



**THE
SOUTH GEORGIA
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The following are published in this Supplement -

The Liberia (Restrictive Measures) (Overseas Territories) Order 2004, (2004 No. 347);

The Liberia (United Nations Sanctions) Order 2004, (2004 No. 348);

The Sudan (Restrictive Measures) (Overseas Territories) Order 2004, (2004 No. 349);

The Burma (Restrictive Measures) (Overseas Territories) Order 2004, (2004 No. 1979);

The Sudan (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004, (2004 No. 1980);

The Iraq (United Nations Sanctions) (Overseas Territories) (Amendment) Order 2004, (2004 No. 1983);

The International Criminal Tribunal for the former Yugoslavia (Restrictive Measures) (Overseas Territories) Order 2004, (2004 No. 3039);

The Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2004, (2004 No. 3040);

The Burma (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004, (2004 No. 3333).

STATUTORY INSTRUMENTS

2004 No. 347

OVERSEAS TERRITORIES

The Liberia (Restrictive Measures) (Overseas Territories) Order 2004

<i>Made</i>	<i>11th February 2004</i>
<i>Laid before Parliament</i>	<i>12th February 2004</i>
<i>Coming into force</i>	<i>13th February 2004</i>

At the Court at Buckingham Palace, the 11th day of February 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833[1], the British Settlements Acts 1887 and 1945[2], and of all other powers enabling Her in that behalf, 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 Liberia (Restrictive Measures) (Overseas Territories) Order 2004 and shall come into force on 13th February 2004.

(2)

(a) This Order shall extend to the territories listed in Schedule 1.

(b) Article 17 of this Order shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(c) In the application of this Order to any of the said territories the expression "the Territory" in this Order means that territory.

(3) Articles 3, 4 and 5 shall apply to any person within the Territory and any person elsewhere who is -

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

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

Interpretation

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

"assistance" means any form of assistance including technical assistance, services, financing and financial assistance;

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

"document" includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"export" includes shipment as stores;

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

"Governor" means the Governor or other officer administering the Government of the Territory;

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

"operator", in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or vehicle;

"owner", in relation to a ship, where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;

"restricted goods" means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003[3] made under the Export Control Act 2002[4];

"ship" includes every description of vessel used in navigation;

"shipment" includes loading into an aircraft;

"stores" means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a ship or aircraft as merchandise for sale by retail to persons carried therein;

"vehicle" means a land transport vehicle.

RESTRICTED GOODS, ASSISTANCE AND TRAINING, IMPORTS

Supply of restricted goods

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

(a) supplies or delivers;

(b) agrees to supply or deliver; or

(c) does any act calculated to promote the supply or delivery of,

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

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

Exportation of restricted goods to Liberia

4. - (1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Liberia or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Liberia.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) above and of an offence under article 3(1) above, he shall not be guilty of the offence under paragraph (3) above.

Provision of assistance, advice or training related to restricted goods

5. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person, entity or body in, or for use in, Liberia any:

(a) assistance;

(b) advice; or

(c) training,

related to military activities or to the provision, manufacture, maintenance or use of restricted goods shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person, entity or body in, or for use in, Liberia.

Importation of rough diamonds from Liberia

6. - (1) Except under the authority of a licence granted by the Governor under this article, no person shall import directly or indirectly into the Territory any rough diamonds exported from Liberia.

(2) Subject to the provisions of paragraph (3) of this article, any person who contravenes the provisions of paragraph (1) of this article shall be guilty of an offence under this Order.

(3) In the case of proceedings for an offence in contravention of this article, it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the diamonds in question had been exported from Liberia.

Importation of round logs and timber products from Liberia

7. - (1) Except under the authority of a licence granted by the Governor under this article, no person shall import directly or indirectly into the Territory any round logs or timber products exported from Liberia.

(2) Subject to the provisions of paragraph (3), any person who contravenes the provisions of paragraph (1) shall be guilty of an offence under this Order.

(3) In the case of proceedings for an offence in contravention of this article, it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the round logs or timber products in question had been exported from Liberia.

