

2012 No. 3068

OVERSEAS TERRITORIES

**The Guinea-Bissau (Sanctions) (Overseas Territories) Order
2012**

Made - - - - - *12th December 2012*

Laid before Parliament *19th December 2012*

Coming into force - - - *9th January 2013*

At the Court at Buckingham Palace, the 12th day of December 2012

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 112 of the Saint Helena Act 1833^(a), the British Settlements Acts 1887 and 1945^(b), and all of the other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Guinea-Bissau (Sanctions) (Overseas Territories) Order 2012.

(2) It comes into force on 9th January 2013.

(3) It extends to the territories listed in Schedule 1.

Application of the Order

2.—(1) This Order applies to—

(a) any person in the Territory,

(b) any person elsewhere who is—

(i) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person and is ordinarily resident in the Territory, or

(ii) a body incorporated or constituted under the law of any part of the Territory, and

(c) any person onboard a ship or aircraft that is registered in the Territory.

(2) Article 13 applies to—

(a) the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2,

^(a) 1833 c.85.

^(b) 1887 c.54 and 1945 c.7.

- (b) the Falkland Islands and South Georgia and the South Sandwich Islands subject to the modification set out in Schedule 3, and
 - (c) St Helena, Ascension and Tristan da Cunha as set out in Schedule 4.
- (3) Article 14 applies to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.
- (4) In the application of this Order to any territory listed in Schedule 1, the expression “the Territory” in this Order means that territory.

Interpretation

3.—(1) In this Order, unless otherwise provided—

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

“the Council Regulation” means Council Regulation (EU) No. 377/2012 adopted by the Council of the European Union on 3rd May 2012^(a) concerning restrictive measures in respect of Guinea-Bissau;

“designated person” means any person, entity or body listed in Annex I to the Council Regulation;

“document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

“frozen account” means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person;

“funds” means financial assets and benefits of every kind, including (but not limited to)—

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments,
- (b) deposits with relevant institutions or other entities, balances on accounts, debts and debt obligations,
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts,
- (d) interest, dividends or other income on or value accruing from or generated by assets,
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments,
- (f) letters of credit, bills of lading and bills of sale,
- (g) documents providing evidence of an interest in funds or financial resources, or
- (h) any other instrument of export financing;

“goods” includes items, materials and equipment;

“Governor” means the Governor or other officer administering the Government of the Territory;

“officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate or any person who has purported to act in any such capacity;

“person” means any natural or legal person, entity or body;

“relevant institution” means—

- (a) any person who may lawfully accept deposits in or from within the Territory by way of business, or

(a) O.J. L. 119, 4.5.2012, p. 1.

- (b) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

“ship” includes every description of vessel used in navigation;

“the Territory” has the meaning given in article 2(4);

“transfer” in relation to funds means—

- (a) any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, regardless of whether the payer and the payee are the same person, or
- (b) any transaction by non-electronic means such as in cash, cheques or accountancy orders, with a view to making funds available to a payee regardless of whether the payer and payee are the same person;

“vehicle” means land transport vehicle.

(2) For the purpose of the definition of “relevant institution” in paragraph (1)—

- (a) the activity of accepting deposits has the meaning given by section 22 of the Financial Services and Markets Act 2000(a), taken with Schedule 2 to that Act and any order under section 22 of that Act, and
- (b) a person is not regarded as accepting deposits by way of business if—
 - (i) the person does not hold himself or herself out as accepting deposits on a day to day basis, and
 - (ii) any deposits which the person accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(3) In determining for the purposes of paragraph (2)(b) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(4) An expression used both in this Order and in the Council Regulation has the meaning given in the Council Regulation.

(5) A reference in this Order to any enactment (including legislation of the European Union) or statutory instrument is to be construed as a reference to that enactment or instrument as amended from time to time.

PART 1

Freezing funds etc.

Dealing with funds and economic resources

4.—(1) It is an offence for a person (“P”), including the designated person, to deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) In paragraph (1), “deal with” means—

- (a) in relation to funds—
 - (i) use, alter, move, allow access to or transfer,
 - (ii) deal with the funds in any other way that would result in a change in volume, amount, location, ownership, possession, character or destination, or
 - (iii) make any other change that would enable use, including portfolio management, and

(a) 2000 c.8.

- (b) in relation to economic resources, use to obtain funds, goods or services in any way, including by selling, hiring or mortgaging the resources.
- (3) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that—
 - (a) P is making the funds or economic resources so available, and
 - (b) in the case of economic resources, the designated person would be likely to exchange them, or use them in exchange, for funds, goods or services.
- (4) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or economic resources so available.
- (5) For the purposes of paragraph (4)—
 - (a) funds or economic resources are made available for the benefit of a designated person only if that person obtains, or is able to obtain, a significant financial benefit from the funds or economic resources, and
 - (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (6) No liability arises for any person concerned in the freezing of funds or economic resources in accordance with this article unless it is proved that the funds or economic resources were frozen or withheld as a result of negligence.
- (7) This article is subject to articles 5 and 7.

