
STATUTORY INSTRUMENTS

2012 No. 1758

OVERSEAS TERRITORIES

**The Afghanistan (United Nations Measures)
(Overseas Territories) Order 2012**

<i>Made</i>	- - - -	<i>10th July 2012</i>
<i>Laid before Parliament</i>		<i>17th July 2012</i>
<i>Coming into force</i>	- -	<i>7th August 2012</i>

At the Court at Windsor Castle, the 10th day of July 2012

Present,

The Queen's Most Excellent Majesty in Council

Under Article 41 of the Charter of the United Nations, the Security Council of the United Nations has, by resolution 1988(1) adopted on 17th June 2011, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to decisions of that Council in relation to Afghanistan.

Her Majesty, by virtue and in exercise of the powers vested in Her by section 1 of the United Nations Act 1946(2), section 112 of the Saint Helena Act 1833(3), the British Settlements Acts 1887 and 1945(4) 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 and application

1.—(1) This Order may be cited as the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 and shall come into force on 7th August 2012.

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

(1) S/RES/1988 (2011).

(2) 1946 c.45

(3) 1833 c.85

(4) 1887 c.54
and
1945 c.7

(3) Articles

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and

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shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(4) Article

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shall apply to the Falkland Islands and South Georgia and the South Sandwich Islands as set out in Schedule 3.

(5) Article

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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 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.

Interpretation

2.—(1) In this Order—

“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;

“designated person” means any person listed in the list of persons associated with the Taliban referred to in paragraph 1 of United Nations Security Council resolution 1988 (2011);

“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 can be used to obtain funds, goods or services;

“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;

“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 financial 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 evidencing an interest in funds or financial resources; and
- (h) any other instrument of export financing;

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

“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;

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

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

“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;

“relevant institution” means—

- (i) any person who may lawfully accept deposits in or from within the Territory by way of business;
- (j) 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 Schedule 2 to the Export Control Order 2008(5);

“Sanctions Committee” means the Committee of the United Nations Security Council established pursuant to paragraph 6 of Security Council resolution 1267 (1999);

“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;

“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 and consulting services;

“vehicle” means land transport vehicle.

- (2) For the purpose of the definition of “relevant institution” in paragraph (1)—
- (a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000⁽⁶⁾; 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.

LISTS

Publicly available list of designated persons and restricted goods

3. The Governor shall—
- (a) maintain a list of designated persons;
 - (b) cause the list to be published in the Gazette as necessary from time to time; and
 - (c) cause a list of restricted goods to be published in the Gazette as necessary from time to time.

RESTRICTED GOODS AND ASSISTANCE

Supply of restricted goods

4. Any person who—
- (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 a designated person shall be guilty of an offence under this Order unless they prove that they did not know and had no reasonable cause to suspect that the goods in question were to be supplied or delivered to a designated person.

Exportation of restricted goods to designated persons

5.—(1) It is prohibited to export restricted goods from the Territory to any designated person or to any destination for the purpose of delivery, directly or indirectly, to, or to the order of, a designated person.

(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.

(6) 2000 c.8

(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

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, they shall not be guilty of an offence under paragraph (3) above.

Provision of technical assistance related to military activities

6. Any person who directly or indirectly provides to a designated person any technical assistance in relation to military activities including the provision, manufacture, maintenance and use of restricted goods shall be guilty of an offence under this Order unless they prove that they did not know and had no reasonable cause to suspect that the technical assistance in question was to be provided to a designated person.

Use of ships, aircraft and vehicles: restricted goods

7.—(1) Without prejudice to the generality of article

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, 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 of those goods to a designated person.

(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 they are 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, if they knew, or had reasonable cause to suspect, that the carriage of goods in question was, or formed part of, carriage of those goods to a designated person.

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

(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.

CUSTOMS POWERS AND INVESTIGATIONS

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 a destination to which their export was not prohibited by this Order, and if they fail to do so, they 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 mentioned above.

Declaration as to goods: powers of search

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

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

(2) Any such officer, and any person acting under the officer's 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 such a declaration, and 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 their authority.

