

2009 No. 3008

OVERSEAS TERRITORIES

**The Burma (Restrictive Measures) (Overseas Territories) Order
2009**

<i>Made</i>	- - - -	<i>17th November 2009</i>
<i>Laid before Parliament</i>		<i>18th November 2009</i>
<i>Coming into force</i>	- -	<i>19th November 2009</i>

At the Court at Buckingham Palace, the 17th day of November 2009

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 of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Burma (Restrictive Measures) (Overseas Territories) Order 2009 and shall come into force on 19th November 2009.

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

(3) Article 28 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(4) Article 28 shall apply to the Falkland Islands and South Georgia and the South Sandwich Islands subject to the modification set out in Schedule 3.

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

(6) An offence may be committed under articles 4, 5(3), 6, 7(3), 8(3), 9(2), 10(2), 12, 15(3) or (4), 16(2), 19(4), 21(1) or (2), or 26(3) by any person within the Territory and by any person elsewhere who is—

(a) 1833 c. 85.

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

- (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.

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;

“assistance” means any form of assistance including technical assistance, services, financing and financial assistance;

“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;

“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;

“export” includes shipment as stores;

“exportation” in relation to any ship, submersible vehicle or aircraft, includes the taking out of the Territory of the ship, submersible vehicle 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;

“financing and financial assistance” in relation to the provision of assistance related to restricted goods includes financing or financial assistance for any sale, supply, transfer or export of restricted goods;

“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, bills of sale;
- (g) documents providing evidence of an interest in funds or financial resources;

“Gazette” means the official gazette of a Territory or any other form in which official information is normally made available in that Territory;

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

“listed enterprise” means any person listed in Annex V or VII (as modified from time to time) to the Regulation or a person identified in a direction by the Governor under article 15(6);

“listed person” means any person listed in Annex VI (as modified from time to time) to the Regulation or a person identified in a direction by the Governor under article 13(1);

“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 the vehicle;

“owner”, in relation to a ship, where the owner of a ship 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;

“prohibited imports” means the goods listed in Annex 1 (as modified from time to time) to the Regulation in the circumstances set out in article 8(1)(a), (b) or (c) of this Order;

“purchase”, “import” or “transport” includes where use is made of any ship, aircraft or vehicle to which article 7 of this Order applies;

“the Regulation” means Council Regulation (EC) No. 194/2008(a) adopted by the Council of the European Union on 25th February 2008 which came into force on 10 March 2008 (the date of its publication) concerning certain restrictive measures in respect of Burma, as amended from time to time;

“relevant institution” means—

- (a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;
- (b) any person who may lawfully accept deposits in or from within the Territory by way of business; or
- (c) 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;

“restricted goods” means the goods, software and technology specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(b) made under the Export Control Act 2002(c) as extended to the territories listed in Schedule 1 thereto by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004(d), equipment that might be used for internal repression as listed in Annex II (as modified from time to time) to the Regulation or the goods and technology listed in Annex III (as modified from time to time) to the Regulation.

“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;

“Supreme Court” means the court of the Territory having unlimited jurisdiction in civil proceedings;

“the 2004 Order” means the Burma (Restrictive Measures) (Overseas Territories) Order 2004(e) as amended by the Burma (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004(f) and by the Judicial Proceedings in Specified Overseas Territories (Restrictive Measures) Order 2009(g);

“vehicle” means land transport vehicle.

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

(a) O.J. L 66, 10.3.2008, p.1. Regulation as amended by Commission Regulation (EC) No 747/2009 (O.J. L 212, 14.8.2009, p.10).
(b) S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561, 2004/2741.
(c) 2002 c. 28.
(d) S.I. 2004/3101 as amended by S.I. 2009/888.
(e) S.I. 2004/1979.
(f) S.I. 2004/3333.
(g) S.I. 2009/888.

- (a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000^(a); and
- (b) a person is not regarded as accepting deposits by way of business if—
 - (i) the person does not hold themselves out as accepting deposits on a day to day basis, and
 - (ii) any deposits which they accept 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)(ii) 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.

Publicly available list of listed persons, restricted goods, listed enterprises and prohibited imports

3.—(1) The Governor shall—

- (a) maintain a list of listed persons;
- (b) cause the list of listed persons to be published in the Gazette of the Territory as necessary from time to time;
- (c) cause a list of restricted goods to be made available to persons in the Territory in such a manner as the Governor thinks fit as necessary from time to time;
- (d) cause a list of listed enterprises to be made available to persons in the Territory in such a manner as the Governor thinks fit as necessary from time to time; and
- (e) cause a list of prohibited imports to be made available to persons in the Territory in such a manner as the Governor thinks fit as necessary from time to time.

