

2005 No. 253

UNITED NATIONS

The Ivory Coast (United Nations Sanctions) Order 2005

Made - - - - *9th February 2005*
Laid before Parliament *10th February 2005*
Coming into force - - *11th February 2005*

At the Court at Buckingham Palace, the 9th day of February 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 1572 (2004) adopted on 15th November 2004, 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 Ivory Coast:

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 and commencement

1.—(1) This Order may be cited as the Ivory Coast (United Nations Sanctions) Order 2005 and shall come into force on 11th February 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 1572 (2004) adopted by it on 15th November 2004 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 shall be published by the Secretary of State in a notice in the London, Edinburgh and Belfast Gazettes.

(4) This Order extends to the United Kingdom.

(5) Articles 3, 4 and 5 shall 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
- (b) is a body incorporated or constituted under the law of any part of the United Kingdom.

(a) 1946 c.45.

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 as constituting a threat to the peace and national reconciliation process in the Ivory Coast for the purpose of 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;

“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;

“Ivory Coast” means the Republic of Côte d’Ivoire;

“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)(b) of Schedule 3 to the 2000 Act 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;

“the Sanctions Committee” means the Committee of the Security Council of the United Nations established by paragraph 14 of resolution 1572 (2004) adopted on 15th November 2004.

(2) The definition of “relevant institution” in paragraph (1) above shall 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) Any 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 shall be guilty of an offence under this Order.

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

(3) A licence may be varied or revoked at any time by written notice given by the Treasury to each recipient of the licence.

(4) A notice under paragraph (2) may be given by post, and shall be 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 given under paragraph (1) shall 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 under paragraph (3).

(3) The Treasury may by notice revoke a direction under paragraph (1) at any time.

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

(5) A notice under paragraph (1) or (3) shall be given in writing to the person holding the funds in question (“the recipient”), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or on whose behalf that are held (“the owner”).

(6) A recipient shall be treated as complying with the requirement in paragraph (5) if, without delay, he sends a copy of the notice to the owner at his last-known address or, if 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) Where a direction has been given under paragraph (1), any person by, for or on behalf of whom those funds are held may apply to the High Court, or in Scotland, to the Court of Session, for the direction to be set aside; and on such application the court may set aside the direction.

(8) A person who makes an application under paragraph (7) shall 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) Any person who contravenes a direction under paragraph (1) is guilty of an offence under this Order.

(10) A recipient who fails to comply with a requirement under paragraph (5) is guilty of an offence under this Order.

Facilitation of activities prohibited under articles 3 or 4(9)

5. Any person who 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 or 4(9) is guilty of an offence under this Order.

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

6.—(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 under this Order.

(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 under this Order.

(3) No person shall be 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 is guilty of an offence if—

- (a) it knows or suspects that a person who is, or has been at any time since the coming into force of this Order, a customer of the institution, or is a person with whom the institution has had dealings in the course of its business since that time—
 - (i) is a designated person; or
 - (ii) is a person acting on behalf of a designated person; or
 - (iii) has committed an offence under article 3, 4(9), 5 or 6(2); and
- (b) it does not disclose to the Treasury 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) Where a relevant institution discloses to the Treasury—

- (a) its knowledge or suspicion that a person is a designated person, a person acting on behalf of a designated person, or a person who has committed an offence under article 3, 4(9), 5 or 6(2); or
- (b) any information or other matter on which that knowledge or suspicion is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

Obtaining evidence and information

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

- (a) of evidence or information for the purpose of securing compliance with or detecting evasion of this Order in the United Kingdom; or
- (b) of evidence of the commission of an offence under this Order in the United Kingdom.

Penalties and proceedings

9.—(1) Any person guilty of an offence under article 3, 4(9) or 5 shall be 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.

(2) Any person guilty of an offence under paragraph 3(b) or (d) of the Schedule to this Order shall be 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 the statutory maximum or to both.

(3) A person guilty of an offence under article 6(1) or (2) shall be 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.

(4) Any person guilty of an offence under paragraph 3(a) or (c) of the Schedule to this Order shall be 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) Any person or relevant institution guilty of an offence under article 4(10) or 7 (1) shall be 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

(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 in section 127(1) of the Magistrates' Courts Act 1980(a), summary proceedings for an offence under this Order may be tried by a magistrate's 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 shall not be commenced after the expiration of three years from the commission of the offence.

(8) Notwithstanding anything in section 136 of the Criminal Procedure (Scotland) Act 1995(b), 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; and subsection (3) of that section applies for the purpose of this paragraph as it applies for the purpose of that section; provided that such proceedings shall not be commenced after the expiration of three years from the commission of the offence.

(9) Notwithstanding anything in Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981(c), 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 shall not be instituted after the expiration of three years from the commission of the offence.

(10) 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 (8) to (10) came to his knowledge shall be conclusive evidence of that fact; and
- (b) a certificate purporting to be so signed shall be presumed to be so signed unless the contrary is proved.

(11) 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.

(12) In England and Wales, section 24(2) of the Police and Criminal Evidence Act 1984(d) shall apply 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 that subsection; and accordingly such offences shall be arrestable offences within the meaning of that Act.

(13) 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.

(14) In Northern Ireland, paragraph (2) of Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989(e) shall apply 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 that paragraph; and accordingly such offences shall be arrestable offences within the meaning of that order.

(15) No proceedings for an offence under this Order, other than for a summary offence, shall be instituted in England, Wales or Northern Ireland except by the Treasury or with the consent of the

(a) 1980 c.43

(b) 1995 c.46

(c) S.I. 1981/1675 (N.I. 26)

(d) 1984 c.60

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

Attorney-General or, as the case may be, the Attorney-General for Northern Ireland; provided that this paragraph shall 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.

Exercise of powers of the Treasury

10. 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 shall be construed accordingly.

Publication of matters designated by the Sanctions Committee

11. The particulars of any designation by the Sanctions Committee referred to in this Order shall 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 securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in sub-paragraph (1) 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.

(3) 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.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to 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.

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

2. No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule 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 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; or
- (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 Ivory Coast 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) for any offence under the law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

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,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, gives effect in part to Resolution 1572, adopted by the Security Council of the United Nations on 15th November 2004.

Amongst other things, the effect of Resolution 1572 is to require States to prohibit the making available of funds to individuals and entities designated by the Security Council.

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

Other aspects of Resolution 1572 include a prohibition on the supply, sale and transfer of restricted goods, a prohibition on the provision of technical assistance, advice and training and a prohibition on the provision of visas. These aspects will be given effect to by other instruments.

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

STATUTORY INSTRUMENTS

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