

2004 No. 1979

OVERSEAS TERRITORIES

**The Burma (Restrictive Measures) (Overseas Territories) Order
2004**

Made - - - - - *27th July 2004*

Laid before Parliament *28th July 2004*

Coming into force - - - *29th July 2004*

At the Court at Buckingham Palace, the 27th day of July 2004

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(1), the British Settlements Acts 1887 and 1945(2), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

INTRODUCTORY

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Burma (Restrictive Measures) (Overseas Territories) Order 2004 and shall come into force on 29th July 2004.

- (a) This Order shall extend to the territories listed in Schedule 1.
- (b) Article 19 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.
- (c) In the application of this Order to any of the said territories the expression “the Territory” in this Order means that territory.

(2) Articles 3,4,5,7,8 and 9 shall apply to any person within the Territory and to 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 the Territory.

(1) 1833 c. 85.

(2) 1887 c. 54 and 1945 c. 7.

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 –

“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;

“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;

“funds, financial assets or economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

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

“listed person” means any member of the Government of Burma, or any natural or legal person, entity or body associated with them, as is listed in the Annex (as modified from time to time) to Council Common Position 2004/423/CFSP, adopted by the Council of the European Union on 26 April 2004;

“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;

“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; and
- (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 specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003⁽³⁾ made under the Export Control Act 2002⁽⁴⁾ and equipment that might be used for internal repression as listed in Schedule 3;

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

“shipment” includes loading into an aircraft;

⁽³⁾ S.I. 2003/2764.

⁽⁴⁾ 2002 c. 28.

“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;

“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⁽⁵⁾; and

(b) a person is not regarded as accepting deposits by way of business if –

(i) he does not hold himself out as accepting deposits on a day to day basis, and

(ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(3) In determining for the purposes of paragraph (2)(b)(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.

(4) For the purpose of identifying a “listed person” referred to in paragraph (1), the Governor shall cause a notice containing the names and other particulars of such listed persons to be published in the Gazette of the Territory as necessary from time to time.

RESTRICTED GOODS, ASSISTANCE AND TRAINING

Supply of restricted goods

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

(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 he proves that he 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

4.—(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.

(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 3, he shall not be guilty of the offence under paragraph (3).

⁽⁵⁾ 2000 c. 8.

Provision of assistance, advice or training

5. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person, entity or body 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 he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person, entity or body in, or for use in, Burma.

Use of ships, aircraft and vehicles: restricted goods

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

(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 he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside Burma to any destination therein.

(4) Nothing in paragraph (1) shall apply when the supply or delivery or exportation from the Territory of the goods concerned to Burma was authorised by a licence granted by the Governor under article 3 or 4.

(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.

FUNDS, FINANCIAL ASSETS OR ECONOMIC RESOURCES

Making funds, financial assets or economic resources available to any listed person

7. Any person who, except under the authority of a licence granted by the Governor under this article, makes any funds, financial assets or economic resources available to or for the benefit of any listed person shall be guilty of an offence under this Order.

Freezing of funds, financial assets or economic resources

8.—(1) Where the Governor has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds, financial assets or economic resources are held is or may be a listed person, the Governor may by notice direct that those funds, financial assets or economic resources are not to be made available to any person, except under the authority of a licence granted by the Governor under article 7.

