

2006 No. 311

UNITED NATIONS

The Lebanon and Syria (United Nations Measures) (Overseas Territories) Order 2006

Made - - - - - *14th February 2006*

Laid before Parliament *15th February 2006*

Coming into force - - - *16th February 2006*

At the Court at Buckingham Palace, the 14th day of February 2006

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 1636(2005) adopted on 31st October 2005, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to decisions of that Council in relation to Lebanon and Syria.

Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946(a), is pleased, by and with the advice of Her Privy Council, to order, and it is ordered as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Lebanon and Syria (United Nations Measures) (Overseas Territories) Order 2006 and shall come into force on 16th February 2006.

(2) This Order shall extend to the territories listed in Schedule 1.

(3) Articles 11 and 12 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(4) In the application of this Order to any of the said territories:

(a) the expression “the Territory” in this Order means that territory;

(b) references to the official gazette of a Territory include a reference to any form in which official information is normally made available in that Territory.

(5) An offence may be committed under article 4, 5 or 7 by any person in the Territory or by any person elsewhere who is—

(a) 1946 c.45.

- (a) 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
- (b) a body incorporated or constituted under the law of any part of the Territory.

Interpretation

2.—(1) In this Order—

“designated person” means any person for the time being designated under paragraph 3(a) of the Security Council Resolution and registered by the Committee of the Security Council established pursuant to paragraph 3(b) that Resolution;

“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 can be used to obtain funds, goods or services;

“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 persons, 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, right of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading, bills of sale; and
- (g) documents evidencing an interest in funds or financial resources;

“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) the person or body responsible for carrying out in the Territory the functions of a monetary authority;
- (b) any person who may lawfully accept deposits in or from within the Territory by way of business;
- (c) 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;

“the Security Council Resolution” means resolution 1636(2005) adopted by the Security Council of the United Nations on 31st October 2005.

“Supreme Court” means the court of the Territory having unlimited jurisdiction in civil proceedings.

(2) For the purpose of the definition of “relevant institution” in paragraph (1)—

- (a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000(a); and
- (b) a person is not regarded as accepting deposits by way of business if—

(a) 2000 c.8.

- (i) he does not hold himself out as accepting deposits on a day to day basis, and
- (ii) any deposits which he 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.

Publicly available list of designated persons

3. The Governor must—

- (a) maintain a list of designated persons; and
- (b) cause the list to be published in the official gazette of the Territory as necessary from time to time.

Freezing funds and economic resources

4.—(1) A person (including the designated person) must not deal with funds or economic resources owned, held or controlled by a designated person unless he does so under the authority of a licence granted under article 9.

(2) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(3) In proceedings for an offence under this article, it is a defence for a person to show that he did not know and had no reasonable cause to suspect that he was dealing with funds or economic resources owned, held or controlled by a designated person.

(4) In this article, “to deal with” means—

- (a) in respect of funds—
 - (i) to use, alter, move, allow access to or transfer;
 - (ii) to deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or
 - (iii) to make any other change that would enable use, including portfolio management; and
- (b) in respect of economic resources, to use to obtain funds, goods or services in any way, including (but not limited to) by selling, hiring or mortgaging the resources.

Making funds and economic resources available

5.—(1) A person must not make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person unless he does so under the authority of a licence granted under article 9.

(2) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(3) In proceedings for an offence under this article, it is a defence for a person to show that he did not know and had no reasonable cause to suspect that he was making funds or economic resources available, directly or indirectly, to or for the benefit of a designated person.

Exceptions

6.—(1) A person is not guilty of an offence under article 4 or 5 if he credits a frozen account with interest or other earnings on the account.

(2) A relevant institution is not guilty of an offence under article 4 or 5 if the institution credits a frozen account with funds transferred by a third party, provided that the institution informs the Governor without delay.

(3) For the avoidance of doubt, article 4 applies to any funds credited to a frozen account in accordance with this article.

(4) In this article—

“frozen account” means an account of a designated person;

“third party” means a person other than the account-holder or the relevant institution with which the account is maintained.

Circumventing prohibitions etc

7. A person is guilty of an offence if he participates, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to—

- (a) circumvent a prohibition in article 4(1) or 5(1); or
- (b) enable or facilitate the commission of an offence under article 4 or 5.

Acting on behalf of a designated person etc

8.—(1) Where the condition in paragraph (2) is satisfied, the Governor may direct that articles 4 to 7 are to apply in respect of a person identified in the direction as if he were a designated person.

(2) The condition in this paragraph is that the Governor has reasonable grounds for suspecting that the person identified in the direction is or may be—

- (a) owned or controlled by a designated person, or
- (b) acting on behalf of or at the direction of a designated person.

(3) A direction under paragraph (1) has effect—

- (a) for such period as the Governor may specify in the direction, or
- (b) until the direction is revoked or set aside.

(4) The Governor may revoke a direction at any time.

