
STATUTORY INSTRUMENTS

2015 No. 1382

**The Democratic Republic of the Congo
(Sanctions) (Overseas Territories) Order 2015**

Citation, commencement, extent and revocation

1.—(1) This Order may be cited as the Democratic Republic of the Congo (Sanctions) (Overseas Territories) Order 2015.

(2) It comes into force on 8th July 2015.

(3) It extends to the territories listed in Schedule 1.

(4) The Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) (Amendment) Order 2012(1), the Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) (Amendment) Order 2005(2), the Democratic Republic of the Congo (United Nations Sanctions) (Overseas Territories) Order 2005(3) and the Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) Order 2003(4) are revoked.

Application of the Order

2.—(1) This Order applies to—

(a) any person in the Territory,

(b) any person elsewhere who is—

(i) 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

(ii) a body incorporated or constituted under the law of any part of the Territory, and

(c) any person onboard a ship or aircraft that is registered in the Territory.

(2) Article 7(2) and Schedule 3 also apply to any relevant person mentioned in those provisions (and for this purpose “relevant person” has the meaning given in article 7(4) and (5)).

(3) Article 17 applies to—

(a) the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus and St Helena, Ascension and Tristan da Cunha as set out in paragraph 1 of Schedule 2, and

(b) the Falkland Islands and South Georgia and the South Sandwich Islands subject to the modifications set out in paragraph 2(2) of Schedule 2.

(4) In the application of this Order to any territory listed in Schedule 1, the expression “the Territory” in this Order means that territory.

(1) [S.I. 2012/2750](#).

(2) [S.I. 2005/1988](#).

(3) [S.I. 2005/1461](#).

(4) [S.I. 2003/2627](#).

Interpretation

3.—(1) In this Order, unless otherwise provided—

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

“assistance” means any form of assistance, including advice, training, technical assistance, financing and financial assistance, investment services, brokering services or other services, including the provision of armed mercenary personnel, and the transfer of financial resources and services;

“brokering services” means—

- (a) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country, or
- (b) the selling or buying of goods and technology or of financial and technical services, including where they are located in third countries for their transfer to another third country;

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator of the aircraft, or, if there is no operator, the person who is for the time being the pilot in command of the aircraft;

“the Council Regulation” means Council Regulation (EU) No. 1183/2005 adopted by the Council of the European Union on 18th July 2005⁽⁵⁾ imposing certain specific restrictive measures directed against persons acting in violation of arms embargo with regard to the Democratic Republic of the Congo;

“designated person” means any person, entity or body listed in Annex I to the Council Regulation;

“document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

“export” includes shipment as stores;

“financing and financial assistance” includes grants, loans and export credit insurance, insurance and reinsurance;

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

“funds” means financial assets and benefits of every kind, including (but not limited to)—

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments,
- (b) deposits with relevant institutions or other entities, balances on accounts, debts and debt obligations,
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts,
- (d) interest, dividends or other income on or value accruing from or generated by assets,
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments,
- (f) letters of credit, bills of lading and bills of sale,

(5) O.J. L.193 23.7.2005.

- (g) documents showing evidence of an interest in funds or financial resources;
- “goods” includes items, materials and equipment;
- “Governor” means the Governor or other officer administering the Government of the Territory;
- “insurance” means an undertaking or commitment where a natural or legal person is obliged, in return for a payment, to provide another person, in the event of materialisation of a risk, with an indemnity or a benefit as determined by the undertaking or commitment;
- “master”, in relation to a ship, includes any persons for the time being in charge of the ship;
- “non-governmental person” means any non-governmental legal or natural person;
- “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;
- “reinsurance” means the activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking or, in the case of the association of underwriters known as Lloyd’s, the activity consisting in accepting risks, ceded by any member of Lloyd’s, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd’s;
- “relevant institution” means—
- (a) any person who may lawfully accept deposits in or from within the Territory by way of business, or
 - (b) 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—
- (a) the goods, software and technology specified in Schedule 2 to the Export Control Order 2008(6), and
 - (b) so far as not covered by paragraph (a), the goods, software and technology specified in the Common Military List of the European Union(7) as amended from time to time;
- “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 in them;
- “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;
- “the Territory” has the meaning given in article 2(4);

(6) S.I. 2008/3231.

(7) O.J. C. 129 21.4.2015, p.1.

“transfer” in relation to funds means—

- (a) any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, regardless of whether the payer and the payee are the same person, or
- (b) any transaction by non-electronic means such as in cash, cheques or accountancy orders, with a view to making funds available to a payee regardless of whether the payer and payee are the same person;

“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 by section 22 of the Financial Services and Markets Act 2000(8), taken with Schedule 2 to that Act and any order under section 22 of that Act, and
- (b) a person is not regarded as accepting deposits by way of business if—
 - (i) the person does not hold himself or herself out as accepting deposits on a day to day basis, and
 - (ii) any deposits which the person 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) 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) An expression used both in this Order and in the Council Regulation has the meaning given in the Council Regulation.

