
STATUTORY INSTRUMENTS

2003 No. 2614

The Democratic Republic of the Congo (United Nations Sanctions) (Isle of Man) Order 2003

Citation, commencement, operation, extent and amendment

1.—(1) This Order may be cited as the Democratic Republic of the Congo (United Nations Sanctions) (Isle of Man) Order 2003 and shall come into force on 10th October 2003.

(2) If the Security Council of the United Nations takes any decision which has the effect of cancelling or suspending the operation of the resolution adopted by it on 28th July 2003, in whole or in part, this Order shall cease to have effect or its operation shall be suspended, in whole or in part, as the case may be, in accordance with that decision; and particulars of that decision shall be published by the Secretary of State in a notice in the London, Edinburgh and Belfast Gazettes.

(3) This Order shall extend to the Isle of Man as part of its law.

(4) Articles 3, 4 and 5 shall apply to any person within the Isle of Man and any person elsewhere who is—

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

Interpretation

2. In this Order the following expressions have the meanings hereby respectively assigned to them, that is to say—

“body corporate” includes a limited liability company constituted under the Limited Liability Companies Act 1996 (an Act of Tynwald) and, in relation to such a company, any reference to a director or other officer of a body corporate is a reference to a member and to a company’s manager and registered agent;

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“custody” means custody within the meaning of the Custody Act 1995 (an Act of Tynwald);

“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;

“export” includes shipment as stores;

“exportation” in relation to any ship, submersible vehicle or aircraft, includes the taking out of the Isle of Man of the ship, submersible vehicle or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

“master”, in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

“officer of Customs and Excise” means an officer authorised as such under the Customs and Excise Management Act 1986 (an Act of Tynwald);

“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 of a ship is not the operator, means the operator and any person to whom it is chartered;

“restricted goods” means the goods specified in Part III of Schedule 1 to the Export of Goods (Control) Order 1994(1);

“ship” includes every description of vessel used in navigation;

“shipment” (and cognate expressions) and “stores” shall have the meanings they bear in the Customs and Excise Management Act 1986 (an Act of Tynwald);

“the Treasury” means the Isle of Man Treasury, a department of the Government of the Isle of Man;

“vehicle” means a land transport vehicle.

RESTRICTED GOODS, TECHNICAL ASSISTANCE AND TRAINING

Supply of restricted goods

3.—(1) Any person who, except under the authority of a licence granted by the Treasury under this article or article 4—

- (a) supplies or delivers;
- (b) agrees to supply or deliver; or
- (c) does any act calculated to promote the supply or delivery of,

restricted goods to any person in the Democratic Republic of the Congo shall be guilty of an offence, unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person in the Democratic Republic of the Congo.

(2) Nothing in paragraph (1)(b) or (c) shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Treasury under this article.

Exportation of restricted goods to the Democratic Republic of the Congo

4. Except under the authority of a licence granted by the Treasury under this article, restricted goods are prohibited to be exported from the Isle of Man to any destination in the Democratic Republic of the Congo or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in the Democratic Republic of the Congo.

(1) S.I.1994/1191. The relevant amending Orders are S.I. 1994/2711, which amended Schedule III and entry ML4; S.I. 1996/2663, which amended Schedule 1, Part III; S.I. 1997/323, which amended Schedule 3; S.I. 1997/2758, which amended Schedule 3 and Group 3, Part I, Schedule 1 and entries ML8 and ML10; S.I. 1999/63, which amended Schedule 1, Part III; S.I. 1999/1777, which amended Group 3, Part I, Schedule 1 and entry ML8; S.I. 1999/335, which amended Schedule 3; S.I. 1999/3411, which amended Group 3, Part I, Schedule I; S.I. 2000/1239, which amended Schedule 1, Part III and entries PL5021, ML3, ML4, ML7, ML8, ML13, ML17, PL5033 and ML21; S.I. 2000/2264, which amended Schedule 1, Part III and entries PL5031 and PL5001; S.I. 2001/729, which amended entry ML4; S.I. 2002/2059, which amended Schedule 1, Part III and certain definitions and entries ML4, ML8 and ML10; and S.I. 2003/1938, which amended Schedule 1, Part III.