Use of ships, aircraft and vehicles: restricted goods

8. - (1) Without prejudice to the generality of article 3, and except under the authority of a licence granted by the Governor under this article, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Liberia to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is -

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

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

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

(a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

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

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Territory of the goods concerned to Liberia was authorised by a licence granted by the Governor under article 3 or 4.

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

GENERAL

Customs powers to demand evidence of destination which goods reach

9. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as the Governor may allow proof to the Governor's satisfaction that the goods have reached either -

(a) a destination to which they were authorised to be exported by a licence granted under this Order; or

(b) a destination to which their exportation was not prohibited by this Order,

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

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

10. - (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 Governor under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order:

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 Governor after the doing of the act authorised by the licence.

Declaration as to goods: powers of search

11. - (1) Any person who is about to leave the Territory shall, if he is required to do so by an officer authorised for the purpose by the Governor -

(a) declare whether or not he has with him any restricted goods which are destined for Liberia or for delivery, directly or indirectly, to or to the order of any person in Liberia; and

(b) produce any such goods as aforesaid which he has with him.

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

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

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

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

Investigation, etc. of suspected ships

12. - (1) Where any authorised officer has reason to suspect that any ship to which article 8 applies has been or is being or is about to be used in contravention of paragraph (1) of that article -

(a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 8, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either -

(a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or

(b) to request the master of the ship to take any one or more of the following steps -

(i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;

(ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;

(iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and

(iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 15(3), where -

(a) a master refuses or fails to comply with a request made under paragraph 2(b); or

(b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

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

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

(5) In this article "authorised officer" means -

(a) any commissioned naval or military officer;

(b) any British consular officer;

(c) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

13. - (1) Where any authorised person has reason to suspect that any aircraft to which article 8 applies has been or is being or is about to be used in contravention of paragraph (1) of that article -

(a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) if the aircraft is then in the Territory, any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, the operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 15(3), where an authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and upon that aircraft;

(b) detain, or authorise the detention of, that aircraft and any of its cargo; and

(c) use, or authorise the use of, reasonable force.

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

(4) In this article -

"authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

14. - (1) Where any authorised person has reason to suspect that any vehicle in the Territory has been or is being or is about to be used in contravention of article 8 -

(a) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify;

(c) any authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the Territory until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 15(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;

(b) detain, or authorise the detention of, that vehicle and any goods contained in it; and

(c) use, or authorise the use of, reasonable force.

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

(4) In this article -

"authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 12 to 14

15. - (1) No information furnished or document produced by any person in pursuance of a request made under article 12, 13 or 14 shall be disclosed except -

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

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this 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 article 12, 13 or 14 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 British overseas territory;

(c) on the authority of the Governor, 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 Liberia 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 Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

(2) Any power conferred by article 12, 13 or 14 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say -

(a) a master of a ship who disobeys any direction given under article 12(2)(a);

(b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who -

(i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 12, 13 or 14 by any person empowered to make it, or

(ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request;

(c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 12, 13 or 14.

(4) Nothing in articles 12 to 15 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

16. The provisions of Schedule 3 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor -

(a) of evidence and information for the purpose of securing compliance with or detecting evasion of -

(i) this Order in the Territory; 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, any of the Channel Islands or the Isle of Man or any British overseas territory; and

(b) of evidence of the commission of -

(i) in the Territory, 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, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and proceedings

17. - (1) Any person guilty of an offence under article 3(1), 4(3), 5, 6(2), 7(2) or 8(3) 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 £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 15(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 3 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 £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 10(1) or (2) or article 11(4) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 15(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 3 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Any person guilty of an offence under article 9 or 11(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(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) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be commenced at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

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

(9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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 Governor

18. - (1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority under Schedule 3 to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor 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.

Miscellaneous

19. - (1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)(a)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St. Helena and Dependencies

South Georgia and South Sandwich Islands

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

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 1(2)(b)

APPLICATION OF ARTICLE 17 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1. - (1) Any person who commits an offence under article 3(1), 4(3), 5, 6(2), 7(2) or 8(3), or paragraph 5(b) or (d) of Schedule 3, shall be liable on conviction -

(a) if tried on Information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under article 10(1) or (2), 11(4), or 15(3)(b)(ii) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

3. Any person who commits an offence under article 15(3)(a), (b)(i) or (c), or paragraph (5)(a) or (c) of Schedule 3, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under article 9 or 11(3) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

5. Where a 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. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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.