(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.

RESTRICTED GOODS, ASSISTANCE AND TRAINING AND PROHIBITED IMPORTS

Supply of restricted goods

4. Any person who, except under the authority of a licence granted by the Governor under this article or article 5,

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

restricted goods to any person or place in Burma shall be guilty of an offence under this Order unless they prove that they did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person or place in Burma.

Exportation of restricted goods to Burma

5.—(1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Burma or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Burma.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture under the customs and excise laws of the Territory.

(a) 2000 c. 8.

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

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) and of an offence under article 4, the person shall not be guilty of the offence under paragraph (3).

Provision of assistance, advice or training

6. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person in, or for use in, Burma any assistance, advice or training related to military activities or to the provision, manufacture, maintenance or use of any restricted goods shall be guilty of an offence under this Order, unless the person proves that they did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person in, or for use in, Burma.

Use of ships, aircraft and vehicles: restricted goods or prohibited imports

7.—(1) Without prejudice to the generality of article 4 or 8, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used—

- (a) for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Burma to any destination therein; or
- (b) for the transport of prohibited imports from Burma as prohibited in article 8(1)(c) below.

(2) This article applies to ships registered in the Territory, to aircraft so registered 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 registered in the Territory or any aircraft so registered, 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 and, if he is such a person as is referred to in paragraph (2)(a) or (b), 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 of the vehicle,

shall be guilty of an offence under this Order, unless the person proves that they did not know and had no reason to suppose that—

- (i) the carriage of the goods in question was, or formed part of, carriage from any place outside Burma to any destination therein; or
- (ii) the transport of the goods in question was, or formed part of, transport as prohibited in article 8(1)(c) below.

(4) Nothing in paragraph (1) shall apply when the supply or delivery or exportation from the Territory of the goods concerned to Burma, or the importation, purchase or transport of the goods concerned from Burma, was authorised by a licence granted by the Governor under article 4, 5 or 8.

(5) 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.

Importation, purchase or transport of prohibited imports

8.—(1) Except under the authority of a licence granted by the Governor under this article, the importation, purchase or transport of goods listed in Annex 1 (as modified from time to time) to the Regulation from Burma is prohibited if—

- (a) the importation or attempted importation is of such goods which originated in Burma or have been exported from Burma;
- (b) the purchase or attempted purchase is of such goods which are located in Burma; or
- (c) the transport or attempted transport is of such goods which originated in Burma or are being exported from Burma to another country, and their final destination is in the Territory.

(2) Any prohibited imports which are imported, purchased or transported or attempted to be imported, purchased or transported shall be liable to forfeiture under the customs and excise laws of the territory.

(3) Any person knowingly concerned in the importation, purchase or transport of such goods shall be guilty of an offence under this Order.

(4) Imports, purchases and transport of goods which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as prohibited by paragraph 1.

PROHIBITIONS CONCERNING LISTED PERSONS

Freezing funds and economic resources

9.—(1) A person (including the listed person) shall not deal with funds or economic resources owned, held or controlled by a listed person unless authorised by a licence granted under article 14.

(2) A person who contravenes the prohibition in paragraph (1) shall be guilty of an offence under this Order.

(3) In proceedings for an offence under this article, it is a defence for a person to show that they did not know and had no reasonable cause to suspect that the funds or economic resources were owned, held or controlled by a listed person.

(4) In this article, “deal with” means—

- (a) in respect of funds—
 - (i) use, alter, move, allow access to or transfer;
 - (ii) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or
 - (iii) make any other change that would enable use, including portfolio management; and
- (b) in respect of economic resources, exchange or use in exchange for funds, goods or services.

Making funds and economic resources available

10.—(1) A person shall not make funds or economic resources available, directly or indirectly, to or for the benefit of a listed person unless authorised by a licence granted under article 14.

(2) A person who contravenes the prohibition in paragraph (1) shall be guilty of an offence under this Order.

(3) In proceedings for an offence under this article, it is a defence for a person to show that they did not know and had no reasonable cause to suspect funds or economic resources were being made available, directly or indirectly, to or for the benefit of a listed person.

Exceptions

11.—(1) A person is not guilty of an offence under article 9 or 10 if he credits 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 prior to the first date on which the account became subject to a direction under article 8 of the 2004 Order or became a frozen account under this Order.

