

2006 No. 1454

UNITED NATIONS

The Sudan (United Nations Measures) Order 2006

Made - - - - *7th June 2006*

Laid before Parliament *8th June 2006*

Coming into force - - *9th June 2006*

At the Court at Buckingham Palace, the 7th day of June 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 1591(2005) adopted on 29th March 2005 and resolution 1672(2006) adopted on 25th April 2006, 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 Sudan.

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, extent and application

1.—(1) This Order may be cited as the Sudan (United Nations Measures) Order 2006 and comes into force on 9th June 2006.

(2) This Order extends to the United Kingdom.

(3) An offence under this Order may be committed by any person in the United Kingdom or by 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; or

(b) 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(b);

“body corporate” includes a Scottish partnership;

(a) 1946 c.45.
(b) 2000 c.8.

“designated person” means any person—

- (a) for the time being designated under paragraph 3(c) of resolution 1591(2005) adopted by the Security Council of the United Nations on 29th March 2005; or
- (b) listed in paragraph 1 of resolution 1672(2006) adopted by the Security Council of the United Nations on 25th April 2006;

“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;
- (g) documents evidencing an interest in funds or financial resources; and
- (h) any other instrument of export financing;

“officer”, in relation to a body corporate, means—

- (a) in relation to a Scottish partnership, a partner, and
- (b) in relation to any other body corporate, 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) a person who has permission under Part 4 of the 2000 Act; and
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the 2000 Act^(a) 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 Security Council Resolutions” means resolution 1591(2005) adopted by the Security Council of the United Nations on 29th March 2005 and resolution 1672(2006) adopted by the Security Council of the United Nations on 25th April 2006.

(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 that Act.

Publicly available list of designated persons

3. The Treasury must—

- (a) maintain a list of designated persons; and
- (b) make the list publicly available.

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

Freezing funds and economic resources

4.—(1) A person (including the designated person) must not deal with funds or economic resources owned or controlled, directly or indirectly, 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 or controlled, directly or indirectly, by a designated person.

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

(a) in respect of funds—

(i) use, alter, move, allow access to or transfer;

(ii) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or

(iii) make any other change that would enable use, including portfolio management; and

(b) in respect of economic resources, 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—

(a) interest or other earnings on the account;

(b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date that an account-holder became a designated person.

(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 Treasury 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 designated person 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 Treasury 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 Treasury have reasonable grounds for suspecting that the person identified in the direction is or may be—

- (a) owned or controlled, directly or indirectly, 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 Treasury may specify in the direction; or
- (b) until the direction is revoked or set aside.

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

(5) The Treasury, where they issue or revoke 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 High Court or, in Scotland, the Court of Session 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 Treasury not later than seven days before the date fixed for the hearing of the application.

Licences

9.—(1) The Treasury 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;
- (c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
- (d) extraordinary expenses; or
- (e) satisfaction of a judicial, administrative or arbitral lien or judgment relating to frozen funds or economic resources where the lien or judgment was entered or given before 29th March 2005 and is not for the benefit of a designated person.

(3) A licence may be—

- (a) general or granted to a particular person;
- (b) subject to conditions;
- (c) of indefinite duration or subject to an expiry date.

(4) The Treasury may vary or revoke a licence at any time.

(5) The Treasury, where they grant, vary or revoke 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.

(8) In this article, “frozen funds or economic resources” means any funds or economic resources owned or controlled, directly or indirectly, by a designated person.

Evidence and information

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

Officers of a body corporate

11. 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 his part,

the officer as well as the body corporate is guilty of the offence.

Penalties

12.—(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—

(i) in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;

(ii) in Scotland or Northern Ireland, 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 9 or paragraph 4(b) or (d) of the Schedule 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—

(i) in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;

(ii) in Scotland or Northern Ireland, 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 paragraph 2(3) or 4(a) or (c) of the Schedule is liable on summary conviction—

(a) in England and Wales, to imprisonment for a period not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale or to both;

(b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

Proceedings

13.—(1) Proceedings against any person for an offence 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) In England and Wales, summary proceedings for an offence may be tried by a magistrates' court if any information is laid—

- (a) before the end of twelve months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to his knowledge, but
- (b) not later than three years from the commission of the offence.

(3) In Scotland—

- (a) summary proceedings for an offence may be commenced—
 - (i) before the end of twelve months from the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge, but
 - (ii) not later than three years from the commission of the offence; and
- (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995(a) (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.