(5) A reference in this Order to any enactment (including legislation of the European Union) or statutory instrument is to be construed as a reference to that enactment or instrument as amended from time to time.

PART 1

Freezing funds etc.

Dealing with funds and economic resources

4.—(1) It is an offence for a person (“P”), including the designated person, to deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person if P knows, or has reasonable cause to suspect, that P is 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 a change in volume, amount, location, ownership, possession, character or destination, or
 - (iii) make any other change that would enable use, including portfolio management, and
- (b) in relation to economic resources, use to obtain funds, goods or services in any way, including by selling, hiring or mortgaging the resources.

(3) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that—

- (a) P is making the funds or economic resources so available, and
- (b) in the case of economic resources, the designated person would be likely to exchange them, or use them in exchange, for funds, goods or services.

(4) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or economic resources so available.

(5) For the purposes of paragraph (4)—

- (a) funds or economic resources are made available for the benefit of a designated person only if that person obtains, or is able to obtain, a significant financial benefit from the funds or economic resources, and
- (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(6) No liability arises for any person concerned in the freezing of funds or economic resources in accordance with this article unless it is proved that the funds or economic resources were frozen or withheld as a result of negligence.

(7) This article is subject to articles 5, 10 and 11.

Credits to a frozen account

5.—(1) Nothing in article 4 prevents a person from crediting 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) Nothing in article 4 prevents a relevant institution from crediting a frozen account where it receives funds transferred to the account.

Information relating to funds etc.

6.—(1) The Governor must take such steps as the Governor considers appropriate to cooperate with any international investigation relating to the funds, economic resources or financial transactions of—

- (a) a designated person,
- (b) a person owned or controlled by a designated person, or
- (c) a person acting on behalf of, or at the direction of, a designated person.

(2) A relevant institution must inform the Governor as soon as practicable if it knows or suspects that a customer—

- (a) is a designated person, or
- (b) has committed an offence under article 4 or 10(10).

(3) When informing the Governor under paragraph (2), the relevant institution must state—

- (a) the information or other matter on which the knowledge or suspicion is based,
- (b) any information it holds about the customer by which the customer can be identified, and
- (c) if the customer is a designated person, the nature and amount or quantity of any funds or economic resources held by the relevant institution for the customer since the customer first became a designated person.

(4) A relevant institution must inform the Governor as soon as practicable if it credits a frozen account in accordance with article 5(1)(b) or (2).

(5) It is an offence for a relevant institution to fail to comply with a requirement of paragraph (2), (3) or (4).

(6) Anything done by a relevant institution in accordance with this article is not to be treated as a breach of any restriction imposed by statute or otherwise.

(7) For the purposes of this article, “customer”, in relation to a relevant institution, includes—

- (a) a person who is or has been a customer of the institution at any time since the coming into force of this Order, or
- (b) a person with whom the institution has had dealings in the course of its business since the coming into force of this Order.

PART 2

Restricted goods etc.

Providing or carrying restricted goods

7.—(1) It is an offence for a person to knowingly sell, supply, transfer or export (directly or indirectly) restricted goods—

- (a) to any non-governmental person in the Democratic Republic of the Congo, or
- (b) for use by any non-governmental person in the Democratic Republic of the Congo.

(2) It is an offence for a relevant person to knowingly use a ship, aircraft or vehicle falling within paragraph (3) 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.

(3) The following fall within this paragraph—

- (a) a ship, aircraft or vehicle within the Territory,
- (b) a ship or aircraft registered in the Territory, or
- (c) any other ship or aircraft that is for the time being chartered to a person mentioned in article 2(1)(a) or (b).

(4) A “relevant person”, in relation to a ship, aircraft or vehicle falling within paragraph (3)(a) or (b), means—

- (a) the owner or master of the ship,
- (b) the charterer, operator or commander of the aircraft, or
- (c) the driver or operator of the vehicle.

(5) A “relevant person”, in relation to a ship or aircraft falling within paragraph (3)(c) means—

- (a) the charterer of the ship or aircraft, or
- (b) the master of the ship, or operator of the aircraft, if the master or operator is a person mentioned in article 2(1)(a) or (b).

(6) Paragraph (2) is without prejudice to any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

(7) This article is subject to articles 10 and 11.

Providing assistance related to restricted goods

8.—(1) It is an offence for a person to knowingly provide (directly or indirectly) assistance relating to the sale, supply, transfer or export of restricted goods —

- (a) to any non-governmental person in the Democratic Republic of the Congo, or
- (b) for use by any non-governmental person in the Democratic Republic of the Congo.

(2) It is an offence for a person to knowingly provide (directly or indirectly) assistance relating to the maintenance, manufacture or use of restricted goods—

- (a) by any non-governmental person in the Democratic Republic of the Congo, or
- (b) for use by any non-governmental person in the Democratic Republic of the Congo.

(3) This article is subject to articles 10 and 11.