SCHEDULE 3

Article 16

EVIDENCE AND INFORMATION

1. - (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which 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 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 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 given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case -

(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 police officer or constable, together with any other persons named in the warrant and any other police officers or 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) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) 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 police officer or constable 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.

(7) In the application of this paragraph to the Sovereign Base Areas of Akrotiri and Dhekelia any reference to a justice of the peace includes a reference to a judge or associate judge.

3. A person authorised by the Governor 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 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 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 British overseas territory;

(c) on the authority of the Governor, 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 Liberia 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 Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under 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.

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 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 applies to each of the territories specified in Schedule 1. It gives effect to Resolution 1521, adopted by the Security Council of the United Nations on 22nd December 2003, which prohibits the delivery or supply of arms and related matériel, the provision of assistance, advice and training related to the provision, manufacture, maintenance or use of arms and related

matériel, and bans the import of diamonds and round logs or timber products from Liberia, and to a Common Position adopted by the Council of the European Union on 10th February 2004 which adopted the measures in Resolution 1521 and applied additional related measures to Liberia.

It replaces The Liberia (United Nations Sanctions) (Overseas Territories) Order 2001 (S.I. 2001/946), and The Liberia (United Nations Sanctions) (Overseas Territories) (No. 2) Order 2001 (S.I. 2001/1867 as amended by S.I. 2003/1876), which ceased to have effect by virtue of the cancellation of the relevant parts of United Nations Security Council resolution 1343 of 7th March 2001 and resolution 1478 of 6th May 2003.

Notes:

[1] 1833 c. 85.

[2] 1887 c. 54 and 1945 c. 7.

[3] S.I. 2003/2764.

[4] 2002 c. 28.

STATUTORY INSTRUMENTS

2004 No. 348

UNITED NATIONS

The Liberia (United Nations Sanctions) Order 2004

<i>Made</i>	<i>11th February 2004</i>
<i>Laid before Parliament</i>	<i>12th February 2004</i>
<i>Coming into force</i>	<i>13th February 2004</i>

At the Court at Buckingham Palace, the 11th day of February 2004

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 a resolution adopted on 22nd December 2003 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 Liberia:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946[1], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement, operation and extent

1. - (1) This Order may be cited as the Liberia (United Nations Sanctions) Order 2004 and shall come into force on 13th February 2004.

(2) If the Security Council of the United Nations takes any decision which has the effect of cancelling or suspending the operation of the resolution adopted by it on 22nd December 2003, in whole or in part, this Order shall cease to have effect or its operation shall be suspended, in whole or in part, as the case may be, in accordance with that decision; and particulars of that decision shall be published by the Secretary of State in a notice in the London, Edinburgh and Belfast Gazettes.

(3) This Order shall extend to the United Kingdom.

(4) Articles 3 and 4 shall apply to any person within the United Kingdom and to 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. In this Order the following expressions have, except where otherwise expressly provided, the meaning hereby respectively assigned to them, that is to say -

"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;

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

"document" includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"export" includes shipment as stores;

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

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

"operator", in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or vehicle;

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

"restricted goods" means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003[2];

"ship" has the meaning it bears in section 313 of the Merchant Shipping Act 1995[3];

"shipment" (and cognate expressions) and "stores" shall have the meanings they bear in the Customs and Excise Management Act 1979[4];

"vehicle" means a land transport vehicle.

RESTRICTED GOODS

Supply of restricted goods

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

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

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

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

Exportation of restricted goods to Liberia

4. Except under the authority of a licence granted by the Secretary of State under this article, restricted goods are prohibited to be exported from the United Kingdom to any destination in Liberia or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Liberia.

Use of ships, aircraft and vehicles: restricted goods

5. - (1) Without prejudice to the generality of article 3, and except under the authority of a licence granted by the Secretary of State under this article, no ship or aircraft to which this article applies, and no vehicle within the United Kingdom, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Liberia to any destination therein.

(2) This article applies to ships registered in the United Kingdom, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person 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.