(4) In Northern Ireland, summary proceedings for an offence may be instituted—

- (a) before the end of twelve months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to his knowledge, but
- (b) not later than 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 Scotland, where a constable reasonably believes that a person has committed or is committing an offence, he may arrest that person without a warrant.

(7) In Northern Ireland, article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989(b) (arrest without warrant for arrestable offences) applies to an offence which is not an arrestable offence by virtue of the term of imprisonment for which a person may be sentenced in respect of it, as if it were mentioned in paragraph (2) of that article.

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

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

- (a) the arrest of any person in respect of an offence, or
- (b) the remand in custody or on bail of any person charged with an offence.

(10) In this article, "offence" means an offence under this Order.

Notices

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

(2) Any such notice may be given—

(a) 1995 c.46.

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

- (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 United Kingdom.

(3) Where the Treasury do not have an address in the United Kingdom for the person, they must make arrangements for the notice to be given to him at the first available opportunity.

Functions of the Treasury

15.—(1) 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 functions under this Order to any person or class or description of persons.

(2) References in this Order to the Treasury are to be construed accordingly.

Postponement etc. of the operation of the Security Council Resolutions

16.—(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 Resolutions, 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 Secretary of State must publish particulars of the decision in a notice in the London, Edinburgh and Belfast Gazettes.

Transitional provisions

17.—(1) In relation to an offence under article 4, 5, 7 or 9 or paragraph 4(b) or (d) of the Schedule committed before the commencement of section 282 of the Criminal Justice Act 2003^(a) (increase in maximum term that may be imposed on summary conviction of offence triable either way), the references in article 12(1)(b)(i) and (2)(b)(i) to 12 months shall have effect as if they were references to six months.

(2) In relation to an offence under paragraph 2(3) or 4(a) or (c) of the Schedule committed before the commencement of section 281(4) and (5) of the Criminal Justice Act 2003, the reference in article 12(3)(a) to 51 weeks shall have effect as if it were a reference to six months.

Revocation

18. The Sudan (United Nations Measures) Order 2005^(b) is revoked.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE

Article 10

Evidence and Information

1. The Treasury must take such steps as they consider 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, directly or indirectly, by a designated person; or
- (c) a person acting on behalf of or at the direction of a designated person.

^(a) 2003 c.44.
^(b) S.I. 1259/2005.

2.—(1) A relevant institution must as soon as practicable inform the Treasury if it knows or suspects that a relevant person—

- (a) is a designated person;
- (b) is a person owned or controlled, directly or indirectly, 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 Treasury 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 paragraph, “relevant person” means a person—

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

3.—(1) The Treasury may request any person in or resident in the United Kingdom 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 or controlled, directly or indirectly, 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) Sub-paragraph (1) 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 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 (or, if no time is specified, within a reasonable 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 Treasury in the exercise of their 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 Treasury 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) any British overseas territory;
- (b) for the purpose of giving assistance or cooperation, pursuant to the Security Council Resolutions, 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 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; 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 taken to breach any restriction on the disclosure of information, however imposed.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect in the United Kingdom to two resolutions adopted by the Security Council of the United Nations (resolution 1591(2005) adopted on 29th March 2005 and resolution 1672(2006) adopted on 25th April 2006) and provides for the enforcement of two Regulations adopted by the European Communities (Council Regulation (EC) No 1184/2005 of 18th July 2005 (O.J. L.193, 23.7.2005, p.9) and Commission Regulation (EC) No 760/2006 of 18th May 2006 (O.J. L.132, 19.5.2006, p.28)).

The Security Council has decided that all states are to take certain measures against individuals who impede the peace process or violate international law in the conflict in the Darfur region of Sudan. 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.

The individuals to which the measures are to apply include persons (“designated persons”) designated by a Committee of the Security Council established under resolution 1591(2005) or listed in paragraph 1 of resolution 1672(2006).

Article 3 of this Order requires the Treasury to maintain a list of designated persons and to make the list publicly available.

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 Treasury power to direct that a person suspected of being owned or controlled, directly or indirectly, 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.

Article 18 revokes the Sudan (United Nations Measures) Order 2005 which gave effect to resolution 1591(2005) before that resolution was supplemented by resolution 1672(2006).

The Schedule makes provision 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.

A partial regulatory impact assessment of the effect that this instrument will have on the costs of business may be obtained from the Asset Freezing Unit of the Financial Crime Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is also available on HM Treasury's website (www.hm-treasury.gov.uk). A copy of the regulatory impact assessment has been placed in the libraries of both Houses of Parliament.

STATUTORY INSTRUMENTS

2006 No. 1454

UNITED NATIONS

The Sudan (United Nations Measures) Order 2006

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