Credits to a frozen account

- 5.—(1) Nothing in article 4 prevents a person from crediting a frozen account with—
 - (a) interest or other earnings due on the account, or
 - (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.
- (2) Nothing in article 4 prevents a relevant institution from crediting a frozen account where it receives funds transferred to the account.

Information relating to funds etc.

- 6.—(1) The Governor must take such steps as the Governor considers appropriate to cooperate with any international investigation relating to the funds, economic resources or financial transactions of—
 - (a) a designated person,
 - (b) a person owned or controlled by a designated person, or
 - (c) a person acting on behalf of, or at the direction of, a designated person.
- (2) A relevant institution must inform the Governor as soon as practicable if it knows or suspects that a customer—
 - (a) is a designated person, or
 - (b) has committed an offence under article 4 or 7(10).
- (3) When informing the Governor under paragraph (2), the relevant institution must state—
 - (a) the information or other matter on which the knowledge or suspicion is based,
 - (b) any information it holds about the customer by which the customer can be identified, and
 - (c) if the customer is a designated person, the nature and amount or quantity of any funds or economic resources held by the relevant institution for the customer since the customer first became a designated person.
- (4) A relevant institution must inform the Governor as soon as practicable if it credits a frozen account in accordance with article 5(1)(b) or (2).

(5) It is an offence for a relevant institution to fail to comply with a requirement of paragraph (2), (3) or (4).

(6) Anything done by a relevant institution in accordance with this article is not to be treated as a breach of any restriction imposed by statute or otherwise.

(7) For the purposes of this article, “customer”, in relation to a relevant institution, includes—

- (a) a person who is or has been a customer of the institution at any time since the coming into force of this Order, or
- (b) a person with whom the institution has had dealings in the course of its business since the coming into force of this Order.

PART 2

General

Licences granted by the Governor

7.—(1) The Governor may, with the consent of the Secretary of State, grant a licence authorising an activity that would otherwise be prohibited under article 4.

(2) A person is not guilty of an offence under article 4 in respect of anything done by the person under the authority of a licence granted by the Governor.

(3) A licence may, in particular, relate to—

- (a) payment of basic expenses of designated persons and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines, medical treatment, taxes, insurance premiums and public utility charges;
- (b) payment of reasonable professional fees and expenses associated with the provision of legal services;
- (c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
- (d) payment of necessary extraordinary expenses;
- (e) satisfaction of a judicial, administrative or arbitral lien or judgment entered into prior to the date on which this Order comes into force and not for the benefit of a designated person.

(4) A licence must specify the acts authorised by it and may be—

- (a) general or granted to a category of persons or to a particular person,
- (b) subject to conditions, and
- (c) of indefinite duration or subject to an expiry date.

(5) The Governor may, with the consent of the Secretary of State, vary or revoke a licence at any time.

(6) On the grant, variation or revocation of a licence, the Governor must—

- (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person, and
- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Governor considers appropriate to publicise the grant, variation or revocation of the licence.

(7) Any notice to be given to a person by the Governor under paragraph (6) may be given—

- (a) by posting it to the person’s last known address, or

(b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office in the Territory of the body or partnership.

(8) Where the Governor does not have an address in the Territory for the person, the Governor must make arrangements for the notice to be given to the person at the first available opportunity.

(9) Failing to comply with any condition in the licence is acting in a way that is not authorised by the licence unless—

(a) the licence was modified after the completion of the act authorised by the licence, and

(b) the alleged failure to comply with a condition in the licence would not have been a failure if the licence had not been so modified.

(10) It is an offence for a person to knowingly or recklessly make any statement or give any document or information which is false in a material particular for the purpose of obtaining a licence.

(11) A licence granted in connection with the application for which the false statement was made or the false document or information given is void from the time it was granted.

Licences granted outside the Territory

8. A person is not guilty of an offence under article 4 in respect of anything done by the person—

(a) outside the Territory, and

(b) under the authority of a licence granted in accordance with any provisions of the law in force in the place where it is done corresponding to the provisions of this Order.

Requirement to publish list of designated persons

9.—(1) The Governor must—

(a) publish a list of designated persons, and

(b) keep the list up to date.

(2) The Governor may publish a list under paragraph (1) in any form the Governor considers appropriate, including by means of a website.