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

- (a) in the case of a ship registered in the United Kingdom or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

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

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the United Kingdom of the goods concerned to Liberia was authorised by a licence granted by the Secretary of State under article 3 or 4.

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

GENERAL

Customs powers to demand evidence of destination which goods reach

6. Any exporter or any shipper of restricted goods which have been exported from the United Kingdom shall, if so required by the Commissioners of Customs and Excise, furnish within such time as they may allow proof to their satisfaction that the goods have reached either -

(a) a destination to which they are authorised to be exported by a licence granted under this Order; or

(b) a destination to which their exportation was not prohibited by this Order,

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

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

7. - (1) If for the purpose 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 Secretary of State under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order.

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 Secretary of State after the doing of the act authorised by the licence.

Declaration as to goods: powers of search

8. - (1) Any person who is about to leave the United Kingdom shall, if he is required to do so by an officer of Customs and Excise -

(a) declare whether or not he has with him any restricted goods which are destined for Liberia or for delivery, directly or indirectly, to or to the order of any person in Liberia; and

(b) produce such goods as aforesaid which he has with him.

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

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

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

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

Investigation, etc. of suspected ships

9. - (1) Where any authorised officer has reason to suspect that any ship to which article 5 applies has been or is being or is about to be used in contravention of paragraph (1) of that article -

(a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 5, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either -

(a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or

(b) to request the master of the ship to take any one or more of the following steps:

(i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;

(ii) if the ship is then in port in the United Kingdom, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;

(iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in subparagraph (ii); and

(iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 12(3), where -

(a) a master refuses or fails to comply with a request made under paragraph (2)(b); or

(b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

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

(4) In this article "authorised officer" means an officer as is referred to in section 284(1) of the Merchant Shipping Act 1995.

Investigation, etc. of suspected aircraft

10. - (1) Where any authorised officer or authorised person has reason to suspect that any aircraft to which article 5 applies has been or is being or is about to be used in contravention of paragraph (1) of that article -

(a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) if the aircraft is then in the United Kingdom, any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the United Kingdom until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 12(3), where an authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and upon that aircraft;

(b) detain, or authorise the detention of, that aircraft and any of its cargo; and

(c) use, or authorise the use of, reasonable force.

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

(4) In this article -

"authorised officer" means any officer of the Customs and Excise;

"authorised person" means any person authorised by the Secretary of State for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

11. - (1) Where any authorised officer or authorised person has reason to suspect that any vehicle in the United Kingdom has been or is being or is about to be used in contravention of article 5 -

(a) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify; and

(c) any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the United Kingdom until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 12(3), where any authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

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

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

(4) In this article -

"authorised officer" means any officer of the Customs and Excise;

"authorised person" means any person authorised by the Secretary of State for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 9 to 11

12. - (1) No information furnished or document produced by any person in pursuance of a request made under article 9,10 or 11 shall be disclosed except -

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

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this 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 article 9,10 or 11 to request that it be furnished or produced or to any person holding or acting in any office under or in the service of:

- (i) the Crown in respect of the Government of the United Kingdom;
- (ii) the Government of the Isle of Man;
- (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;
- (iv) the States of Jersey; or

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

(c) on the authority of the Secretary of State, 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 Liberia 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 United Kingdom, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under any law making provision with respect to such matter that is in force in any of the Channel Islands, the Isle of Man or any territory listed in Schedule 1 to this Order.

(2) Any power conferred by article 9, 10 or 11 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say

(a) a master of a ship who disobeys any direction given under article 9(2)(a);

(b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who:

(i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 9, 10 or 11 by any person empowered to make it, or

(ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request;

(c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 9, 10 or 11.

(4) Nothing in articles 9 to 12 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

13. The provisions of Schedule 2 shall have effect in order to facilitate the obtaining, by or on behalf of the Secretary of State or the Commissioners of Customs and Excise -

(a) of evidence and information for the purpose of securing compliance with or detecting evasion of -

(i) this Order in the United Kingdom; or

(ii) any law making provision with respect to any of the matters regulated by this Order that is in force in any of the Channel Islands or the Isle of Man or any territory listed in Schedule 1; and

(b) of evidence of the commission of -

(i) in the United Kingdom, 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 any of the Channel Islands or the Isle of Man or any territory listed in Schedule 1.

