

2012 No. 361

OVERSEAS TERRITORIES

The Sudan and South Sudan (Restrictive Measures) (Overseas Territories) Order 2012

Made - - - - - *15th February 2012*
Laid before Parliament *22nd February 2012*
Coming into force - - - *14th March 2012*

At the Court at Buckingham Palace, the 15th day of February 2012

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in 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, extent, application and revocation

1.—(1) This Order may be cited as the Sudan and South Sudan (Restrictive Measures) (Overseas Territories) Order 2012 and shall come into force on 14th March 2012.

(2) This Order shall extend to the territories listed in Schedule 1.

(3) Articles 16 and 17 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(4) Article 16 shall apply to the Falkland Islands and South Georgia and the South Sandwich Islands as set out in Schedule 3.

(5) Article 16 shall apply to St Helena, Ascension and Tristan da Cunha as set out in Schedule 4.

(6) In the application of this Order to any of the said territories the expression “the Territory” in this Order means that territory.

(7) An offence may be committed under article 3(1), 4(3), 5, 6(3), 8, 9(1), 9(2), 10(3), 10(4), 14(3), and paragraph 4 of Schedule 5 by any person in the Territory or by any person elsewhere who is—

- (a) 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
- (b) a body incorporated or constituted under the law of any part of the Territory.

(a) 1833 c.85.

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

(8) The Sudan (Restrictive Measures) (Overseas Territories) Order 2004(a) is revoked.

Interpretation

2.—(1) In this Order, the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say—

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

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“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;

“export” includes shipment as stores;

“exportation” in relation to any ship or aircraft, includes the taking out of the Territory of the ship or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

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

“master”, in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

“operator”, in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or vehicle;

“owner”, in relation to a ship, where the owner is not the operator, means the operator and any person to whom it is chartered;

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

“the Regulation” means Council Regulation (EC) No 131/2004(b) adopted by the Council of the European Union on 26 January 2004 which came into force on 29 January 2004 (the date of its publication) concerning certain restrictive measures as amended from time to time;

“restricted goods” means the goods, software and technology specified in Schedule 2 to the Export Control Order 2008(c) and, in so far as they are not covered in that Schedule, the goods, software and technology specified in the Common Military List of the European Union(d);

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

“shipment” includes loading into an aircraft;

“stores” means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a ship or aircraft as merchandise for sale by retail to persons carried therein;

“technical assistance” means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance;

“vehicle” means land transport vehicle.

(2) Except where this Order provides otherwise, expressions used in the Regulation which are also used in this Order have the same meaning in this Order as they have in the Regulation.

(a) S.I. 2004/349.

(b) O.J. L.21 28.1.2004, p.1.

(c) S.I. 2008/3231.

(d) O.J. C.86 18.3.2011, p.1.

RESTRICTED GOODS AND ASSISTANCE

Supply of restricted goods

3.—(1) Any person who, except under the authority of a licence granted by the Governor—

- (a) supplies or delivers;
- (b) agrees to supply or deliver; or
- (c) does any act calculated to promote the delivery of,

restricted goods to any person or destination in Sudan or South Sudan shall be guilty of an offence under this Order unless he or she proves that he or she did not know and had no reasonable cause to suspect that the goods in question were to be supplied or delivered to a person or destination in Sudan or South Sudan.

(2) Nothing in paragraph (1)(b) or (c) shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Governor.

Exportation of restricted goods to Sudan and South Sudan

4.—(1) Except under the authority of a licence granted by the Governor, restricted goods shall not be exported from the Territory to any destination in Sudan or South Sudan or to any destination for the purpose of delivery, directly or indirectly, or to the order of any person in Sudan or South Sudan.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of restricted goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty both of an offence under paragraph (3) above and of an offence under article 3(1), he or she shall not be guilty of an offence under paragraph (3) above.