(2) It is not an offence under article 10 for a relevant institution to credit a frozen account where it receives funds transferred by a third party to a frozen account under this Order.

(3) Article 9 applies to any funds credited to a frozen account in accordance with this article.

(4) In this article: “frozen account” means an account with a relevant institution which is held or controlled by a listed person.

(5) In this article: “third party” means a person other than the account holder or the relevant institution with which the account is maintained.

Circumventing prohibitions etc

12. Any person who participates, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to—

- (a) circumvent a prohibition in article 9(1) or 10(1); or
- (b) enable or facilitate the commission of an offence under article 9(2) or 10(2),

shall be guilty of an offence under this Order.

Governor’s power to give directions

13.—(1) Where the Governor has reasonable grounds for suspecting that a person is a person listed in Annex VI to the Regulation, the Governor may give a direction that such person is a listed person for the purposes of this Order.

(2) The Governor may vary or revoke such a direction at any time.

(3) A direction under paragraph (1) has effect—

- (a) for such period as the Governor may specify in the direction, or
- (b) until the direction is revoked or set aside.

(4) Where the Governor gives a direction the Governor shall—

- (a) take such steps as the Governor considers appropriate to publicise the direction;
- (b) give written notice to the person identified in the direction; and
- (c) if the direction is varied or revoked—
 - (i) give written notice of the variation or revocation to the person identified in the direction; and
 - (ii) take such further steps as the Governor considers appropriate to publicise the variation or revocation.

(5) The Supreme Court may set aside a direction on the application of—

- (a) the person identified in the direction; or
- (b) any other person affected by the direction.

(6) A person who makes an application under paragraph (5) shall give a copy of the application and any witness statement or affidavit in support to the Governor not later than seven days before the date fixed for the hearing of the application.

Licences

14.—(1) The Governor may grant a licence to disapply the prohibition in article 9(1) or 10(1) in relation to the acts specified in the licence.

(2) A licence may relate to—

- (a) basic expenses of listed 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 as determined by the Governor provided that the other Member States and the Commission of the European Union have been notified of the grounds for the Governor's determination at least two weeks before the Governor's authorisation of payment.

(3) A licence 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.

(4) The Governor may vary or revoke a licence at any time.

(5) Where a licence is granted, varied or revoked by the Governor, the Governor 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.

PROHIBITIONS CONCERNING LISTED ENTERPRISES

Prohibition against financing listed enterprises

15.—(1) Except under the authority of a licence issued by the Governor, a person shall not finance a listed enterprise.

(2) In this article “finance” means—

- (a) grant any loan or credit to a listed enterprise;
- (b) acquire bonds, certificates of deposit, warrants or debentures issued by any person listed in Annex VII to the Regulation or any person whom the Governor has reasonable grounds for suspecting of being such a person;
- (c) acquire or increase a participation or shareholding, including shares or securities of a participating nature, in a listed enterprise;

(3) A person who contravenes the prohibition in paragraph (1) shall be guilty of an offence under this Order.

(4) Any person who participates, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to—

- (a) circumvent the prohibition in paragraph (1); or
- (b) enable or facilitate the commission of an offence under paragraph (3);

shall be guilty of an offence under this Order.

(5) In proceedings for an offence under paragraph (3) or (4), it is a defence for a person to show that they did not know and had no reasonable cause to suspect that the person being financed was a listed enterprise.

(6) Where the Governor has reasonable grounds for suspecting that a person is a person listed in Annex V or Annex VII to the Regulation, the Governor may give a direction that the person is a listed enterprise for the purposes of this Order.

(7) The provisions of article 13(2) to (6) inclusive apply to any direction made by the Governor under paragraph (6) as they apply to a direction given under article 13(1).

Prohibition against creating a joint venture

16.—(1) A person shall not create a joint venture with—

- (a) a listed enterprise;
- (b) a subsidiary enterprise of a listed enterprise; or
- (c) a person under the control of a listed enterprise.

(2) A person who contravenes the prohibition in paragraph (1) shall be guilty of an offence.

(3) In proceedings for an offence under this article, it is a defence for a person to show that they did not know and had no reasonable cause to suspect that the joint venture was being created with a body falling within sub-paragraph (a), (b) or (c) of paragraph (1).

Exceptions

17.—(1) Subject to paragraph (2), a person is not guilty of an offence under article 15 if the financing of the listed enterprise takes place pursuant to an obligation, contract or agreement which arose or was concluded before the date on which the enterprise was first listed as indicated in Annex V or Annex VII to the Regulation.