(2) A direction given under paragraph (1) shall specify either –

- (a) the period for which it is to have effect; or
 - (b) that the direction is to have effect until it is revoked by notice under paragraph (3).
- (3) The Governor may by notice revoke a direction given under paragraph (1) at any time.
- (4) The expiry or revocation of a direction shall not affect the application of article 7 in respect of the funds, financial assets or economic resources in question.
- (5) A notice under paragraph (1) or (3) shall be given in writing to the person holding the funds, financial assets or economic resources in question (“the recipient”), and shall require the recipient to send a copy of the notice without delay to the person whose funds, financial assets or economic resources they are, or on whose behalf they are held (“the owner”).
- (6) A recipient shall be treated as complying with that requirement if, without delay, he sends a copy of the notice to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.
- (7) Where a direction has been given under paragraph (1), any person by, for or on behalf of whom those funds, financial assets or economic resources are held may apply to the Supreme Court for the direction to be set aside; and on such application the court may set aside the direction.
- (8) A person who makes an application under paragraph (7) shall give a copy of the application and any witness statement or affidavit in support to the Governor (and to any other person by, for or on behalf of whom those funds, financial assets or economic resources are held), not later than seven days before the date fixed for the hearing of the application.
- (9) Any person who contravenes a direction under paragraph (1) is guilty of an offence under this Order.
- (10) A recipient who fails to comply with such a requirement as is mentioned in paragraph (5) is guilty of an offence under this Order.

Facilitation of activities prohibited under article 7 or 8(9)

9. Any person who knowingly and intentionally engages in any activities the object or effect of which is to enable or facilitate the commission (by that person or another) of an offence under article 7 or 8(9) is guilty of an offence under this Order.

Failure to disclose knowledge or suspicion of measures

10.—(1) A relevant institution is guilty of offence if:

- (a) it knows or suspects that a person who is, or has been at any time since the coming into force of this Order, a customer of the institution, or is a person with whom the institution has had dealings in the course of its business since that time:
 - (i) is a listed person; or
 - (ii) has committed an offence under article 7, 8(9) or 12(2); and
- (b) it does not disclose to the Governor the information or other matter on which the knowledge or suspicion is based as soon as is reasonably practicable after that information or other matter comes to its attention.

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

- (a) its knowledge or suspicion that a person is a listed person or a person who has committed an offence under article 7, 8(9) or 12(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

11. 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 he fails to do so, he shall be guilty of an offence under this Order unless he proves that he 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

12.—(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 his 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, he shall be guilty of an offence under this Order.

(2) 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:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Governor after the doing of the act authorised by the licence.

Declaration as to goods: power of search

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

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

(2) Any authorised person, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him 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 himself 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 his knowledge is false in a material particular or recklessly makes any declaration which is false in a material particular shall be guilty of an offence under this Order.

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

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

- (a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

- (b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and
- (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 6, 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 at 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 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 17(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 him 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 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

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

- (a) he 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 inspection such documents so relating and such cargo as he may specify;
- (b) he may (either alone or accompanied and assisted by persons under his 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 17(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 may take such steps as appear to him 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 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

16.—(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 6:

- (a) he 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 inspection such documents so relating and such goods as he may specify;
- (b) he may (either alone or accompanied and assisted by persons under his 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 sub-paragraph (a)) 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 17(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 may take such steps as appear to him 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 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 14 to 16

17.—(1) No information furnished or document produced by any person in pursuance of a request made under article 14, 15 or 16 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 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 own right;
- (b) to any person who would have been empowered under article 14, 15 or 16 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; or
- (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.

(2) Any power conferred by article 14, 15 or 16 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 14(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 14, 15 or 16 by any person empowered to make it, or
 - (ii) furnishes any document or information which to his 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 powers under article 14, 15 or 16.

(4) Nothing in articles 14 to 17 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

18. 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; and
- (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.

Penalties and Proceedings

19.—(1) Any person guilty of an offence under article 3, 4(3), 5, 6(3), 7, 8(9) or 9 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 17(3)(b)(ii) or paragraph 5(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 12(1) or (2) or article 13(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 8(10), 10, 17(3)(a), (b)(i) or (c), or paragraph 5(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 11 or 13(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, 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:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of powers of the Governor

20.—(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

21.—(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.