Assistance relating to military activities etc

5. Any person who, except under the authority of a licence granted by the Governor, directly or indirectly, provides to any person in, or for use in, Sudan or South Sudan—

- (a) any technical assistance or brokering or other services relating to military activities or to the provision, manufacture, maintenance or use of restricted goods; or
- (b) financing or financial assistance relating to military activities, the sale, supply, export or delivery of restricted goods, or the provision of technical assistance or brokering or other services referred to in paragraph (a),

shall be guilty of an offence under this Order, unless he or she can prove that he or she did not know and had no reasonable cause to suspect that the assistance, technical assistance, financing or financial assistance in question was to be provided to a person in, or for use in, Sudan or South Sudan.

Use of ships, aircraft and vehicles: restricted goods

6.—(1) Without prejudice to the generality of article 3, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Sudan or South Sudan to any destination therein.

(2) This article applies to ships or aircraft registered in the Territory, and to any other ship or aircraft that is for the time being chartered to any person who is—

- (a) 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
 - (b) a body incorporated or constituted under the law of the Territory.
- (3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then—
- (a) in the case of a ship or aircraft registered in the Territory, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
 - (b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered, if he or she is a person referred to in paragraph (2)(a) or (b) and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
 - (c) in the case of a vehicle, the operator and driver of the vehicle,

shall be guilty of an offence under this Order, unless he or she proves that he or she did not know and had no reasonable cause to suspect that the carriage of goods in question was, or formed part of, carriage from any place outside Sudan or South Sudan to any destination therein.

(4) Any restricted goods subject to carriage in contravention of paragraph (1) shall be liable to forfeiture.

(5) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Territory of the goods concerned to Sudan or South Sudan was authorised by a licence granted by the Governor.

(6) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

Licences

7.—(1) The Governor may grant a licence under articles 3 to 5 of this Order in respect of—

- (a) the supply, export or delivery of—
 - (i) non-lethal military equipment intended solely for humanitarian, human rights monitoring or protective use, or for institution building programmes of the United Nations, the African Union, the European Union, or for European Union, United Nations and African Union crisis management operations;
 - (ii) non-combat vehicles which have been manufactured or fitted with materials to provide ballistic protection and which are intended solely for the protective use of personnel of the European Union and its Member States in Sudan or South Sudan;
 - (iii) de-mining equipment for use in de-mining operations;
 - (iv) non-lethal military equipment intended solely for the support of the process of security sector reform in South Sudan; or
 - (v) protective clothing, including flak jackets and military helmets temporarily exported to Sudan or South Sudan by United Nations personnel, personnel of the European Union or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.
- (b) the provision of technical assistance, brokering and other services, and financing and financial assistance related to the equipment or programmes or operations referred to in paragraphs (a)(i) to (iv);
- (c) the provision of technical assistance, brokering and other services, financial assistance, and sales, supplies, exports or deliveries in support of the implementation of the Comprehensive Peace Agreement(a);

(a) The Comprehensive Peace Agreement between The Government of The Republic of The Sudan and The Sudan People's Liberation Movement/Sudan People's Liberation Army, dated 9th January 2005.

- (2) A licence may be—
- (a) general or granted to a category of persons or to a particular person;
 - (b) subject to conditions; or
 - (c) of an indefinite duration or subject to an expiration date.
- (3) The Governor may vary or revoke a licence at any time.
- (4) The Governor, where he or she grants, varies or revokes a licence shall—
- (a) in the case of a licence granted to a particular person, give written notice of the licence, variation or revocation to that person; and
 - (b) in the case of a general licence, or of a licence granted to a category of persons, take such steps as the Governor considers appropriate to publicise the licence, variation or revocation.

GENERAL

Customs powers to demand evidence of destination which goods reach

8. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by the Governor, furnish, within such time as the Governor may allow, proof to the Governor's satisfaction that the goods have reached either—

- (a) a destination to which they were authorised to be exported by a licence granted under article 7 of this Order; or
- (b) a destination to which their exportation or provision was not prohibited by this Order,

and if he or she fails to do so, he or she shall be guilty of an offence under this Order, unless he or she proves that he or she did not consent to or connive at the goods reaching any destination other than a destination referred to in paragraph (a) or (b).