(2) Paragraph (1) does not apply where the financing of a listed enterprise consists of—

- (a) an increase in a participation or shareholding in the enterprise unless the person informs the Governor of their intention to undertake such an increase before it takes place; or
- (b) the acquisition of a participation or shareholding in a listed enterprise.

Trade contracts

18. The prohibition in regulation 15(1) does not apply to—

- (a) the execution of trade contracts for the supply of goods or services on usual commercial payment conditions; and
- (b) any supplementary agreements connected with the execution of such contracts.

DISCLOSURE BY FINANCIAL INSTITUTIONS

Failure to disclose knowledge or suspicion

19.—(1) If a relevant institution knows or suspects that a relevant person—

- (a) is a listed person or a listed enterprise; or
- (b) has committed an offence under Article 9(2), 10(2), 12, 15(3) or (4), 16(2) or 21(1) or (2),

it shall disclose to the Governor the information or other matter specified in paragraph (2) as soon as is reasonably practicable after that information or other matter comes to its attention.

(2) A relevant institution, where it discloses to the Governor under paragraph (1), must state—

- (a) the information or other matter on which the knowledge or suspicion is based;

- (b) any information it holds about the relevant person by which the person can be identified; and
- (c) where the relevant person is a listed person or a listed enterprise, the nature and amount or quantity of any funds or economic resources held by the relevant institution for that person since the person or enterprise first became listed under the 2004 Order or this Order.

(3) A relevant institution must inform the Governor without delay if it credits a frozen account in accordance with article 11(2).

(4) A relevant institution which fails to comply with a requirement in paragraph (1), (2) or (3) is guilty of an offence.

(5) In this paragraph, “relevant person” means—

- (a) a customer of the institution;
- (b) a person who has been a customer of the institution at any time on or after 29th July 2004(a); or
- (c) a person with whom the institution has had dealings in the course of its business on or after that date.

(6) Where a relevant institution discloses to the Governor:

- (a) its knowledge or suspicion that a person is a listed person or a listed enterprise or a person who has committed an offence under article 9(2), 10(2), 12, 15(3) or (4), 16(2) or 21(1) or (2); or
- (b) any information or other matter on which that knowledge or suspicion is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

GENERAL

Customs powers to demand evidence of destination which goods reach

20. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by an officer authorised for the purpose by the Governor, furnish within such time as the Governor may allow proof to the Governor’s satisfaction that the goods have reached a destination to which their exportation was not prohibited by this Order, and, if they fail to do so, the person shall be guilty of an offence under this Order unless they prove that they did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

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

21.—(1) If for the purposes of obtaining any licence under this Order, any person makes any statement or furnishes any document or information which to their knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, they 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 any 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 they prove that the condition with which they failed to comply was modified, otherwise than with their consent, by the Governor after the doing of the act authorised by the licence.

(a) This is the date on which the Burma (Restrictive Measures) (Overseas Territories) Order 2004 (S.I. 2004/1979) came into force.

Declaration as to goods: power of search

22.—(1) Any person who is about to leave the Territory shall, if required to do so by any authorised person:

- (a) declare whether or not they have with them any restricted goods which are destined for a person or place in Burma for delivery, directly or indirectly, to or to the order of any person in Burma; and
- (b) produce any such goods as aforesaid which they have with them.

(2) Any authorised person, and any person acting under their direction, may search that person for the purpose of ascertaining whether they have 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 a declaration, or fails to produce any goods 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 their authority.

(6) 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 ships

23.—(1) Where any authorised officer has reason to suspect that any ship to which article 7 applies has been or is being or is about to be used in contravention of paragraph (1) of that article:

- (a) the authorised 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 authorised officer may request 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 or she 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 7, any authorised 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, 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 in any port specified by the officer any part of the ship’s cargo that is so specified; 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 subparagraph (b)(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 26(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 a request that has been so made may not be complied with,

any such officer may take such steps as appear to the officer 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 person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

24.—(1) Where any authorised person has reason to suspect that any aircraft to which article 7 applies has been or is being or is about to be used in contravention of paragraph (1) of that article:

- (a) the authorised person 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;
- (b) the authorised person 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; 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 (a)) further request the charterer, 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 26(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, may for that purpose:

- (a) enter, or authorise entry, upon any land and upon that aircraft;
- (b) detain, or authorise the detention of, that aircraft and any of its cargo; and
- (c) 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

25.—(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 article 7(1)—

- (a) the authorised person 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;

- (b) the authorised person 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; 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 subparagraph 1(a) above) further request the operator or the driver 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 26(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, the authorised person 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:

- (a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;
- (b) detain, or authorise the detention of, that vehicle and any goods contained in it; and
- (c) 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 23 to 25

26.—(1) No information furnished or document produced by any person in pursuance of a request made under article 23, 24 or 25 or under Schedule 4 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 his or her 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 the possession of that document in his or her own right;
- (b) to any person who would have been empowered under article 23, 24 or 25 or Schedule 4 to request that it be furnished or 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 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;
- (e) to the Financial Services Authority or to the monetary authority of any other country or territory.