Provision of assistance, advice or training related to military activities

5. Any person who, except under the authority of a licence granted by the Treasury under this article, directly or indirectly provides to any person in the Democratic Republic of the Congo any

- (a) assistance,
- (b) advice, or
- (c) training,

related to military activities shall be guilty of an offence, unless he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person in the Democratic Republic of the Congo.

Use of ships, aircraft and vehicles: restricted goods

6.—(1) Without prejudice to the generality of article 3, and except under the authority of a licence granted by the Treasury under this article, no ship or aircraft to which this article applies, and no vehicle within the Isle of Man, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside the Democratic Republic of the Congo to any destination therein.

(2) This article applies to ships registered in the Isle of Man, to aircraft registered in the United Kingdom and to any other ship or aircraft that is for the time being chartered to any person who is referred to in article 1(4).

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then—

- (a) in the case of a ship registered in the Isle of Man or any aircraft registered in the United Kingdom, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in article 1(4) the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside the Democratic Republic of the Congo to any destination therein.

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Isle of Man of the goods concerned to the Democratic Republic of the Congo was authorised by a licence granted by the Treasury under article 3 or 4.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

GENERAL

Customs powers to demand evidence of destination which goods reach

7. Any exporter or any shipper of goods which have been exported from the Isle of Man shall, if so required by the Treasury, furnish within such time as it may allow proof to its satisfaction that the goods have reached either—

- (a) a destination to which they were authorised to be exported by a licence granted under this Order; or
- (b) a destination to which their exportation was not prohibited by this Order,

and, if he fails to do so, he shall be guilty of an offence, unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

Offences in connection with applications for licences, conditions attaching to licences, etc.

8.—(1) If for the purposes of obtaining any licence under this Order any person makes any statement, or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he shall be guilty of an offence.

(2) Any person who has done any act under the authority of a licence granted by the Treasury under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Treasury after the doing of the act authorised by the licence.

Declaration as to goods: powers of search

9.—(1) Any person who is about to leave the Isle of Man shall, if he is required to do so by an officer of Customs and Excise—

- (a) declare whether or not he has with him any restricted goods which are destined for the Democratic Republic of the Congo or for delivery, directly or indirectly, to or to the order of any person in the Democratic Republic of the Congo; and
- (b) produce any such goods as aforesaid which he has with him.

(2) Any such officer, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(3) Any person who without reasonable excuse refuses to make a declaration, or fails to produce any goods, or refuses to allow himself to be searched in accordance with the foregoing provisions of this article, shall be guilty of an offence.

(4) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular, or recklessly makes any declaration which is false in a material particular, shall be guilty of an offence.

Investigation, etc. of suspected ships

10.—(1) Where any authorised officer has reason to suspect that any ship to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article—

- (a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;
- (b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and
- (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 6, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order

that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

- (2) The further action referred to in sub-paragraph (1)(c) is either—
- (a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or
 - (b) to request the master of the ship to take any one or more of the following steps—
 - (i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;
 - (ii) if the ship is then in port in the Isle of Man, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;
 - (iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and
 - (iv) to take her to any other destination that may be specified by the officer in agreement with the master.
- (3) Without prejudice to the provisions of article 13(3), where—
- (a) a master refuses or fails to comply with a request made under paragraph (2) (b); or
 - (b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) Before or on exercising any power conferred by this article, an authorised officer shall, if requested to do so, produce evidence of his authority.

(5) In this article “authorised officer” means any officer as is referred to in section 74(1) of the Merchant Shipping Registration Act 1991 (an Act of Tynwald).

Investigation, etc. of suspected aircraft

11.—(1) Where any authorised officer or authorised person has reason to suspect that any aircraft to which article 6 applies has been or is being or is about to be used in contravention of paragraph (1) of that article—

- (a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;
- (b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and
- (c) if the aircraft is then in the Isle of Man, any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Isle of Man until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 13(3), where an authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be

complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorise entry, upon any land and upon that aircraft;
- (b) detain, or authorise the detention of, that aircraft and any of its cargo; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised officer or authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article—

“authorised officer” means any officer of Customs and Excise;

“authorised person” means any person authorised by the Treasury for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

12.—(1) Where any authorised officer or authorised person has reason to suspect that any vehicle in the Isle of Man has been or is being or is about to be used in contravention of article 6—