Offences in connection with application for licences, conditions attaching to licences, etc

9.—(1) If, for the purposes of obtaining any licence under this Order, any person makes a statement or furnishes any document or information which to their knowledge is false in any material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he or she shall be guilty of an offence under this Order.

(2) Subject to paragraph (3), any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with the conditions attaching to that licence shall be guilty of an offence under this Order.

(3) No person shall be guilty of an offence under paragraph (2) where he or she proves that the condition with which he or she failed to comply was modified, otherwise than with their consent, by the Governor after the doing of the act authorised by the licence.

Declaration as to goods: powers of search

10.—(1) Any person who is about to leave the Territory shall, if he or she are required to do so by an officer authorised for the purpose by the Governor—

- (a) declare whether or not he or she has with them any restricted goods which are destined for Sudan or South Sudan or for delivery, directly or indirectly, to or to the order of any person in Sudan or South Sudan; and
- (b) produce any such goods as aforesaid which he or she has with them.

(2) Any such officer, and any person acting under his or her direction, may search that person for the purpose of ascertaining whether he or she has with them any such goods as aforesaid, provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(3) Any person who without reasonable excuse refuses to make such a declaration, or fails to produce any goods as aforesaid, or refuses to allow themselves to be searched in accordance with the foregoing provisions of this article, shall be guilty of an offence under this Order.

(4) Any person who under the provisions of this article makes a declaration which to their knowledge is false in a material particular, or recklessly makes any declaration which is false in a material particular, shall be guilty of an offence under this Order.

(5) Before or on exercising any power conferred by this article, an authorised person shall if requested to do so, produce evidence of his or her authority.

Investigation, etc. of suspected ships

11.—(1) Where any authorised officer has reason to suspect that any ship to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article—

- (a) the officer may (either alone or accompanied and assisted by persons under his or her authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;
- (b) the officer may request the owner or the master of the ship to furnish such information relating to the ship and her cargo and produce for his or her inspection such documents so relating and such cargo as he may specify; and
- (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 6, the officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, shall seize any restricted goods and may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either—

- (a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo specified by the officer; or
- (b) to request the master of the ship to take any one or more of the following steps—
 - (i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;
 - (ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;
 - (iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and
 - (iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 14(3), where—

- (a) a master refuses or fails to comply with a request made under paragraph (2)(b); or
- (b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

any authorised officer may take such steps as appear to him or her to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) Before or on exercising any power conferred by this article, an authorised officer shall if requested to do so, produce evidence of his or her authority.

(5) In this article “authorised officer” means—

- (a) any commissioned naval or military officer;
- (b) any British consular officer;
- (c) any police or customs officer; or
- (d) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

12.—(1) Where any authorised person has reason to suspect that any aircraft to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article—

- (a) he or she may (either alone or accompanied and assisted by persons under his or her authority) board the aircraft and search it and, for that purpose, may use, or authorise the use of reasonable force;
- (b) he or she may request the charterer, the operator and the commander of the aircraft, or any of them, to furnish such information relating to the aircraft and its cargo and produce for his or her inspection such documents so relating and such cargo as he or she may specify; and
- (c) if the aircraft is then in the Territory, any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, the operator and the commander, or any of them, to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 14(3), where an authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he or she may take such steps as appear to him or her to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, for that purpose—

- (a) may enter, or authorise entry, upon any land and upon that aircraft;
- (b) may detain, or authorise the detention of, that aircraft and any of its cargo;
- (c) shall seize any restricted goods; and
- (d) may use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his or her authority.

(4) In this article, “authorised person” means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

13.—(1) Where any authorised person has reason to suspect that any vehicle in the Territory has been or is being or is about to be used in contravention of paragraph (1) of article 6—

- (a) he or she may (either alone or accompanied and assisted by persons under his or her authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;
- (b) he or she may request the operator and the driver of the vehicle, or either of them, to furnish such information relating to the vehicle and any goods contained in it and produce for his or her inspection such documents so relating and such goods as he or she may specify; and
- (c) any authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator and driver, or either of them, to

cause the vehicle and any goods contained in it to remain in the Territory until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 14(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he or she may take such steps as appear to him or her to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, for that purpose—

- (a) may enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;
- (b) may detain, or authorise the detention of, that vehicle and any goods contained in it; and
- (c) may use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his or her authority.