(2) Any power conferred by article 23, 24 or 25 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether 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 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 23(2)(a);
- (b) a master of a ship 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 23, 24 or 25 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 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 his or her powers under article 23, 24 or 25.

(4) Nothing in articles 23 to 26 inclusive 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

27. The provisions of Schedule 4 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 of—
 - (i) in the Territory, 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 those matters, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory;
- (c) of evidence or information establishing—
 - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by a listed person; or
 - (ii) the nature of any financial transactions entered into by a listed person or listed enterprise; or
- (d) of evidence or information considered by the Governor appropriate to cooperate with any domestic or international investigation relating to the funds, economic resources or financial transactions of a listed person or a listed enterprise.

Penalties and Proceedings

28.—(1) Any person guilty of an offence under article 4,5(3), 6, 7(3) or 8(3) shall be 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) Any person guilty of an offence under article 9(2), 10(2), 12, 15(3) or (4), 16(2), 26(3)(b)(ii), or paragraph 4(b) or (d) of Schedule 4 shall be 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) Any person guilty of an offence under article 21(1) or (2), or 22(4) shall be 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 a fine not exceeding £5,000 or its equivalent.
- (4) Any person guilty of an offence under article 19(4), 26(3)(a), 26(3)(b)(i) or 26(3)(c), or paragraph 4(a) or (c) of Schedule 4 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) Any person guilty of an offence under article 20 or 22(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.
- (6) Where any 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, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he or she, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (7) Summary proceedings for an offence under this Order, being 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.
- (8) 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.
- (9) No proceedings for an offence under this Order 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:
- (10) Notwithstanding that the necessary consent under paragraph (9) to the institution of proceedings for the offence may not have been obtained, paragraph (9) shall 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.

Exercise of powers of the Governor

29.—(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 powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

Miscellaneous

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

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

Revocation

31. The Burma (Restrictive Measures) (Overseas Territories) Order 2004(a) and the Burma (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004(b) are revoked.

Judith Simpson
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

(a) S.I. 2004/1979.

(b) S.I. 2004/3333.

SCHEDULE 2

Article 1(3)

APPLICATION OF ARTICLE 28 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1. Any person guilty of an offence under article 4, 5(3), 6, 7(3), or 8(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 9(2), 10(2), 12, 15(3) or (4), 16(2), 21(1) or (2), 22(4), 26(3)(b)(ii) or paragraph 4(b) or (d) of Schedule 4, 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 19(4), 26(3)(a), 26(3)(b)(i), 26(3)(c) or paragraph 4(a) or (c) of Schedule 4 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 20 or 22(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, he or she, 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 28 TO THE FALKLAND ISLANDS AND TO SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS

When the Magistrate's Court is sentencing a person following summary conviction for an offence under this Order, alternatively to the penalties applicable under article 28 to the relevant offence upon summary conviction, there shall be available to the Magistrate's Court any penalties which would be applicable under article 28 upon conviction for that offence on indictment.

EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or 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 27 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 so to do, the court may make an order requiring them, within such 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 statute or otherwise.

2.—(1) If any judge, justice of the peace or magistrate is satisfied by 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 of the 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 other 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 in accordance with sub-paragraph (1) may do any or all of the following things—

- (a) inspect and search those premises or the vehicle, ship or aircraft for any material which they have 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 they have 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 they have reasonable grounds to believe are required 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 information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced 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 whom they have reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and
- (b) seize anything they find in a search referred to in paragraph (a), if they have 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 empowered to enter any premises, vehicle, ship or aircraft they 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 an 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.—(1) 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.

(2) Nothing in this paragraph 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 his possession in that capacity.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies to each of the British overseas territories listed in Schedule 1. It maintains and augments restrictive measures in respect of Burma and the continuing serious violations of human rights in that country and the failure of its military authorities to enter into substantive discussions with the democratic movement concerning a process leading to national reconciliation, respect for human rights and democracy.

