STATUTORY INSTRUMENTS

2015 No. 1382

OVERSEAS TERRITORIES

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

Made - - - -	*10th June 2015*
Laid before Parliament	*17th June 2015*
Coming into force - -	*8th July 2015*

At the Court at Buckingham Palace, the 10th day of June 2015

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 resolutions adopted on 31st March 2008 and 29th January 2015, called upon Her Majesty's Government in the United Kingdom 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 conferred on Her by section 1 of the United Nations Act 1946(**1**), section 112 of the Saint Helena Act 1833(**2**), the British Settlements Acts 1887 and 1945(**3**), 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, 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(**4**), the Democratic Republic of the Congo (Restrictive Measures)

(**1**) 1946 c.45.
(**2**) 1833 c.85.
(**3**) 1887 c.54 and 1945 c.7.
(**4**) S.I. 2012/2750.

(Overseas Territories) (Amendment) Order 2005(**5**), the Democratic Republic of the Congo (United Nations Sanctions) (Overseas Territories) Order 2005(**6**) and the Democratic Republic of the Congo (Restrictive Measures) (Overseas Territories) Order 2003(**7**) 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.

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;

(**5**) S.I. 2005/1988.
(**6**) S.I. 2005/1461.
(**7**) S.I. 2003/2627.

"the Council Regulation" means Council Regulation (EU) No. 1183/2005 adopted by the Council of the European Union on 18th July 2005(**8**) 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,

(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;

(**8**) O.J. L.193 23.7.2005.

"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(**9**), 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(**10**) 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);

"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(**11**), 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.

(**9**) S.I. 2008/3231.
(**10**) O.J. C. 129 21.4.2015, p.1.
(**11**) 2000 c.8.

(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.