(4) In this article, “authorised person” means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 11 to 13

14.—(1) No information furnished or document produced by any person in pursuance of a request made under article 11, 12 or 13 shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or the document was produced, provided that a person who has obtained information or is in possession of a document only in their capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in their own right;
- (b) to any person empowered under article 11, 12 or 13 to request that the information or the document be furnished or produced, or to any person holding or acting in any office under or in the service of—
 - (i) the Crown in respect 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) with a view to the institution of, or otherwise for the purposes of, any proceedings—
 - (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory;
- (d) for the purpose of giving assistance or cooperation, pursuant to the Regulation, to any person in the service of the Council of the European Union, the European Commission or the government of any country.

(2) Any power conferred by article 11, 12 or 13 to request the furnishing of information or the production of a document or of cargo or of goods for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo or goods produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say—

- (a) a master of a ship who disobeys any direction given under article 11(2)(a);
- (b) a master of a ship or its owner or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who—

- (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 11, 12 or 13 by any person empowered to make it; or
 - (ii) furnishes any document or information which to his or her knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request.
- (c) a master, an owner or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any person (or any person acting under the authority of any such person) in the exercise of their powers under article 11, 12 or 13.

(4) Nothing in article 11, 12 and 13 or this article shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

15.—(1) The provisions of Schedule 5 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor—

- (a) of evidence or information for the purpose of securing compliance with or detecting evasion of:
 - (i) this Order in the Territory; or
 - (ii) any law making provision with respect to the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory.
- (b) of evidence of the commission—
 - (i) in the Territory, of an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or
 - (ii) with respect to any of the matters regulated by this Order, of an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory.

(2) No information furnished or document produced by any person in pursuance of a request made under Schedule 5 shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or the document was produced, provided that a person who has obtained information or is in possession of a document only in their capacity as a servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or the possession of that document in their own right;
- (b) to any person empowered under Schedule 5 to request that the information be furnished or the document produced to any person holding or acting in any office under or in the service of—
 - (i) the Crown in respect 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 other British overseas territory.
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings—
 - (i) in the Territory, for an offence under this Order or with respect to any of the matters regulated by this Order, for any offence relating to customs; or
 - (ii) for an offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

Penalties

- 16.—(1) A person guilty of an offence under article 3(1), 4(3), 5, or 6(3) 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 14(3)(b)(ii) or paragraph 4(b) 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;
 - (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 article 9(1) or (2) or article 10(4) is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on a summary conviction to a fine not exceeding £5,000 or its equivalent or to both.
- (4) A person guilty of an offence under article 14(3)(a), 14(3)(b)(i), 14(3)(c) or paragraph 4(a) or (c) of Schedule 5 shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or its equivalent or to both.
- (5) A person guilty of an offence under article 8 or 10(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.
- (6) 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

- 17.—(1) Proceedings against any 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 at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.
- (3) No proceedings for an offence shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions.
- (4) Irrespective of whether such consent has been obtained, paragraph (3) does not prevent—
- (a) the arrest of any person in respect of such an offence; or
 - (b) the remand in custody or on bail of any person charged with such an offence.
- (5) In this article, “offence” means an offence under this Order.

Notices

- 18.—(1) This article has effect in relation to any notice to be given to a person by the Governor under article 7(4)(a).
- (2) Any such notice may be given—
- (a) by posting it to the person’s last known address; or

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

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

Exercise of the powers of the Governor

19.—(1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his or her powers under this Order to any person, or class or description of persons approved by the Governor.

(2) In the case of a delegation referred to in paragraph (1) of this article, 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.