Investigation, etc. of suspected ships

10.—(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 officer may (either alone or accompanied and assisted by persons under their 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 inspection such documents so relating and such cargo as may be specified; and
- (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of article 7(1), 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 13(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,

an authorised officer may take such steps as appear to them 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 their 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

11.—(1) Where an 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 (either alone or accompanied and assisted by persons under their authority) board the aircraft and search it and, for that purpose, may use, or authorise the use of reasonable force;
- (b) 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 their inspection such documents so relating and such cargo as the authorised person 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 13(3)

13(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, they may take such steps as appear to them 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 their 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

12.—(1) Where an 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 7—

- (a) the authorised person may (either alone or accompanied and assisted by persons under their authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;
- (b) 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 their inspection such documents so relating and such goods as they may specify; and
- (c) the 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 13(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, they may take such steps as appear to them 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 their 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 10 to 12

13.—(1) No information furnished or document produced by any person in pursuance of a request made under article 10

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, 11 or 12 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 10, 11 or 12 to request that the information furnished or the document produced 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) on the authority of the Governor, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to persons associated with the Taliban decided upon by the Security Council of the United Nations; or
 - (d) 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.
- (2) Any power conferred by article 10, 11 or 12 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 or personnel 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 10(2)(a);
 - (b) a master of a ship or its owner or a charterer or operator or commander of an aircraft or an operator or driver of a vehicle who—
 - (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 10, 11 or 12 by any person empowered to make it, or
 - (ii) furnishes any document or information 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;
 - (c) a master, owner or a member of a crew of a ship or a charterer or operator or commander or a member of a crew of an aircraft or an operator or driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of their powers under article 10,
11
or
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- (4) Nothing in articles
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,
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and
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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.

FUNDS AND ECONOMIC RESOURCES

Freezing funds and economic resources

14.—(1) A person must not deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person if they know, or have reasonable cause to suspect, that they are dealing with such funds or economic resources.

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

(a) in relation to funds—

(i) use, alter, move, allow access to or transfer;

(ii) deal with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or

(iii) to make any other change that would enable use, including portfolio management; and

(b) in relation to economic resources, exchange or use in exchange, for funds, goods or services.

(3) Paragraph (1) is subject to article 20.

Making funds available to a designated person

15.—(1) A person must not make funds or economic resources available, directly or indirectly, to a designated person, if they know, or have reasonable cause to suspect, that they are making the funds so available.

(2) Paragraph (1) is subject to articles 19 and 20.

Making funds available for the benefit of a designated person

16.—(1) A person must not make funds available to any person for the benefit of a designated person if they know, or have reasonable cause to suspect, that they are making the funds or economic resources so available.

(2) For the purposes of this article—

(a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and

(b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) Paragraph (1) is subject to articles 19 and 20.

Making economic resources available to a designated person

17.—(1) A person must not make economic resources available, directly or indirectly, to a designated person if they know, or have reasonable cause to suspect—

(a) that they are making the economic resources so available, and

(b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

(2) Paragraph (1) is subject to article 20.

Making economic resources available for the benefit of a designated person

18.—(1) A person must not make economic resources available to any person for the benefit of a designated person if they know, or have reasonable cause to suspect, that they are making the economic resources so available.

- (2) For the purposes of this article—
- (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
 - (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) Paragraph (1) is subject to article 20.

Credits to a frozen account

19.—(1) The prohibitions in articles 15 and 16 are not contravened by a person who 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 before the account became a frozen account.

(2) The prohibitions in articles 15 and 16 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

Licences

20.—(1) The prohibitions in articles 14 to 18 do not apply to anything done under the authority of a licence granted by the Governor.

- (2) The Governor may grant a licence for—
- (a) necessary basic expenses of designated persons and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines, medical treatment, taxes, insurance premiums and public utility charges after notification to the Sanctions Committee and no objection having been made with 3 working days of such notification;
 - (b) payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services after notification to the Sanctions Committee and no objection having been made within 3 working days of such notification;
 - (c) payment of fees or service charges for the routine holding or maintenance of frozen funds and economic resources after notification to the Sanctions Committee and no objection having been made within 3 working days of such notification;
 - (d) payment of necessary extraordinary expenses as determined by the Governor and approved by the Sanctions Committee;
- (3) A licence must specify the acts authorised by it and may be—
- (a) general or granted to a category of persons or to a particular person;
 - (b) subject to conditions;
 - (c) of indefinite duration or subject to an expiry date.
- (4) The Governor may vary or revoke a licence at any time.
- (5) When granting, revoking or varying a licence, the Governor must—
- (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 a licence granted to a category of persons, take such steps as the Governor considers appropriate to publicise the licence, variation or revocation.

(6) A person who, for the purpose of obtaining a licence, knowingly or recklessly makes any statement or furnishes any document or information which is false in a material particular commits an offence.

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

(8) A person who, having acted under the authority of a licence, fails to comply with any conditions in the licence, commits an offence, unless—

- (a) The licence was modified after the completion of the act authorised, and
- (b) The alleged failure to comply would not have been a failure had the licence not been so modified.

Contravention and circumvention of prohibitions

21.—(1) A person who contravenes any of the prohibitions in articles 14 to 18 commits an offence.

(2) A person commits an offence who intentionally participates in activities knowing that the object or effect of them is (directly or indirectly)—

- (a) to circumvent any of the prohibitions in articles 14 to 18, or
- (b) to enable or facilitate the contravention of any such prohibition.