Evidence and information

10. Schedule 5 (which contains further provisions about obtaining evidence and information) has effect.

Functions of the Governor

11.—(1) The Governor may, to such extent and subject to such restrictions and conditions as the Governor thinks proper, delegate or authorise the delegation of any of the Governor's functions under this Order to any person, or class or description of persons.

(2) References in this Order to the Governor are to be construed accordingly.

(3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in this Order.

Circumvention and contravention of prohibitions

12. It is an offence for a person to intentionally participate in an activity, knowing that the object or effect of the activity is (directly or indirectly)—

(a) to circumvent any of the prohibitions in article 4, or

(b) to enable or facilitate the contravention of any such prohibition.

Penalties

- 13.—(1) A person guilty of an offence under article 4 or 12 is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both; or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.
- (2) A person guilty of an offence under article 6 or 7(10), or paragraph 3(b), (c) or (d) of Schedule 5 is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.
- (3) A person guilty of an offence under paragraph 3(a) or paragraph 5 of Schedule 5 is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.
- (4) If an offence under this Order committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to any neglect on the part of an officer of the body corporate,
- the officer as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly.

Proceedings

- 14.—(1) Proceedings against a person for an offence may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.
- (2) Summary proceedings for an offence alleged to have been committed outside the Territory may be instituted within the period of 12 months beginning with the date on which the person charged first enters the Territory after committing the offence.
- (3) Proceedings for an offence must not be instituted in the Territory except with the consent of the principal public officer of the Territory responsible for criminal prosecutions.
- (4) Nothing in paragraph (3) prevents—
- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of an offence, or
 - (b) the remand in custody or on bail of any person charged with an offence.
- (5) A reference in this article to an offence is to an offence under this Order.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 1(3)

Territories to which this Order extends

Anguilla

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands
Falkland Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St Helena, Ascension and Tristan da Cunha
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 2

Application of Articles 13 and 14 to the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

1. A person guilty of an offence under article 4 or 12 is liable on conviction to imprisonment for a term not exceeding seven years or to a fine or to both.
2. A person guilty of an offence under article 6 or 7(10), or paragraph 3(b), (c) or (d) of Schedule 5 is liable on conviction to imprisonment for a term not exceeding two years or to a fine or to both.
3. A person guilty of an offence under paragraph 3(a) or paragraph 5 of Schedule 5 is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or its equivalent or to both.
4. If an offence under this Order committed by a body corporate is shown—
 - (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to any neglect on the part of an officer of the body corporate,the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.
5. Proceedings against a person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.
6. Proceedings for an offence under this Order must not be instituted in the Territory except with the consent of the Attorney General and Legal Adviser.
7. Nothing in paragraph 6 prevents—
 - (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of an offence, or
 - (b) the remand in custody or on bail of any person charged with an offence.

SCHEDULE 3

Article 2

Application of Article 13 to the Falkland Islands and to South Georgia and the South Sandwich Islands

1. This Schedule applies when the Magistrates' Court is sentencing a person following a summary conviction for an offence under this Order.

2. Any penalties which would be available to the Magistrates' Court under article 13 on conviction on indictment for the offence are available to the Court as if they were penalties so available on summary conviction.

SCHEDULE 4

Article 2

Application of Article 13 to St Helena, Ascension and Tristan da Cunha

1. A person guilty of an offence under article 4 or 12 is liable on conviction to imprisonment for a term not exceeding seven years or to a fine or to both.

2. A person guilty of an offence under article 6 or 7(10), or paragraph 3(b), (c) or (d) of Schedule 5 is liable on conviction to imprisonment for a term not exceeding two years or to a fine or to both.

3. A person guilty of an offence under paragraph 3(a) or paragraph 5 of Schedule 5 is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or its equivalent or to both.

4. If an offence under this Order committed by a body corporate is shown—

(a) to have been committed with the consent or connivance of an officer of the body corporate, or

(b) to be attributable to any neglect on the part of an officer of the body corporate,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

SCHEDULE 5

Article 10

Evidence and information

Power to require information or documents

1. —(1) An authorised officer may request any person in, or resident in, the Territory to provide any information or produce any document in the person's possession or control which the officer may require for the purpose of—

(a) securing compliance with, or detecting evasion of, this Order,

(b) obtaining evidence of the commission of an offence under this Order,

(c) establishing the nature and amount or quantity of any funds or economic resources owned, held or controlled by a designated person,

(d) establishing the nature of any financial transactions entered into by a designated person,
or

(e) cooperating with any international investigation in accordance with article 6(1).

(2) When exercising the power in sub-paragraph (1), an authorised officer may—

(a) take copies of or extracts from any document so produced,

- (b) request any person producing a document to give an explanation of it, and
 - (c) where that person is a body corporate, request any person who is a present or past officer or employee of the body corporate to give such an explanation.
- (3) Any person to whom a request is made must comply with it within such time and in such manner as may be specified in the request.
- (4) Nothing in this paragraph is to be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged information or document in the person's possession in that capacity.

