STATUTORY INSTRUMENTS

2005 No. 1469

UNITED NATIONS

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

Whereas 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 the Congo:

Now, therefore, Her Majesty, in exercise of the powers vested in 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–

INTRODUCTORY

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Democratic Republic of the Congo (United Nations Sanctions) (Isle of Man) Order 2005 and shall come 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 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**) 1946 c. 45.

(a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person and is ordinarily resident in the Isle of Man; or

(b) a body incorporated or constituted under the law of the Isle of Man.

Interpretation

2.—(1) 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;

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

"designated person" means an individual designated by the Committee established by paragraph 3(a) of resolution 1533 (2004) adopted by the Security Council of the United Nations on 12th March 2004;

"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, other financial assets or economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

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

"relevant institution" means—

(a) a body corporate wherever incorporated;

(b) a partnership or unincorporated association of two or more persons formed under the law of the Isle of Man or elsewhere; and

(c) a building society within the meaning of section 7 of the Industrial and Building Societies Act 1892 (an Act of Tynwald); and

"the Treasury" means the Isle of Man Treasury, a department of the Government of the Isle of Man.

(2) For the purposes of identifying a "designated person" referred to in paragraph (1) of this article, the Treasury shall cause a notice containing the names and other particulars of such designated persons to be published in a newspaper published and circulating in the Isle of Man as necessary from time to time.

MAKING FUNDS AVAILABLE AND FREEZING OF FUNDS

Making funds available to any designated person

3. Any person who, except under the authority of a licence granted by the Treasury under this article, makes any funds, other financial assets or economic resources available to or for the benefit of any designated person shall be guilty of an offence.

Freezing of funds, other financial assets or economic resources

4.—(1) Where the Treasury has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds, other financial assets or economic resources are held is or may be a

designated person, the Treasury may by notice direct that those funds, other financial assets or economic resources are not to be made available to any person or entity except under the authority of a licence granted by the Treasury under article 3.

(2) A notice given under paragraph (1) shall specify either—

(a) the period for which it is to have effect; or

(b) that the direction is to have effect until it is revoked by notice under paragraph (3).

(3) The Treasury may by notice revoke a notice given 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, other financial assets or economic resources in question.

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

(6) A recipient shall be treated as complying with the requirement under 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 notice has been given under paragraph (1), any person by, for or on behalf of whom those funds, other financial assets or economic resources are held may apply to the High Court for the notice 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, other financial assets or economic resources 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.

(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(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.

Failure to disclose knowledge or suspicion of measures

6.—(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) has committed an offence under article 3, 4(9), 5 or 7(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 or a person who has committed an offence under article 3, 4(9), 5 or 7(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.

GENERAL

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

7.—(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.

Obtaining of evidence and information

8. The provisions of part 2 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 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 part 1 of the Schedule to this Order; 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 part 1 of the Schedule to this Order.

Investigations by the Treasury

9. 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

10.—(1) Any person guilty of an offence under article 3, 4(9), or 5 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 paragraph 5(b) or (d) of part 2 of the Schedule to this Order 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 7(1) or (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 a fine not exceeding the statutory maximum.

(4) Any person guilty of an offence under article 4(10) or 6(1) or paragraph 5(a) or (c) of part 2 of the Schedule to this Order 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) 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.

(6) Notwithstanding anything in section 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.

(7) 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 (6) 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.

(8) 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

11.—(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 part 2 of the Schedule to this Order to apply for a search warrant) to any person, or class or description of persons, approved by it, 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

SCHEDULE

Article 8

OBTAINING OF EVIDENCE AND INFORMATION

PART 1

DISCLOSURE OF INFORMATION – LISTED TERRITORIES

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Gibraltar

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St. Helena and Dependencies

South Georgia and the South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

Turks and Caicos Islands

Virgin Islands

PART 2

EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Treasury or an officer of Customs and Excise may request any person in or resident in the Isle of Man to furnish any information in his possession or control, or to produce to it or him any document in his possession or control, which it or he 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 advocate for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, 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.—(1) If any justice of the peace is satisfied by information on oath—

(a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

(b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any constable or any officer of Customs and Excise, together with any other constables or officers of Customs and Excise named in the warrant and any other constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or, as the case may be, the vehicle, ship or aircraft.

(2) A constable or officer of Customs and Excise authorised by a warrant under sub-paragraph (1) who has entered any premises or any vehicle, ship or aircraft may do any or all of the following things —

(a) inspect and search those premises or the vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;

(b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;

(c) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1; or

(d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A constable or an officer of Customs and Excise lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may:

(a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and

(b) seize anything he finds in a search referred to in paragraph (a) if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

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

(5) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

3. A person authorised by the Treasury to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy of an extract made of any document produced) by any person in pursuance of a request made under this part of this Schedule and no document seized under paragraph 2(2) shall be disclosed except —

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

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 part of 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 States of Jersey; or

(v) the Government of any territory listed in part 1 of this Schedule;

(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 by 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 against any enactment relating to customs; or

(ii) for any offence under the 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 part 1 of this Schedule.

5. 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; or

(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; or

(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 part of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, applies to the Isle of Man and gives effect, in part, to Resolution 1596 (2005) adopted by the Security Council of the United Nations on 18th April 2005.

UNSCR 1596 (2005) amongst other things imposes financial sanctions against persons designated as acting in violation of the arms embargo by the Sanctions Committee established by Resolution 1533 (2004).

£3.00

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E0885 6/2005 150885T 19585