

2005 No. 1517

UNITED NATIONS

**The Democratic Republic of the Congo (United Nations
Measures) Order 2005**

Made - - - - - *7th June 2005*

Laid before Parliament *8th June 2005*

Coming into force - - - *9th June 2005*

At the Court at Buckingham Palace, the 7th day of June 2005

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 1596 (2005) adopted on 18th April 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 the Democratic Republic of Congo;

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 hereby ordered, as follows:

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Democratic Republic of Congo (United Nations Measures) Order 2005 and comes into force on 9th June 2005.

(2) If the Security Council of the United Nations takes any decision which has the effect of cancelling, extending, or suspending the operation of resolution 1596 (2005) adopted by it on 18th April 2005 in whole or in part, this Order shall cease to have effect or its operation shall be extended or suspended, in whole or in part as the case may be, in accordance with that decision.

(3) Particulars of any such decision must be published by the Secretary of State in the London, Edinburgh and Belfast Gazettes.

(4) This Order extends to the United Kingdom.

(5) Articles 3, 4 and 5 apply to any person within the United Kingdom and to any person elsewhere who—

(a) is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person; or

(a) 1946 c.45.

(b) is a body incorporated or constituted under the law of any part of the United Kingdom.

Interpretation

2.—(1) In this Order—

“the 2000 Act” means the Financial Services and Markets Act 2000(a);

“body corporate” includes a Scottish partnership and, in relation to such a partnership, any reference to a director or other officer of a body corporate is a reference to a partner;

“designated person” means an individual or entity designated by the Sanctions Committee;

“direction” means a direction under article 4(1);

“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;

“funds” means financial assets, economic benefits and economic resources of any kind, including (but not limited to) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivative contracts); interest, dividends or other income on or value accruing from or generated by assets; credit, rights of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export financing;

“relevant institution” means—

(a) a person who has permission under Part 4 of the 2000 Act;

(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the 2000 Act(b) which has permission under paragraph 15 of that Schedule as a result of qualifying for authorisation under paragraph 12 of that Schedule to accept deposits; and

“the Sanctions Committee” means the Committee of the Security Council of the United Nations established by paragraph 8 of resolution 1533 (2004) adopted on 12th March 2004.

(2) The definition of “relevant institution” in paragraph (1) must be read with—

(a) section 22 of the 2000 Act;

(b) any relevant Order under that section; and

(c) Schedule 2 to the 2000 Act.

Making funds available to designated persons

3.—(1) A person who, except under the authority of a licence granted by the Treasury under this article, makes funds available to or for the benefit of a designated person or any person acting on behalf of a designated person is guilty of an offence.

(2) A licence must be in writing, may be subject to conditions and may be limited so as to expire on a specified date unless renewed.

(3) The Treasury may vary or revoke a licence at any time by giving written notice to each recipient of the licence.

(4) Notice may be given by post and is deemed to have been given to a person if it is sent to him at his last known address.

(a) 2000 c.8.

(b) As amended by S.I. 2000/2952 and S.I. 2003/1473.

Freezing of funds

4.—(1) Where the Treasury have reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be a designated person or a person acting on behalf of a designated person, the Treasury may by notice direct that those funds are not to be made available to that person, except under the authority of a licence granted by the Treasury under article 3.

(2) A direction must specify either—

- (a) the period for which it is to have effect; or
- (b) that it is to have effect until it is revoked by notice.

(3) The Treasury may by notice revoke a direction at any time.

(4) The expiry or revocation of a direction does not affect the application of article 3 in respect of the funds in question.

(5) A notice under paragraph (1) or (3) must—

- (a) be given in writing to the person holding the funds in question (“the recipient”), and
- (b) require the recipient to send a copy of the notice without delay to the person whose funds they are, or on whose behalf they are held (“the owner”).

(6) A recipient is to be treated as complying with the requirements in paragraph (5) if—

- (a) he sends a copy of the notice to the owner at his last-known address without delay, or
- (b) where he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

(7) The High Court or, in Scotland, the Court of Session may set aside a direction on the application of any person by, for or on behalf of whom those funds are held.

(8) A person who makes an application under paragraph (7) must give a copy of the application and any witness statement or affidavit in support to the Treasury (and to any other person by, for or on behalf of whom those funds are held) not later than seven days before the date fixed for the hearing of the application.

(9) A person who contravenes a direction is guilty of an offence.

(10) A recipient who fails to comply with such a requirement as is mentioned in paragraph (5) is guilty of an offence.

Facilitation of activities prohibited under article 3 or 4

5. A person is guilty of an offence if he knowingly and intentionally engages in any activities, the object or effect of which is to enable or facilitate the commission (by that person or another) of an offence under article 3(1) or 4(9).

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

6.—(1) A person is guilty of an offence if, for the purposes of obtaining any licence he—

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular,
- (b) recklessly makes any statement or furnishes any document or information which is false in a material particular, or
- (c) fails, without reasonable excuse, to make a statement or furnish any document or information which may be relevant to the application for the licence.

(2) A person who does any act under the authority of a licence granted by the Treasury and who fails to comply with any conditions attaching to that licence is guilty of an offence.

(3) A person is not guilty of an offence under paragraph (2) where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, after the doing of the act authorised by the licence.

Failure to disclose knowledge or suspicion of offences

7.—(1) A relevant institution must inform the Treasury—

- (a) if it knows or suspects that a relevant person—
 - (i) is a designated person;
 - (ii) is a person acting on behalf of a designated person; or
 - (iii) has committed an offence under article 3(1), 4(9), 5 or 6(2); and

(b) of the information or other matter on which the knowledge or suspicion is based,

as soon as is reasonably practicable after that information or other matter comes to its attention.

