STATUTORY INSTRUMENTS

2015 No. 1898

OVERSEAS TERRITORIES

The Burundi (Sanctions) (Overseas Territories) Order 2015

Made - - - -	*11th November 2015*
Laid before Parliament	*18th November 2015*
Coming into force - -	*10th December 2015*

At the Court at Buckingham Palace, the 11th day of November 2015

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 112 of the Saint Helena Act 1833(**1**), the British Settlements Acts 1887 and 1945(**2**), 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 and extent

1.—(1) This Order may be cited as the Burundi (Sanctions) (Overseas Territories) Order 2015.

(2) It comes into force on 10th December 2015.

(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 onboard a ship or aircraft that is registered in the Territory.

(**1**) 1833 c.85.
(**2**) 1887 c.54 and 1945 c.7.

(2) Article 14 applies to the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, the Falkland Islands, South Georgia and the South Sandwich Islands, and St Helena, Ascension and Tristan da Cunha as set out 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, unless otherwise provided—

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

"the Council Regulation" means Council Regulation (EU) No. 1755/2015 adopted by the Council of the European Union on 1 October 2015(**3**) concerning restrictive measures in respect of Burundi;

"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;

"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,

(g) documents showing evidence of an interest in funds or financial resources, or

(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;

"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

(**3**) O.J.L.257 2.10.2015.

(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" includes every description of vessel used in navigation;

"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(**4**), 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,

(**4**) 2000 c.8.

(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, 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, or

(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 a judicial, administrative or arbitral lien or judgment.

(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 7(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 (c) 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

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, in particular, 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) 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;

(f) payment due under a contract or agreement concluded by, or an obligation that arose before, the date on which this Order comes into force 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