DISCLOSURE BY FINANCIAL INSTITUTIONS

Failure to disclose knowledge or suspicion

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

- (a) is a designated person; or
- (b) has committed an offence under article 20(6), 20(8) or 21,

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, when it makes a disclosure to the Governor under paragraph (1), shall 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 designated person, the nature and amount or quantity of any funds or economic resources held by the relevant institution for that person since the person first became a designated person.

(3) A relevant institution shall inform the Governor without delay if it credits a frozen account in accordance with article 19(1)(b) or (2).

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

(5) In this article “relevant person” means—

- (a) a customer of the relevant institution;

- (b) a person who has been a customer of the relevant institution at any time on or after 15th October 1999⁽⁷⁾ and has ceased to be a customer; or
 - (c) a person with whom the relevant institution has had dealings in the course of 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 designated person or a person who has committed an offence under article 20 or 21; or
 - (b) any information or other matter on which that knowledge or suspicion is based, under paragraph (2) above,
the disclosure shall not be treated as a breach of any restrictions imposed by legislation or otherwise.

GENERAL

Evidence and information

23.—(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 other 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 other 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 designated person; or
 - (ii) the nature of any financial transactions entered into by a designated person;
- (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 designated person.

(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;

(7) This is the date on which the Security Council resolution 1267 (1999) came into force.

- (b) to any person empowered under Schedule 5 to request that the information furnished or the document produced 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 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;
- (d) to the Financial Services Authority of the United Kingdom or to any equivalent authority of any other country or territory.

Penalties

- 24.—(1) A person guilty of an offence under article 4, 5(3), 6, or 7(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 13(3)(b)(ii) or 21 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; or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.
- (3) A person guilty of an offence under article 9(4) or 20 is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of any amount or to both;
 - (b) on summary conviction to a fine not exceeding £5,000 or its equivalent.
- (4) A person guilty of an offence under article 13(3)(a), 13(3)(b)(i), 13(3)(c), 22(4) 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 9(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 the offence and is liable to be proceeded against and punished accordingly.

Proceedings

25.—(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

26.—(1) This article has effect in relation to any notice to be given to a person by the Governor under article 20(5)(a).

(2) Any such notice may be given—

(a) by posting it to their 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 power of the Governor

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

28.—(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 it is duly authorised.

(2) An act is duly authorised for the purposes 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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Liability

29. No liability will arise for any person concerned in the freezing of funds or economic resources in accordance with article 14 unless it is proved that the funds or economic resources were frozen or withheld as a result of negligence.

Savings

30. Any licence which was granted by the Governor under article 7 of the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 in respect of a designated person and which was in effect immediately before the coming into force of this Order shall have effect as if it were a licence granted by the Governor under article 20 of this Order.

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

24

and

25

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 or 7(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(4), 13(3)(b)(ii), 20 or 21 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 13(3)(a), 13(3)(b)(i), 13(3)(c), 22(4) 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 9(3) is liable on conviction to a fine not exceeding £5000 or its equivalent.
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.
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

24

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, instead of the penalties applicable under article 24 to the relevant offence upon summary conviction, there shall be available to the Magistrate's Court any penalties which would be applicable under article 24 upon conviction for that offence on indictment.

SCHEDULE 4

Article 1(5)

Application of Article

24

to St Helena, Ascension and Tristan da Cunha

1. A person guilty of an offence under article 4, 5(3), 6 or 7(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 9(4), 13(3)(b)(ii), 20 or 21 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 13(3)(a), 13(3)(b)(i), 13(3)(c), 22(4) or paragraph 4(a) or (c) of Schedule 5 shall be 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 9(3) shall be 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 23

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 under article 23 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(1)(a) 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 produce 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 legislation 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,

they 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 any document or information 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 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 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 authorised 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 provision 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 a 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)

The Order, made under the United Nations Act 1946, the St Helena Act 1833, the British Settlements Acts 1887 and 1945, and prerogative powers, gives effect to United Nations Security Council Resolution 1988 (2011) adopted on 17th June 2011. Resolution 1988 (2011) maintains in force the sanctions first imposed by resolution 1267 (1999) against the Taliban. In parallel the Security Council adopted resolution 1989 (2011) maintaining its previous sanctions against persons associated with Al-Qaida, but separating them out into a separate resolution.

The effect of the Order is to continue, in the specified Overseas Territories, the asset freeze in respect of the Taliban and persons associated with them in constituting a threat to the peace, stability and security of Afghanistan as designated by the Security Council, and to prohibit funds being made available to such persons. It also prohibits the supply of military goods and technical assistance related to military activities to designated persons.

The list of persons designated by the Security Council is to be found at <http://www.un.org/sc/committees/1267/AQList.htm>