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STATUTORY INSTRUMENTS

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**2020 No. 279**

**The Nicaragua (Sanctions) (Overseas Territories) Order 2020**

**Citation, commencement and extent**

- 1.—(1) This Order may be cited as the Nicaragua (Sanctions) (Overseas Territories) Order 2020.  
(2) It comes into force on 8th April 2020.  
(3) It extends to the territories listed in Schedule 1.

**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 on board a ship or aircraft that is registered in the Territory.  
(2) Article 14 applies to the Falkland Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, and the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus with the modifications specified in Schedule 2.  
(3) In the application of this Order to any territory listed in Schedule 1, the expression “the Territory” in this Order means that territory.

**Interpretation**

- 3.—(1) In this Order—  
“aircraft” has the same meaning as it has in section 6(9) of the Sanctions and Anti-Money Laundering Act 2018<sup>(1)</sup>;  
“the Council Regulation” means Council Regulation (EU) 2019/1716 of 14th October 2019 concerning restrictive measures in view of the situation in Nicaragua<sup>(2)</sup>;  
“designated person” means any person 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;

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(1) 2018 c.13.

(2) OJ No. L 262, 15.10.2019, p. 1.

“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—

- (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,
- (g) documents showing evidence of an interest in funds or financial resources, and
- (h) any other instrument of export financing;

“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 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;

“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;

“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;

“ship” has the same meaning as it has in section 7(14) of the Sanctions and Anti-Money Laundering Act 2018;

“the Territory” has the meaning given in article 2(3);

“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(3), taken with Schedule 2 to that Act(4) and any order under section 22 of that Act(5), 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)(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) 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 of 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.

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(3) 2000 c.8; section 22 was amended by the Financial Services Act 2012 (c.21), section 7(1); the Financial Guidance and Claims Act 2018 (c.10), section 27(4); and S.I. 2018/135.

(4) Schedule 2 was amended by the Regulation of Financial Services (Land Transactions) Act 2005 (c.24), section 1; the Dormant Bank and Building Society Accounts Act 2008 (c.31), section 15 and Schedule 2, paragraph 1; the Financial Services Act 2012 (c.21), sections 7(2) to (5) and 8; the Financial Guidance and Claims Act 2018 (c.10), section 27(13); and S.I. 2013/1881; and it is prospectively amended by S.I. 2018/135 and S.I. 2019/632.

(5) S.I. 2001/544, as most recently amended by S.I. 2019/679 and prospectively amended by S.I. 2019/710.

(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, 7 and 8.

### **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,
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or
- (c) payments due under judicial, administrative or arbitral decisions rendered in the Territory or enforceable in the Territory.

(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 or relevant business or profession 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 7(10).

(3) When informing the Governor under paragraph (2), the relevant institution or relevant business or profession 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 or relevant business or profession 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 (c) or 5(2).

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

(6) Anything done by a relevant institution or relevant business or profession 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 or relevant business or profession, includes—

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

(8) In this article, a “relevant business or profession” means any of the following operating in the Territory—

- (a) an auditor,
- (b) a casino,
- (c) a dealer in precious metals or stones,
- (d) an external accountant,
- (e) an independent legal professional,
- (f) a real estate agent,
- (g) a tax adviser, and
- (h) a trust or company service provider.

(9) For the purpose of paragraph (8)—

“auditor” means a firm or sole practitioner who by way of business provides auditing services to other persons, when providing such services;

“casino” means the holder of a licence to operate a casino in the Territory;

“dealer in precious metals or stones” means a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging—

- (a) articles made from gold, silver, platinum or palladium, or
- (b) precious stones or pearls;

“external accountant” means a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services;

“independent legal professional” means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when providing such services;

“real estate agent” means a firm or sole practitioner, who by way of business provides real estate agency services to their client in relation to transactions concerning the buying or selling of real estate by their client, when the work is being carried out;

“tax adviser” means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services;

“trust or company service provider” means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services—

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
  - (i) as a director or secretary of a company,
  - (ii) as a partner of a partnership, or
  - (iii) in a similar capacity in relation to other legal persons;

- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
  - (d) acting, or arranging for another person to act, as—
    - (i) a trustee of an express trust or similar legal arrangement, or
    - (ii) a nominee shareholder for a person.
- (10) In paragraph (9), “firm” means any entity that, whether or not a legal person, is not an individual, and includes a body corporate and a partnership or other unincorporated association.

## PART 2

### General

#### **Licences granted by the Governor**

7.—(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.

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

(3) A licence may relate to—

- (a) payment of 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;
- (b) payment of reasonable professional fees and expenses associated with the provision of legal services;
- (c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
- (d) payment of necessary extraordinary expenses;
- (e) payments into or from an account of a diplomatic or consular mission or of an international organisation enjoying immunities in accordance with international law, intended to be used for official purposes of the diplomatic or consular mission or international organisation;
- (f) satisfaction of an arbitral decision rendered before the date on which the designated person was so designated, or satisfaction of a judicial or administrative decision made at any time;
- (g) payment due under a contract or agreement concluded by, or an obligation that arose before, the date on which the designated person was so designated provided that the payment is 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, or
- (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.
- (12) In this article—

“frozen funds or economic resources” means funds or economic resources frozen by virtue of article 4(1), and any reference to a person’s frozen funds or economic resources is to funds or economic resources frozen as a consequence of the listing of that person in Annex I to the Council Regulation.

### **Licences granted outside the Territory**

- 8. A person is not guilty of an offence under article 4 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**

- 9.—(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 through or 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 for compensation or 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 a list of designated persons**

- 10.—(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**

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

### **Functions of the Governor**

12.—(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**

13. 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
- (b) to enable or facilitate the contravention of any such prohibition.

### **Penalties**

14.—(1) A person guilty of an offence under article 4 or 13 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(5) or 7(10) or paragraph 3(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 3(a) or 5 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.

(5) This article is subject to article 2(2) and the modifications specified in Schedule 2.



## **Proceedings**

**15.**—(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