(5) The Governor, where he issues or revokes a direction, must—

- (a) give written notice of the direction or revocation to the person identified in the direction, and
- (b) make information as to the direction or revocation publicly available.

(6) The Supreme Court may set aside a direction on the application of—

- (a) the person identified in the direction, or
- (b) any other person affected by the direction.

(7) A person who makes an application under paragraph (6) must give a copy of the application and any witness statement or affidavit in support to the Governor not later than seven days before the date fixed for the hearing of the application.

Licences

9.—(1) The Governor may grant a licence to exempt acts specified in the licence from the prohibition in article 4(1) or 5(1).

(2) A licence may relate to—

- (a) basic expenses, 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; or
- (c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources.

(3) A licence may be—

- (a) general or granted to a particular person;
- (b) absolute or subject to conditions;

- (c) of indefinite duration or subject to an expiry date.
- (4) The Governor may vary or revoke a licence at any time.
- (5) The Governor, where he grants, varies or revokes a licence, must—
 - (a) in the case of a licence granted to a particular person, give written notice of the licence, variation or revocation to that person, and
 - (b) in the case of a general licence, make information as to the licence, variation or revocation publicly available.
- (6) Any person who, for the purpose of obtaining a licence, knowingly or recklessly makes any statement or furnishes any document or information which is false in a material particular is guilty of an offence.
- (7) Any person who has done any act under the authority of a licence and who fails to comply with any conditions attaching to that licence is guilty of an offence.

Evidence and information

10. Schedule 3 (which contains further provisions about evidence and information) has effect.

Penalties

- 11.—(1) A person guilty of an offence under article 4, 5 or 7 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 9(6) or (7) or paragraph 4(b) 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 2(3) or 4(a) or (c) 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 the offence and is liable to be proceeded against and punished accordingly.

Proceedings

- 12.—(1) Proceedings against any 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 at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.
- (3) No proceedings for an offence shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions.
- (4) Irrespective of whether such consent has been given, paragraph (3) does not prevent

- (a) the arrest of any person in respect of such an offence, or
 - (b) the remand in custody or on bail of any person charged with such an offence.
- (5) In this article, “offence” means an offence under this Order.

Notices

13.—(1) This article has effect in relation to any notice to be given to a person by the Governor under article 8(5)(a) or 9(5)(a).

(2) Any such notice may be given—

- (a) by posting it to his last known address; or
- (b) where the person is a body corporate, by posting it to the registered or principal office of the body corporate in the Territory.

(3) Where the Governor does not have an address in the Territory for the person, he must make arrangements for the notice to be given to him at the first available opportunity.

Functions of the Governor

14.—(1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his 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.

Postponement etc of the operation of the Security Council Resolution

15.—(1) If the Security Council of the United Nations takes any decision which has the effect of postponing, suspending or cancelling the operation of the Security Council Resolution, in whole or in part, this Order shall cease to have effect or its operation shall be postponed or suspended, in whole or in part as the case may be, in accordance with that decision.

(2) The Governor must publish particulars of the decision in a notice in the official gazette of the Territory.

Miscellaneous

16.—(1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing if—

- (a) it is done anywhere other than the Territory; and
- (b) it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if—

- (a) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (and that law substantially corresponds to the relevant provisions of this Order); and
- (b) that licence is granted by the authority competent in that behalf under that law.

A.K Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St. Helena and Dependencies
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 1(3)

APPLICATION OF ARTICLES 11 AND 12 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1. Any person who commits an offence under article 4, 5 or 7, shall be liable on conviction—
 - (a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;
 - (b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.
2. Any person who commits an offence under article 9(6) or (7) or paragraph 4(b) or (d) of Schedule 3, shall be liable on conviction:
 - (a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding two years, or to a fine, or to both;
 - (b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.
3. Any person who commits an offence under paragraph 2(3) or 4(a) or (c) of Schedule 3, is guilty of a misdemeanour and shall be liable on 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 a body corporate commits an offence and it is shown that the offence—
 - (a) was committed with the consent or connivance of an officer of the body corporate, or

(b) was 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 that offence and is liable to be proceeded against and punished accordingly.

5. Proceedings against any 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.

6. Proceedings for a misdemeanour, alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

7. No proceedings for an offence shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions.

8. Irrespective of whether such consent has been given, paragraph (7) does not prevent—

- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence;
- (b) the remand in custody or on bail of any person charged with such an offence.

9. In paragraphs (5) to (8), “offence” means an offence under this Order.

SCHEDULE 3

Article 10

Evidence and Information

1. The Governor must take such steps as he 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.—(1) A relevant institution must as soon as practicable inform the Governor if it knows or suspects that a relevant person—

- (a) is a designated person;
- (b) is a person owned or controlled by a designated person;
- (c) is a person acting on behalf of or at the direction of a designated person; or
- (d) has committed an offence under article 4, 5, 7 or 9.