(2) A “relevant person” means a person who is, or has been at any time since the coming into force of this Order—

- (a) a customer of a relevant institution; or
- (b) a person with whom the institution has had dealings in the course of its business since that time.

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

(4) A disclosure made under paragraph (1) is not to be treated as a breach of any restriction imposed by statute or otherwise.

Obtaining evidence and information

8. The Schedule to this Order contains provisions about obtaining evidence and information.

Penalties

9.—(1) A person guilty of an offence under article 3(1), 4(9) or 5 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 the statutory maximum or to both.
- (c) A person guilty of an offence under paragraph 3(b) or (d) of the Schedule to this Order is liable—
- (d) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; or
- (e) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(2) A person guilty of an offence under article 6(1) or (2) 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 a fine not exceeding the statutory maximum.

(3) A person guilty of an offence under paragraph 3(a) or (c) of the Schedule to this Order is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(4) A person guilty of an offence under article 4(10) or 7(3) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(5) 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, is guilty of that offence and is liable to be proceeded against and punished accordingly.

Proceedings

10.—(1) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(2) Summary proceedings for an offence under this Order may be tried by a magistrates' court in England and Wales if any information is laid at any time within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to his knowledge, provided that such proceedings are not commenced after the expiration of three years from the commission of the offence.

(3) Summary proceedings in Scotland for an offence under this Order may be commenced at any time within twelve months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge, provided that such proceedings are not commenced after the expiration of three years from the commission of the offence; section 136(3) of the Criminal Procedure (Scotland) Act 1995(a) applies for the purpose of this paragraph as it applies for the purpose of that section.

(4) Summary proceedings in Northern Ireland for an offence under this Order may be instituted at any time within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to his knowledge, provided that such proceedings are not instituted after the expiration of three years from the commission of the offence.

(5) For the purposes of this article—

(a) a certificate signed by or on behalf of the prosecutor or the Lord Advocate as to the date on which such evidence as is referred to in paragraphs (2) to (4) came to his knowledge is conclusive evidence of that fact; and

(b) a certificate purporting to be so signed is presumed to be so signed unless the contrary is proved.

(6) In England and Wales, section 24 of the Police and Criminal Evidence Act 1984(b) applies to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in Schedule 1A of that Act.

(7) In Scotland, where a constable reasonably believes that a person has committed or is committing an offence under this Order, he may arrest that person without a warrant.

(8) In Northern Ireland, Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989(c) applies to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in paragraph (2) of that Article.

(9) No proceedings for an offence under this Order, other than for a summary offence, may be instituted in England, Wales or Northern Ireland except by the Treasury or with the consent of the Attorney-General or, as the case may be, the Attorney-General for Northern Ireland.

(10) Paragraph (9) does not prevent 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.

(a) 1995 c.46.

(b) 1984 c.60, as amended by the Police Reform Act 2002 (c.30).

(c) S.I. 1989/1341 (N.I. 12), to which there are amendments not relevant to this Order.

Exercise of powers of the Treasury

11. The Treasury may, to such extent and subject to such restrictions and conditions as they may think proper, delegate or authorise the delegation of any of their powers under this Order to any person or class or description of persons approved by them, and references in this Order to the Treasury are to be construed accordingly.

Publication of matters designated by the Sanctions Committee

12. The particulars of any designation by the Sanctions Committee must be published by the Secretary of State or the Treasury in the London, Edinburgh and Belfast Gazettes.

A.K Galloway
Clerk of the Privy Council

Evidence and Information

1.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Treasury may request any person in or resident in the United Kingdom to furnish to them any information in his possession or control, 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; or
- (b) obtaining evidence of the commission of an offence under this Order in the United Kingdom.

(2) 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.

(3) The power conferred by this paragraph to request any person to produce documents includes power to—

- (a) take copies of or extracts from any document so produced; and
- (b) request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(4) Where a person is convicted under paragraph 3(a) of this Schedule of failing to furnish information or produce a document when requested so to do, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The furnishing of any information or the production of any document under this paragraph is not to be treated as a breach of any restriction imposed by statute or otherwise.

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

2. Information furnished or documents produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule is not to be disclosed to a third party by the requesting authority 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 a servant or agent of another person may not give consent for the purposes of this sub-paragraph 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 this Schedule 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 State of Jersey;
 - (v) any British overseas territory;

- (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 Council of the European Union or of the Government of any other country for the purpose of assisting the United Nations or the Council of the European Union or that Government in securing compliance with or detecting evasion of measures in relation to the Democratic Republic of Congo decided upon by the Security Council of the United Nations or the Council of the European Union; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings—
 - (i) in the United Kingdom, for an offence under this Order; or
 - (ii) in 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.

3. Any person who—

- (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 this Schedule by any person who is empowered to make it;
- (b) furnishes any information or produces any document 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) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule;
or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence under this Order.

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 part to Resolution 1596, adopted by the Security Council of the United Nations on 18th April 2005. Other instruments will give effect to Resolution 1596 in the overseas territories.

Amongst other things, the effect of Resolution 1596 is to require States to prohibit the making available of funds to individuals and entities designated by the relevant Sanctions Committee of the Security Council.

The list of persons designated by the Security Council can be found at: www.bankofengland.co.uk.

A full regulatory impact assessment has not been prepared for this instrument, as it has no impact on the cost of business.

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