- (a) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;
- (b) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify;
- (c) any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the Isle of Man until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 13(3), where any authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;
- (b) detain, or authorise the detention of, that vehicle and any goods contained in it; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised officer or authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article—

“authorised officer” means any officer of Customs and Excise;

“authorised person” means any person authorised by the Treasury for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 10 to 12

13.—(1) No information furnished or document produced by any person in pursuance of a request made under article 10, 11 or 12 shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or the document was produced:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

- (b) to any person who would have been empowered under article 10, 11 or 12 to request that it be furnished or produced or 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 States of Jersey; or
 - (v) the Government of any territory listed in Schedule 1;
- (c) on the authority of the Treasury, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to the Democratic Republic of the Congo decided upon the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings—
 - (i) in the Isle of Man, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey or any territory listed in Schedule 1.

(2) Any power conferred by article 10, 11 or 12 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

- (3) Each of the following persons shall be guilty of an offence under this Order, that is to say—
 - (a) a master of a ship who disobeys any direction given under article 10(2)(a);
 - (b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who—
 - (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 10, 11 or 12 by any person empowered to make it, or
 - (ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request;
 - (c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 10, 11 or 12.

(4) Nothing in articles 10 to 13 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

14. The provisions of Schedule 2 shall have effect in order to facilitate the obtaining, by or on behalf of the Treasury—

- (a) of evidence and information for the purpose of securing compliance with or detecting evasion of—
 - (i) this Order in the Isle of Man; or
 - (ii) any law making provision with respect to any of the matters regulated by this Order that is in force in the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey or any territory listed in Schedule 1; and
- (b) of evidence of the commission of—
 - (i) in the Isle of Man, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or
 - (ii) with respect to any of those matters, an offence under the law of the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey or any territory listed in Schedule 1.

Investigations by the Treasury

15. Where the Treasury investigates or proposes to investigate any matter with a view to determining—

- (a) whether there are grounds for believing that an offence under this Order has been committed, or
- (b) whether a person should be prosecuted for such an offence

the matter shall be treated as an assigned matter within the meaning of section 184 (1) of the Customs and Excise Management Act 1986 (an Act of Tynwald).

Penalties and proceedings

- 16.—(1) Any person guilty of an offence under article 3, 5 or 6(3) shall be liable—
- (a) on conviction on information to custody for a term not exceeding seven years or to a fine or to both; or
 - (b) on summary conviction to custody for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (2) Any person guilty of an offence under article 13(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 2 shall be liable—
- (a) on conviction on information to custody for a term not exceeding two years or to a fine or to both; or
 - (b) on summary conviction to custody for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (3) Any person guilty of an offence under article 8(1) or (2) or article 9(4) shall be liable—
- (a) on conviction on information to custody for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction to a fine not exceeding the statutory maximum.
- (4) Any person guilty of an offence under article 13(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 2 shall be liable on summary conviction to custody for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(5) Any person guilty of an offence under article 7 or 9(3) shall be liable on summary conviction to a fine not exceeding the statutory maximum.

(6) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(7) Notwithstanding anything section in 75(1) of the Summary Jurisdiction Act 1989 (an Act of Tynwald), a complaint relating to an offence under this Order which is triable by a court of summary jurisdiction may be heard if it is made at any time within three years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge.

(8) For the purposes of this article—

- (a) a certificate signed by or on behalf of the prosecutor as to the date on which such evidence as is referred to in paragraph (7) above came to his knowledge shall be conclusive evidence of that fact;
- (b) a certificate purporting to be so signed shall be presumed to be so signed unless the contrary is proved, and
- (c) section 27(2) of the Police Powers and Procedure Act 1998 (an Act of Tynwald) shall apply to offences under this Order which are not arrestable offences by virtue of the term of custody for which a person may be sentenced in respect of them, as if they were mentioned in that subsection; and accordingly such offences shall be arrestable offences within the meaning of that Act.

(9) No proceedings for an offence under this Order, other than for a summary offence, shall be instituted except with the consent of the Attorney General for the Isle of Man:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of powers of the Treasury

17.—(1) The Treasury may, to such extent and subject to such restrictions and conditions as it may think proper, delegate or authorise the delegation of any of its powers under this Order (other than the power to give authority under Schedule 2 to this Order to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Treasury shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

A.K. Galloway
Clerk of the Privy Council