
STATUTORY INSTRUMENTS

2020 No. 281

The Cyber (Sanctions) (Overseas Territories) Order 2020

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.