Miscellaneous

20.—(1) Any provision of this Order which prohibits the doing of an act except under the authority of a licence granted by the Governor shall not have effect in relation to any such act done anywhere other than the Territory provided that it is duly authorised.

(2) An act is duly authorised for the purpose of paragraph (1) if—

(a) it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (and that law substantially corresponds to the relevant provisions of this Order); and

(b) that licence is granted by the authority competent in that behalf under that law.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)

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 1(3)

Application of Articles 16 and 17 to the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

1. Any person guilty of an offence under article 3(1), 4(3), 5 or 6(3) is liable on conviction to imprisonment for a term not exceeding seven years, or to a fine, or to both.

2. Any person guilty of an offence under article 10(4), 14(3)(b)(ii), 9(1) or (2) or paragraph 4(b) 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. Any person guilty of an offence under article 14(3)(a), 14(3)(b)(i), 14(3)(c), or paragraph 4(a) or (c) of Schedule 5 is liable on conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding £5000 or its equivalent, or to both.

4. Any person guilty of an offence under article 8 or 10(3) is liable on conviction to a fine not exceeding £5000 or its equivalent.

5. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or 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 that offence and is liable to be proceeded against and punished accordingly.

6. Proceedings against any 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.

7. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the Attorney General and Legal Adviser.

8. Irrespective of whether consent under paragraph 7 has been obtained, paragraph 7 does not prevent—

- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence; or
- (b) the remand in custody or on bail of any person charged with such an offence.

SCHEDULE 3

Article 1(4)

Application of Article 16 to the Falkland Islands and to South Georgia and the South Sandwich Islands.

When the Magistrate's Court is sentencing a person following a summary conviction for an offence under this Order, alternatively to the penalties applicable under article 16 to the relevant offence upon summary conviction, there shall be available to the Magistrate's Court any penalties which would be applicable under article 16 upon conviction for that offence on indictment.

SCHEDULE 4

Article 1(5)

Application of Article 16 to St Helena, Ascension and Tristan da Cunha

1. A person guilty of an offence under article 3(1), 4(3), 5, or 6(3) 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 10(4), 14(3)(b)(ii), 9(1) or (2), or paragraph 4(b) 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 article 14(3)(a), 14(3)(b)(i), 14(3)(c), or paragraph 4(a) or (c) 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 to both.
4. A person guilty of an offence under article 8 or 10(3) is liable on conviction to a fine not exceeding £5,000.
5. 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 15

Evidence and Information

- 1.—(1) Without prejudice to any other provision of this Order, or to any provision of any other law, the Governor may request any person in or resident in the Territory to furnish any information in their possession or control, or to produce any document in their possession or control, which the Governor may require for the purposes of article 15 of this Order; and any person to whom such a request is made shall comply with it within such time and in such a manner as may be specified in the request.
 - (2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in their possession in that capacity.
 - (3) Where a person is convicted of an offence under paragraph 4 of this Schedule of failing to furnish or produce a document when requested to do so, the court may make an order requiring them, within such a period as may be specified in the order, to furnish the information or provide the document.
 - (4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.
 - (5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by law.
- 2.—(1) If any judge, justice of the peace or magistrate is satisfied by the information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case:
 - (a) that there is a reasonable ground for suspecting that an offence under this Order, or with respect to any matters regulated by this Order, an offence relating to customs, has been or is being committed and that evidence of the commission of the offence is to be found on

any premises specified in the information, or in any vehicle, ship or aircraft so specified,
or

- (b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he or she may grant a search warrant authorising any police officer or constable, together with any persons named in the warrant and any other police officers or constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft by virtue of the warrant issued in accordance with sub-paragraph (1) may do all or any of the following things:

- (a) inspect and search those premises or the vehicle, ship or aircraft for any material which he or she has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;
- (b) seize anything on the premises or on the vehicle, ship or aircraft which he or she has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;
- (c) seize anything on the premises or on the vehicle, ship or aircraft which he or she has reasonable grounds to believe are to be produced in accordance with paragraph 1; or
- (d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any authorised person may require that information to be produced in accordance with sub-paragraph (2) which is contained in a computer must be provided in a form in which it can be taken away and in which it is visible and legible.