(2) A relevant institution, where it informs the Governor under sub-paragraph (1), must state—

- (a) the information or other matter on which the knowledge or suspicion is based;
- (b) any information it holds about the relevant person by which the person can be identified; and
- (c) the nature and amount or quantity of any funds or economic resources held by the relevant institution for the relevant person since this Order came into force.

(3) A relevant institution that fails to comply with a requirement in paragraph (1) or (2) is guilty of an offence.

(4) In this article, “relevant person” means—

- (a) a customer of the institution;
- (b) a person who has been a customer of the institution since this Order came into force; or
- (c) a person with whom the institution has had dealings in the course of its business since then.

3.—(1) The Governor may request any person in or resident in the Territory to give to them any information or to produce to them any document in his possession or control which they may require for the purpose of—

- (a) securing compliance with or detecting evasion of this Order;
- (b) obtaining evidence of the commission of an offence under this Order;
- (c) establishing the nature and amount or quantity of any funds or economic resources owned, held or controlled by—
 - (i) a designated person; or
 - (ii) a person who is the subject of a direction under article 8; or
- (d) establishing the nature of any financial transactions entered into by any such person.

(2) This includes power to—

- (a) take copies of or extracts from any document so produced;
- (b) request any person producing a document to give an explanation of it; and
- (c) where that person is a body corporate, request any person who is a present or past officer of, or employee of, the body corporate to give such an explanation.

(3) Any person to whom a request is made must comply with it within such time and in such manner as may be specified in the request.

(4) Nothing in this paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to give or produce any privileged information or document in his possession in that capacity.

4. A person is guilty of an offence if he—

- (a) without reasonable excuse refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under paragraph 3;
- (b) knowingly or recklessly gives any information or produces any document which is false in a material particular in response to such a request;
- (c) otherwise wilfully obstructs the Governor in the exercise of his powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, conceals or removes any document.

5. Where a person is convicted of an offence under paragraph 4(a), the court may make an order requiring him, within such period as may be specified in the order, to give the requested information or to produce the requested document.

6.—(1) The Governor may only disclose any information given or document produced under this Schedule (including any copy or extract made of any such document)—

- (a) to any person holding or acting in any office under or in the service of—
 - (i) the Crown in respect of the Government of the United Kingdom;
 - (ii) the Government of the Isle of Man;
 - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;
 - (iv) the State of Jersey;
 - (v) the Government of any British overseas territory;
- (b) for the purpose of giving assistance or cooperation, pursuant to the Security Council Resolution, to—
 - (i) any organ of the United Nations;
 - (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country;

- (c) with a view to instituting, or otherwise for the purposes of, any proceedings—
 - (i) in the Territory, for an offence under this Order; or
 - (ii) in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory, for an offence under a similar provision in any such jurisdiction;
or
- (d) with the consent of a person who, in his own right, is entitled to the information or to the possession of the document, to any third party.

(2) In this paragraph, “in his own right” means not merely in the capacity as a servant or agent of another person.

7. An action done under this Schedule is not to be treated as a breach of any restriction imposed by statute or otherwise.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under section 1 of the United Nations Act 1946, gives effect in the territories listed in Schedule 1 to Resolution 1636(2005) adopted by the Security Council of the United Nations on 31st October 2005.

The Security Council has decided that all states are to take certain measures against individuals suspected of an involvement in the terrorist bombing in Beirut, Lebanon on 14th February 2005.

A Committee of the Security Council, established under the Security Council Resolution, will register the details of the individuals to which the measures are to apply. The measures include the freezing of funds, financial assets and economic resources of such individuals and ensuring that any funds, financial assets and economic resources are not made available to them.

Article 3 of this Order requires the Governor of each territory to maintain a list of individuals registered by the Committee of the Security Council (“designated persons”) and to publish the list in the official gazette of the Territory.

Article 4 prohibits any dealing with funds, financial assets and economic resources of designated persons, and makes it a criminal offence to contravene this prohibition.

Article 5 prohibits making funds, financial assets and economic resources available to designated persons, and makes it a criminal offence to contravene this prohibition.

Article 7 makes it a criminal offence to circumvent the prohibitions or to facilitate the commission of an offence relating to a prohibition.

Article 8 gives the Governor power to direct that a person suspected of being owned or controlled by a designated person or of acting on behalf of or at the direction of a designated person is to be treated for the purposes of the prohibitions and offences as if he were a designated person. It also creates an appeal process in respect of any such direction.

Article 9 provides a licensing procedure to enable, for humanitarian purposes, certain acts to be exempted from the prohibitions.

The Schedule makes provisions about information and evidence.

A list of designated persons and any persons who are the subject of a direction made under article 8 will be made available on the Internet at: www.bankofengland.co.uk.

STATUTORY INSTRUMENTS

2006 No. 311

UNITED NATIONS

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Territories) Order 2006**

£3.00

ISBN 0-11-074050-5

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0174 2/2006 160174T 19585

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