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STATUTORY INSTRUMENTS

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**2012 No. 2750**

**OVERSEAS TERRITORIES**

**The Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) (Amendment) Order 2012**

*Made - - - - 7th November 2012*  
*Laid before Parliament 14th November 2012*  
*Coming into force - - 5th December 2012*

At the Court at Buckingham Palace, the 7th day of November 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 a resolution adopted on 31st March 2008, 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 the Democratic Republic of the Congo:

Her Majesty, in exercise of the powers vested in Her by section 1 of the United Nations Act 1946<sup>(1)</sup>, section 112 of the Saint Helena Act 1833<sup>(2)</sup>, the British Settlements Acts 1887 and 1945<sup>(3)</sup>, 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, interpretation and extent**

1.—(1) This Order may be cited as the Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) (Amendment) Order 2012 and comes into force on 5th December 2012.

(2) In this Order, “the principal Order” means the Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) Order 2003<sup>(4)</sup>.

(3) This Order extends to the territories listed in Schedule 1 to the principal Order.

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(1) 1946 c.45.

(2) 1833 c.85.

(3) 1887 c.54 and 1945 c.7.

(4) S.I. 2003/2627, amended by S.I. 2005/1988 and 2012/362.

## Amendment of the principal Order

2. The principal Order is amended as follows.
3. In article 2—
  - (a) in the appropriate place, insert—
    - ““financing and financial assistance” in relation to the provision of assistance related to restricted goods includes in particular grants, loans and export credit insurance for any supply, delivery or export of such goods;”;
    - ““non-governmental person” means any non-governmental legal or natural person, entity or body;”;
    - and
    - ““technical assistance” means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including verbal forms of assistance;”;
  - (b) for the definition of “restricted goods”, substitute—
    - ““restricted goods” means the goods, software and technology specified in Schedule 2 to the Export Control Order 2008(5) as amended from time to time and, so far as not covered in that Schedule, the goods, software and technology specified in the Common Military List of the European Union(6) as amended from time to time;”.
4. In article 3(1), for “person in the Democratic Republic of the Congo”, wherever occurring, substitute “non-governmental person in the Democratic Republic of the Congo”.
5. For article 4(1), substitute—
  - “4.—(1) Except under the authority of a licence granted by the Governor under this article, it is prohibited to export restricted goods from the Territory for the purpose of delivery, directly or indirectly, to or to the order of any non-governmental person in, or for use in, the Democratic Republic of the Congo.”.
6. In article 5, for “person, entity or body” wherever occurring, substitute “non-governmental person”.
7. After article 5, insert—

### **“Requirement for notice before exporting restricted goods or providing assistance etc. to the Democratic Republic of the Congo**

- 5A.—(1) A person who—
  - (a) exports restricted goods to the Democratic Republic of the Congo (where such export is not prohibited by article 3 or 4), or
  - (b) provides assistance, advice or training related to military activities or to the provision, manufacture, maintenance or use of restricted goods in the Democratic Republic of the Congo (where such provision is not prohibited by article 5),

must send the Governor written notice of the proposed export or provision of assistance, advice or training not less than 21 calendar days before the date of export or the date the assistance, advice or training is to be provided.

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(5) S.I. 2008/3231.

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

(2) The notice referred to in paragraph (1) must include all relevant information including, where appropriate, the end-user, proposed date of delivery and the itinerary of shipments.

(3) A person who fails to send the notice required by paragraph (1) commits an offence.

### **Licences**

**5B.**—(1) The Governor may grant a licence under article 3, 4 or 5 of this Order in respect of—

- (a) the supply, delivery or export of restricted goods or the provision of assistance, advice or training related to restricted goods intended solely for the support of, or use by, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo;
- (b) the supply, delivery or export of protective clothing, including flak jackets and military helmets, temporarily exported to the Democratic Republic of the Congo by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; or
- (c) the supply, delivery or export of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training.”

**8.** In article 6—

(a) for paragraph (1) substitute—

“(1) Without prejudice to the generality of article 3, no ship or aircraft to which this article applies, and no vehicle within the Territory, may be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside the Democratic Republic of the Congo to any non-governmental person in the Democratic Republic of the Congo.”;

(b) in paragraph (3), for “destination therein” substitute “non-governmental person in the Democratic Republic of the Congo”.

**9.** For article 9(1)(a), substitute—

“(a) declare whether or not he has with him any restricted goods which are for delivery, directly or indirectly, to or to the order of any non-governmental person in the Democratic Republic of the Congo; and ”.

**10.** In article 15(5), after “article” insert “5A,”.

**11.** In paragraph 4 of Schedule 2 after “article” insert “5A,”.

*Richard Tilbrook*  
Clerk of the Privy Council

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

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) Order 2003, as amended (“the 2003 Order”). The 2003 Order applies in the Overseas Territories specified in Schedule 1 the measures adopted by the United Nations Security Council in resolution 1493 (2003) and by the Council of the European Union in a Common Position adopted on 17th September 2003. This Order gives effect to the modified arms embargo measures provided for in United Nations Security Council resolution 1807 (2008) and EU Council Decision 2010/788 adopted on 20th December 2010.

This Order reduces the scope of the arms embargo already in place by restricting the prohibitions to the supply or export of arms and related materiel and the provision of assistance, advice or training related to military activities to non-governmental persons in the Democratic Republic of the Congo. The opportunity has also been taken to clarify the 2003 Order by including definitions of “financing and financial assistance” and “technical assistance” and updating the definition of restricted goods.