27th July 2004

A. K. Galloway
Clerk to the Privy Council

SCHEDULE 1

Article 1(2)(a)

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 and Dependencies

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(2)(b)

APPLICATION OF ARTICLE 19 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1.—(1) Any person who commits an offence under article 3, 4, 5, 6(3), 7, 8(9) or 9, or paragraph 5(b) or (d) of Schedule 4, shall be liable on conviction:

- (a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;

(b) if tried before the Judge's Court, 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 who commits an offence under article 12(1) or (2), 13(3), or 17(3)(b)(ii) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

3. Any person who commits an offence under article 17(3)(a), (b)(i) or (c), or paragraph (5)(a) or (c) of Schedule 4, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under article 8(10) or 10 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding £5,000 or its equivalent, or to both.

5. Any person who commits an offence under article 11 or 13(3) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

6. 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, 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, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

7. Proceedings for a misdemeanour 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:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

SCHEDULE 3

Article 2(1)

EQUIPMENT THAT MIGHT BE USED FOR INTERNAL REPRESSION

10. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.

11. Specially designed fingerprint equipment.

12. Power controlled searchlights.

13. Construction equipment provided with ballistic protection.

14. Hunting knives.

15. Specially designed production equipment to make shotguns.

16. Ammunition hand-loading equipment.

17. Communications intercept devices.
18. Solid-state optical detectors.
19. Image-intensifier tubes.
20. Telescopic weapon sights.
21. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:
 - (a) signal pistols;
 - (b) air- and cartridge-powered guns designed as industrial tools or humane animal stunners.
22. Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.
23. Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.
24. Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.
25. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.
26. Water cannon and specially designed or modified components therefor.
27. Vehicles equipped with a water cannon.
28. Vehicles specially designed or modified to be electrified to repel boarders and components therefor specially designed or modified for that purpose.
29. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.
30. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:
 - handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.
31. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.
32. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shocks batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.
33. Electronic equipment capable of detecting concealed explosives and specially designed components therefor; except:
 - TV or X-ray inspection equipment.
34. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.
35. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:

- those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters or fire sprinkler actuators).

36. Equipment and devices designed for explosive ordnance disposal; except:

- (a) bomb blankets;
- (b) containers designed for folding objects known to be, or suspected of being improvised explosive devices.

37. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.

38. Software specially designed and technology required for all listed items.

39. Linear cutting explosive charges.

40. Explosives and related substances as follows:

- amatol,
- nitrocellulose (containing more than 12,5 % nitrogen),
- nitroglycol,
- pentaerythritol tetranitrate (PETN),
- picryl chloride,
- tinitorphenylmethylnitramine (tetryl),
- 2,4,6-trinitrotoluene (TNT)

41. Software specially designed and technology required for all listed items.

SCHEDULE 4

Article 18

EVIDENCE AND INFORMATION

42.—(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 to him any information in his possession or control, or to produce to him any document in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such 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 his possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, 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 statute or otherwise.

43.—(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 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 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 he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;
- (b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;
- (c) seize anything on the premises or on the vehicle, ship or aircraft which he has 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 he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and
- (b) seize anything he finds in a search referred to in paragraph (a), if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

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

(5) Where, by virtue of this paragraph a person is empowered to enter any premises, vehicle, ship or aircraft he 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.

44. 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 his authority before exercising that power.

45. No information furnished or document produced (including any copy of an extract made of any document produced) by a person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) shall be disclosed except –

- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized: provided that a person

who has obtained information or is in the possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

- (b) to any person who would have been empowered under this Schedule to request that it 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; or
- (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.

46. 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 his 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 his 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.

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 imposes 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. These measures include the prohibition of the delivery or supply of arms and related material and equipment that might be used for internal repression to Burma, and the prohibition of making available funds, financial assets or economic resources to listed persons and the freezing of their funds, financial assets or economic resources. It gives effect to measures adopted by the European Union in Council Common Position 2004/423/CFSP.

STATUTORY INSTRUMENTS

2004 No. 1979

OVERSEAS TERRITORIES

The Burma (Restrictive Measures) (Overseas Territories) Order
2004

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