Powers of search and entry to obtain evidence or information

2.—(1) A justice of the peace may grant a search warrant if satisfied by information on oath that—

- (a) there are reasonable grounds for suspecting that—
 - (i) an offence under this Order has been or is being committed, or
 - (ii) information or a document requested by an authorised officer under paragraph 1 has not been provided or produced; and
- (b) evidence of the commission of the offence, or the information or document so requested, is to be found on a ship, aircraft, vehicle or premises specified in the information.

(2) A search warrant issued under this paragraph is a warrant empowering an authorised officer to enter and search the ship, aircraft, vehicle or premises specified in the information, at any time within one month from the date of the warrant.

(3) An authorised officer who enters and searches a ship, aircraft, vehicle or premises under a warrant issued under this paragraph may—

- (a) take such other persons and such equipment on to the ship, aircraft, vehicle or premises as appear to the officer to be necessary;
- (b) inspect and seize anything found in the course of a search if the officer reasonably suspects that—
 - (i) it is evidence in relation to an offence under this Order,
 - (ii) it is information or a document requested (but not provided or produced) under paragraph 1, or
 - (iii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed;
- (c) take copies of any document;
- (d) require information which is stored in an electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible (or from which it can readily be produced in a visible and legible form).

(4) An authorised officer may, if necessary, use reasonable force in the exercise of the powers conferred by this paragraph.

(5) Anything seized under sub-paragraph (3) may be retained for so long as is necessary in all the circumstances.

(6) An authorised officer who enters a ship, aircraft, vehicle or premises under a warrant issued under this paragraph, or by virtue of sub-paragraph (3)(a), may—

- (a) search any person found on the ship, aircraft, vehicle or premises whom the officer has reasonable cause to believe to be in possession of anything which may be required as evidence for the purposes of proceedings in respect of an offence under this Order, and
- (b) seize anything found in such a search.

(7) A search of a person under sub-paragraph (6) must be carried out by a person of the same sex.

Offences relating to information etc.

3. It is an offence for a person to—

- (a) without reasonable excuse, refuse or fail within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule,
- (b) knowingly or recklessly give any information, or produce any document, which is false in a material particular in response to such a request,
- (c) destroy, mutilate, deface, conceal or remove any document with intent to evade the provisions of this Schedule, or
- (d) otherwise intentionally obstruct any person in the exercise of that person's powers under this Schedule.

4. Where a person is convicted of an offence under paragraph 3(a), the court may make an order requiring the person, within such period as may be specified in the order, to give the requested information or produce the requested document.

5.—(1) It is an offence for a person to disclose information or a document obtained in accordance with this Order (including a copy or extract made of such a document) except—

- (a) to a person who would have been authorised to request the information or document under this Order;
- (b) to a person holding or acting in any office under or in the service of—
 - (i) the Crown in right of the Government of the United Kingdom,
 - (ii) the Government of the Isle of Man,
 - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark,
 - (iv) the States of Jersey, or
 - (v) the Government of any British overseas territory;
- (c) for the purpose of giving assistance or cooperation, with the authority of the Governor, to—
 - (i) any organ of the United Nations, or
 - (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the government of any State or territory;
- (d) with a view to instituting, or otherwise for the purposes of, any proceedings—
 - (i) in the Territory, for an offence under this Order, or
 - (ii) in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory (other than the Territory), for an offence under a similar provision in any such jurisdiction;
- (e) to the Financial Services Authority of the United Kingdom or to the relevant authority with responsibility in any other State or territory for regulating and supervising financial services business; or
- (f) to any third party, with the consent of a person who, in the person's own right, is entitled to the information or to possession of the document, copy or extract.

(2) In sub-paragraph (1)(f) "in the person's own right" means not merely in the person's capacity as a servant or agent of another person.

6. An authorised officer must, if requested to do so, produce evidence of his or her authority before exercising any power conferred by this Schedule.

7. In this Schedule "authorised officer" means—

- (a) a police or customs officer, or
- (b) a person authorised by the Governor for the purposes of this Schedule, whether generally or in a particular case.

8. Anything done in accordance with this Schedule is not to be treated as a breach of any restriction imposed by statute or otherwise.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect in specified Overseas Territories to sanctions in respect of Guinea-Bissau adopted by the European Union in Council Decision 2012/285/CFSP, as amended.

The sanctions comprise an asset freeze against persons engaged in or providing support for acts which threaten peace, security or stability in Guinea-Bissau and a prohibition on making funds and economic resources available to such persons.

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