This Order revokes and replaces the Burma (Restricted Measures) (Overseas Territories Order 2004) (SI 2004/1979) and the Burma (Restricted Measures) (Overseas Territories) (Amendment) Order 2004 (SI 2004/3333), together referred to as “the 2004 Order”. The Order is made under statutory and prerogative powers used to implement autonomous European Union sanctions regimes.

The Order gives effect in the overseas territories listed in Schedule 1 to measures adopted by the European Union in Council Common Position 2007/750/CFSP on 19th November 2007 and implemented in Council Regulation (EC) No 194/2008 adopted on 25th February 2008, which came into force on 10 March 2008, the date of its publication.

The measures in the 2004 Order included a prohibition on the supply or export of arms and related material and equipment that might be used for internal repression to Burma, and a prohibition on making available funds, financial assets or economic resources to listed persons and entities and the freezing of their funds, financial assets or economic resources. These measures are maintained in this Order, which also introduces additional measures, in particular by extending the range of goods subject to the export ban to include goods and technology for industries in Burma which provide revenue for the military regime, by extending the list of persons and entities subject to the asset freeze, by prohibiting the import of specified goods originating in Burma, and by expanding the scope of the investment ban. The provisions of the Order include the following.

Article 1 provides that the draft Order extends to the same territories as the 2004 Order.

Article 2 contains new and revised definitions. In particular, the ban on the supply of relevant goods and technology for Burmese enterprises engaged in specified industries is given effect by an expanded definition of “restricted goods”. A definition of “prohibited imports” is added. The list of persons and entities subject to the asset freeze is extended by re-defining “listed person”, and enterprises subject to the investment ban are re-defined as “listed enterprises”.

Article 3 provides for publication by the Governor of a list of listed persons, and the making available of lists of restricted goods, listed enterprises and prohibited imports.

Articles 4, 5, 6 and 7 repeat the provisions of articles 3, 4, 5, and 6 of the 2004 Order, prohibiting the supply or export of restricted goods, the provision of related assistance, and the use of ships, vehicles or aircraft for carriage of restricted goods to Burma. The transport of prohibited imports from Burma is also prohibited by article 7.

Article 8 prohibits the importation, purchase or transfer of prohibited imports which have originated in Burma.

Article 9, which requires the assets of listed persons to be frozen, is a reformulation of article 8 of the 2004 Order to accord with current wording in the equivalent Order for the United Kingdom.

Article 10, which prohibits making funds available to a listed person, is similar to article 7 of the 2004 Order, but also provides a defence.

Article 11 provides an exception by allowing a frozen account to be credited with interest.

Article 12 provides offences for circumventing the prohibitions in articles 9 and 10.

Article 13 enables the Governor to direct that a person reasonably suspected to be a listed person be treated as if he were, for example when using an alias. This mirrors the provisions in the equivalent UK Order.

Article 14 makes provision for licences to authorise exemptions from the asset freeze.

Article 15 prohibits the financing of listed enterprises, expanding on the similar prohibition in article 8a of the 2004 Order. The ban on investment is extended to a wider range of listed enterprises.

Article 16 prohibits the creation of joint ventures with listed enterprises, their subsidiaries or other persons under their control.

Article 17 provides an exception to the offences in article 15 for contracts prior to the first listing of the enterprise.

Article 18 provides an exception to the prohibition in article 15(1) for trade contracts.

Article 19 repeats article 10 of the 2004 Order, regarding failure by relevant institutions to disclose knowledge or suspicion of listed persons or listed enterprises, or contraventions of the Order.

Thereafter, the Order in articles 20 to 30 replicates with minor alterations the general provisions contained in articles 11 to 21 of the 2004 Order.

Offences and penalties are added in article 28 to correspond with the additional prohibitions made by the Order.

The 2004 Order is revoked by article 31.

Schedule 2 is revised to reflect court structures and procedures in the Sovereign Base Areas.

Schedule 3 contains a modification of article 28 regarding the application of penalties for the Falkland Islands and South Georgia and the South Sandwich Islands. The list of equipment which might be used for internal repression equipment, contained in Schedule 3 of the 2004 Order, is now under article 3 required to be made available in the Territory.

Schedule 4 is revised to reflect provisions regarding evidence and information currently used in such sanctions Orders.

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STATUTORY INSTRUMENTS

2009 No. 3008

OVERSEAS TERRITORIES

The Burma (Restrictive Measures) (Overseas Territories) Order
2009

£5.50