Providing assistance related to military activities

9.—(1) It is an offence for a person to knowingly provide (directly or indirectly) assistance related to military activities to any non-governmental person in the Democratic Republic of the Congo.

(2) This article is subject to articles 10 and 11.

PART 3

General

Licences granted by the Governor

10.—(1) The Governor may, with the consent of the Secretary of State, grant a licence authorising an activity that would otherwise be prohibited under article 4 or 7 to 9.

(2) A person is not guilty of an offence under article 4 or 7 to 9 in respect of anything done by the person under the authority of a licence granted by the Governor.

(3) A licence may, in particular, relate to—

- (a) arms and related materiel, as well as assistance, intended solely for the support of, or use by, the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO) or the African Union Regional Task Force;
- (b) 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;
- (c) non-lethal military equipment intended solely for humanitarian or protective use, or the provision of assistance related to such non-lethal equipment;
- (d) payment of basic expenses of designated persons and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges;
- (e) payment of reasonable professional fees and expenses associated with the provision of legal services;
- (f) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
- (g) payment of necessary extraordinary expenses;

- (h) satisfaction of a judicial, administrative or arbitral lien or judgment established before the designated person was so designated and not for the benefit of a designated person;
 - (i) payment due under contract or agreement concluded by, or an obligation that arose before, the date on which the designated person was so designated and not for the benefit of a designated person.
- (4) 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, and
 - (c) of indefinite duration or subject to an expiry date.
- (5) The Governor may, with the consent of the Secretary of State, vary or revoke a licence at any time.
- (6) On the grant, variation or revocation of a licence, the Governor must—
- (a) in the case of a licence granted to a particular person, give written notice of the grant, 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 grant, variation or revocation of the licence.
- (7) Any notice to be given to a person by the Governor under paragraph (6) may be given—
- (a) by posting it to the person's last known address, or
 - (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office in the Territory of the body or partnership.
- (8) Where the Governor does not have an address in the Territory for the person, the Governor must make arrangements for the notice to be given to the person at the first available opportunity.
- (9) Failing to comply with any condition in the licence is acting in a way that is not authorised by the licence unless—
- (a) the licence was modified after the completion of the act authorised by the licence, and
 - (b) the alleged failure to comply with a condition in the licence would not have been a failure if the licence had not been so modified.
- (10) It is an offence for a person to knowingly or recklessly make any statement or give any document or information which is false in a material particular for the purpose of obtaining a licence.
- (11) A licence granted in connection with the application for which the false statement was made or the false document or information given is void from the time it was granted.

Licences granted outside the Territory

- 11.** A person is not guilty of an offence under article 4 or 7 to 9 in respect of anything done by the person—
- (a) outside the Territory, and
 - (b) under the authority of a licence granted in accordance with any provisions of the law in force in the place where it is done corresponding with the provisions of this Order.

Claims for indemnity or under contract

12.—(1) No claim in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by this Order shall be enforced if it is made by:

- (a) a designated person, or
- (b) a person acting on behalf of a designated person.

(2) Paragraph (1) applies in particular to any claim for indemnity or any other claim of this type, such as a claim under guarantee (including a financial guarantee or indemnity).

(3) In any proceedings for the enforcement of such a claim, the burden of proof that the claim is not prohibited is on the person seeking to enforce that claim.

Requirement to publish list of designated persons

13.—(1) The Governor must—

- (a) publish a list of designated persons, and
- (b) keep the list up to date.

(2) The Governor may publish a list under paragraph (1) in any form the Governor considers appropriate, including by means of a website.

Evidence and information

14. Schedule 3 contains further provision about obtaining evidence and information.

Functions of the Governor

15.—(1) The Governor may, to such extent and subject to such restrictions and conditions as the Governor thinks 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.

(2) 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.

Circumvention and contravention of prohibitions

16. It is an offence for a person to intentionally participate in an activity, knowing that the object or effect of the activity is (directly or indirectly)—

- (a) to circumvent any of the prohibitions in article 4 or 7 to 9, or
- (b) to enable or facilitate the contravention of any such prohibition.

Penalties

17.—(1) A person guilty of an offence under article 4, 7, 8, 9 or 16 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 6 or 10(10), or paragraph 4(b), (c) or (d) of Schedule 3 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 paragraph 4(a) or 6 of Schedule 3 is liable 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.
- (4) If an offence under this Order committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to any neglect on the part of an officer of the body corporate,
- the officer as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly.

Proceedings

- 18.**—(1) Proceedings against a 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 within the period of 12 months beginning with the date on which the person charged first enters the Territory after committing the offence.
- (3) Proceedings for an offence must not be instituted in the Territory except with the consent of the principal public officer of the Territory responsible for criminal prosecutions.
- (4) Nothing in paragraph (3) prevents—
- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of an offence, or
 - (b) the remand in custody or on bail of any person charged with an offence.
- (5) A reference in this article to an offence is to an offence under this Order.

Richard Tilbrook
Clerk of the Privy Council