(4) A police officer or constable lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may:

- (a) search any person who he or she has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and
- (b) seize anything he or she finds in a search referred to in sub-paragraph (a), if he or she has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph,

provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where by virtue of this paragraph a person is authorised to enter any premises, vehicle, ship or aircraft he or she may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of their authority before exercising that power.

4. Any person who—

- (a) without reasonable excuse, refuses or fails 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 by any person who is empowered to make it; or
- (b) furnishes any information or produces any document which to their knowledge is false in a material particular or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request; or

- (c) otherwise wilfully obstructs any person in the exercise of their powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

5. Nothing in this Schedule shall be taken to require any person who has acted as counsel or solicitor for any person to give or produce any privileged information or document in their possession in that capacity.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order gives effect in the specified overseas territories to measures adopted by the European Union in Council Decision 2011/423/CFSP adopted on 18 July 2011 and implemented in Council Regulation 131/2004 as amended, including by amendments introduced following adoption of Council Regulation 1215/2011 on 24 November 2011. Council Decision 2011/423/CFSP repealed Common Position 2005/411/CFSP and extended some restrictive measures to South Sudan which became a separate and independent State on 9 July 2011.

Article 1 provides that the Order extends to the territories listed in Schedule 1, and revokes the Sudan (Restrictive Measures) (Overseas Territories) Order 2004.

Article 2 contains the interpretations used in the Order.

Article 3 makes it a criminal offence for any person to supply restricted goods without a licence.

Article 4 prohibits the exportation of restricted goods and makes it a criminal offence to contravene this prohibition.

Article 5 prohibits the provision of technical assistance, brokering services, and financing or financial assistance relating to such matters as military activities, and makes it an offence to contravene this provision.

Article 6 prohibits the use of ships, aircraft and vehicles to carry restricted goods to Sudan or South Sudan and makes it a criminal offence to contravene this provision.

Article 7 provides a licensing procedure to disapply prohibitions in relation to the arms embargo in respect of certain equipment intended solely for humanitarian or protective use, or for institution building programmes, and for related assistance.

Article 8 provides for customs powers to demand evidence of the destination of goods and makes it an offence to fail to comply with the provisions.

Article 9 creates offences in connection with applications for licences and the failure to comply with the requirements.

Article 10 requires that when requested to do so those leaving the Territory provide a declaration as to goods, provides for powers of search and makes it an offence if provisions are not complied with or false information is provided.

Article 11 provides powers for searching ships suspected of being used in contravention of the provisions of the Order, for prohibiting a voyage from proceeding and for seizing restricted goods and detaining the vessel.

Article 12 provides powers for searching aircraft suspected of being used in contravention of the provisions of the Order, for prohibiting a flight from proceeding and for seizing restricted goods and detaining the aircraft.

Article 13 provides powers for searching vehicles suspected of being used in contravention of the provisions of the Order, for prohibiting a journey from proceeding and for seizing restricted goods and detaining the vehicle.

Article 14 regulates the furnishing of information under articles 11 to 13 and establishes offences for non compliance.

Article 15 provides for the Governor to obtain evidence or information to secure compliance with, or detect evasion of, the matters regulated by the Order.

Article 16 provides for penalties for offences created under the Order.

Article 17 provides for proceedings for offences created under the Order.

Article 18 prescribes the manner in which notices may be given under the Order.

Article 19 provides for the delegation of powers by the Governor.

Article 20 limits the scope of the prohibitions in the Order.

Schedule 1 lists the territories to which the Order applies.

Schedule 2 modifies articles 16 and 17 regarding penalties and court procedures for the Sovereign Base Areas.

Schedule 3 modifies article 16 regarding penalties for the Falkland Islands and South Georgia and the South Sandwich Islands.

Schedule 4 modifies article 16 regarding penalties for the St Helena, Ascension and Tristan da Cunha.

Schedule 5 makes provision regarding the collection of information and evidence by the Governor pursuant to article 15.

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