

2018 No. 1351

OVERSEAS TERRITORIES

**The Burma and Somalia (Sanctions) (Overseas Territories)
(Amendment) Order 2018**

Made - - - - - *12th December 2018*

Laid before Parliament *19th December 2018*

Coming into force - - - *9th January 2019*

At the Court at Buckingham Palace, the 12th day of December 2018

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 resolution 2385 adopted on 14th November 2017, called upon Her Majesty's Government in the United Kingdom to apply certain measures to give effect to decisions of the Council in relation to Somalia:

Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946(a), section 112 of the Saint Helena Act 1833(b), the British Settlements Acts 1887 and 1945(c), 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, interpretation and extent

1.—(1) This Order may be cited as the Burma and Somalia (Sanctions) (Overseas Territories) (Amendment) Order 2018 and comes into force on 9th January 2019.

(2) In this Order—

(a) “the principal Order” means the Burma (Sanctions) (Overseas Territories) Order 2013(d);

(b) “the Somalia Order” means the Somalia (Sanctions) Overseas Territories) Order 2012(e).

(3) This Order extends to the territories listed in Schedule 1 to the principal Order.

Amendment of the principal Order

2. The principal Order is amended in accordance with articles 3 to 16 of this Order.

(a) 1946 c.45.

(b) 1833 c.85.

(c) 1887 c.54 and 1945 c.7.

(d) S.I. 2013/1447.

(e) S.I. 2012/3065, as amended by S.I. 2013/1443.

3. In article 2(2)—

- (a) after “Article 4(2)” insert “, article 4A(2)”;
- (b) omit “(and for this purpose “relevant person” has the meaning given in article 4(4) and (5))”.

4. In article 3—

- (a) in paragraph (1), insert the following definitions in the appropriate places—

““designated person” means any person listed in Annex IV of the Council Regulation;”;

““dual-use goods and technology” means the items listed in Annex I to Council Regulation (EC) No. 428/2009(a);”;

““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—

- (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;”;

““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;”;

““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;”;

““relevant person” has the meaning given in paragraphs (4) and (5) of article 4;”;

““surveillance equipment” means the equipment, technology and software listed in Annex III to the Council Regulation;”;

““surveillance services” means services that provide, in particular using surveillance equipment, access to and delivery of a person’s incoming and outgoing telecommunications and call-associated data for the purpose of its extraction, decoding, recording, processing, analysis or storing, or any other related activity;”;

- (b) for paragraphs (2) and (3) substitute—

(a) O.J. L. 134 29.5.2009, p.1.

“(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^(a), 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)(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) 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.”.

5. For the heading to Part 1, substitute “Restricted goods, services, and assistance”.

6. In article 4, after paragraph (2) insert—

“(2A) Paragraphs (1) and (2) do not apply in respect of protective clothing, including flak jackets and military helmets, which are temporarily exported to Burma by persons in the service of the United Nations, persons in the service of the European Union or its Member States, representatives of the media or humanitarian or development workers or associated personnel solely for their personal use.”.

7. After article 4, insert—

“Dual use goods and technology

4A.—(1) Subject to paragraph (5), it is an offence for a person to knowingly sell, supply, transfer or export (directly or indirectly) dual-use goods and technology intended for military use, or for delivery to a military end-user or the Border Guard Police—

- (a) to any person in Burma, or
- (b) for use in Burma.

(2) Subject to paragraph (5), it is an offence for a relevant person to knowingly use a ship, aircraft or vehicle falling within paragraph (3) for the carriage of dual-use goods and technology intended for military use, or for delivery to a military end-user or the Border Guard Police, if the carriage is, or forms part of, carriage from any place outside Burma to any destination in Burma.

(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 who falls within article 2(1)(a) or (b).

(5) Paragraphs (1) and (2) do not apply —

(a) 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 the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018/135, regulation 38.

- (a) in respect of protective clothing, including flak jackets and military helmets, which are temporarily exported to Burma by persons in the service of the United Nations, persons in the service of the European Union or its Member States, representatives of the media or humanitarian or development workers or associated personnel solely for their personal use; or
 - (b) where the sale, supply, transfer, export or carriage is carried out pursuant to a contract concluded before 9th January 2019 or to an ancillary contract necessary for the execution of such a contract.
- (6) This article is subject to articles 7 and 8.

Surveillance equipment and surveillance services

- 4B.**—(1) It is an offence for a person to knowingly—
- (a) sell, supply, transfer or export (directly or indirectly) surveillance equipment to any person in Burma or for use in Burma,
 - (b) provide (directly or indirectly) assistance relating to surveillance equipment, or relating to the installation, provision, manufacture, maintenance or use of the equipment and technology specified in Annex III to the Council Regulation, or to the provision, installation, operation or updating of any software specified in that Annex, to any person in Burma or for use in Burma, or
 - (c) provide surveillance services to, or for the direct or indirect benefit of, the Government of Burma, its public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction.
- (2) This article is subject to articles 7 and 8.

Dealing with funds and economic resources

- 4C.**—(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 4D, 7 and 8.

Credits to a frozen account

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

Information relating to funds etc.

4E.—(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 4C 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 or relevant business or profession must inform the Governor as soon as practicable if it credits a frozen account in accordance with article 4D(1)(b) or (c) or (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 institution or business or profession at any time since 9th January 2019, and
- (b) a person with whom the institution or business or profession has had dealings in the course of its business at any time since 9th January 2019.

(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, or
- (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.”.

8. For article 5 substitute—

“Providing assistance to restricted goods or dual-use goods

5.—(1) Subject to paragraph (2), it is an offence for a person to knowingly provide (directly or indirectly) assistance relating to restricted goods or dual-use goods and technology intended for military use, for delivery to a military end-user or the Border Guard Policy—

- (a) to any person in Burma, or
- (b) for use in Burma.

(2) Paragraph (1) does not apply where the provision of assistance related to dual-use goods and technology is carried out pursuant to a contract concluded before 9th January 2019 or to an ancillary contract necessary for the execution of such a contract.

(3) This article is subject to articles 7 and 8.”.

9. In article 7(3)—

(a) omit sub-paragraph (a);

(b) after paragraph (d) insert—

“(da) the sale, supply, transfer or export of surveillance equipment, or the provision of surveillance services, provided that the Governor has determined that the surveillance equipment would not be used for internal repression by the Government of Burma, its public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction;”;

(c) in paragraphs (e) and (f), for “(a)-(d)” substitute “(b) to (da)”;

(d) at the end of paragraph (f) for “.” substitute “;”;

(e) after paragraph (f) insert—

“(g) 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;

(h) payment of reasonable professional fees and expenses associated with the provision of legal services;

(i) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;

(j) payment of necessary extraordinary expenses;

(k) 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;

(l) 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;

(m) 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.”.

10. For article 9 substitute—

“Publication requirements

9.—(1) The Governor must—

- (a) publish a list of designated persons, restricted goods and surveillance equipment; 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.”.

11. After article 9 insert—

“Claims for indemnity or under contract

9A.—(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.”.

12. In article 13—

- (a) in paragraph (1), after “article 4,” insert “4A, 4B, 4C,”;
- (b) in paragraph (2), after “article” insert “4E(5),”.

13. In Schedule 2—

- (a) in paragraph 3(1), after “article 4(2)” insert “or 4A(2)”;
- (b) in paragraph 5 omit the definition of “relevant person”.

14. In Schedule 3—

- (a) in paragraph 1, after “4,” insert “4A, 4B, 4C,”;
- (b) in paragraph 2, after “article” insert “4E(5)”.

15. In Schedule 5—

- (a) in paragraph 1, after “4,” insert “4A, 4B, 4C,”;
- (b) in paragraph 2, after “article” insert “4E(5)”.

16. In paragraph 1(1) of Schedule 6, after sub-paragraph (b) insert—

- “(c) establishing the nature and amount or quantity of any funds or economic resources owned, held or controlled by a designated person,
- (d) establishing the nature of any financial transactions entered into by a designated person, or
- (e) cooperating with any international investigation in accordance with article 4E.”.

Amendment of the Somalia Order

17. In article 4(8)(c) of the Somalia Order, for “Consolidated Appeal” substitute “Humanitarian Response Plan”.

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Burma (Sanctions) (Overseas Territories) Order 2013 (S.I. 2013/1447) and gives effect in specified Overseas Territories to sanctions measures adopted by the European Union in Council Decision (CFSP) 2018/655, which was adopted on 26th April 2018, and Council Regulation (EU) 2018/647, which was also adopted on 26th April 2018.

The sanctions imposed include specific measures in relation to equipment that might be used for internal repression and to prevent the misuse of communication equipment. They also include measures to enable the freezing of assets of persons from the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police designated by the Council of the European Union as responsible for serious human rights violations, obstructing the provision of humanitarian assistance to civilians in need, or obstructing the conduct of independent investigations into alleged human rights violations or abuses, or any natural or legal persons, entities or bodies associated with them.

The Order also makes relevant provision for the Governors of the specified Overseas Territories to license certain activities.

This Order also amends the Somalia (Sanctions) (Overseas Territories) Order 2012 (S.I. 2012/3065) to give effect to a minor textual amendment contained in United Nations Security Council resolution 2385 (2017) adopted on 14th November 2017.

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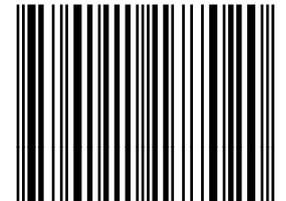
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