Investigations by the Commissioners of Customs and Excise

14. Where the Commissioners of Customs and Excise investigate or propose 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 1(1) of the Customs and Excise Management Act 1979.

Penalties and proceedings

15. - (1) Any person guilty of an offence under article 3 or 5(3) 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 article 12(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 2 shall be liable -

on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;

on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

Any person guilty of an offence under article 7(1) or (2) or article 8(3) shall be liable -

on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;

on summary conviction to a fine not exceeding the statutory maximum.

Any person guilty of an offence under article 12(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 2, 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.

Any person guilty of an offence under article 6 or 8(2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Where any body corporate is guilty of an offence under this Order, and that offence is shown 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.

Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980[5], a summary offence under this Order may be tried by a magistrates' court in England and Wales if information is laid 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 start the proceedings comes to his knowledge.

Notwithstanding anything in section 136 of the Criminal Procedure (Scotland) Act 1995[6], summary proceedings in Scotland for an offence under this Order may be commenced at any time within 12 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 shall apply for the purpose of this paragraph as it applies for the purpose of that section:

and that such proceedings shall not be commenced after the expiration of three years from the commission of the offence.

Notwithstanding anything in article 19 of the Magistrates' Courts (Northern Ireland) Order 1981[7], summary proceedings in Northern Ireland for an offence under this Order may be commenced 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.

(10) For the purposes of this article -

(a) a certificate signed by or on behalf of the prosecutor or the Lord Advocate (as the case may be) as to the date on which such evidence as is referred to in paragraphs (7), (8) and (9) 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, subsection (2) of section 24 of the Police and Criminal Evidence Act 1984[8] 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[9] 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 Secretary of State or with the consent of the Attorney General or, as the case may be, the Attorney General for Northern Ireland:

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 the powers of the Secretary of State

16. - (1) The Secretary of State may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Secretary of State 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 1

Article 12

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 Area of Akrotiri and Dhekelia in the Island of Cyprus

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 13

EVIDENCE AND INFORMATION

1. - (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Secretary of State or the Commissioners of Customs and Excise may request any person in or resident in the United Kingdom to furnish to him or to them any information in his possession or control, or to produce to him or to them any document in his possession or control, which he or 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 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 given by any constable or person authorised by the Secretary of State or the Commissioners of Customs and Excise to act for the purposes of this paragraph either generally or in a particular case -

(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 under any enactment 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 the Customs and Excise, together with any other persons 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) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) 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 officer of the 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.

(7) In the application of this paragraph to Scotland any reference to a justice of the peace includes a reference to a sheriff; and any reference to information on oath is a reference to evidence on oath.

3. A person authorised by the Secretary of State 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 a person in pursuance of a request made under 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 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 States of Jersey; or

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

(c) on the authority of the Secretary of State, 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 purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Liberia 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 United Kingdom, 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;

(ii) for any offence under any law making provision with respect to such matters that is in force in any of the Channel Islands, the Isle of Man or any territory listed in Schedule 1.

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 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, implements the prohibition of the sale or supply of arms and related materiel to Liberia pursuant to decisions of the Security Council of the United Nations in resolution 1521 of 22nd December 2003. It replaces The Liberia (United Nations Sanctions) Order 2001 (S.I. 2001/947) which ceased to have effect by virtue of the cancellation of the relevant parts of United Nations Security Council resolution 1343 of 7th March 2001.

Notes:

[1] 1946 c. 45.

[2] S.I. 2003/2764.

[3] 1995 c. 21.

[4] 1979 c. 2.

[5] 1980 c. 43.

[6] 1995 c. 46.

[7] S.I. 1981/1675 (N.I.26).

[8] 1984 c. 60.

[9] S.I. 1989/1341 (N.I. 12).

STATUTORY INSTRUMENTS

2004 No. 349

OVERSEAS TERRITORIES

The Sudan (Restrictive Measures) (Overseas Territories) Order 2004

<i>Made</i>	<i>11th February 2004</i>
<i>Laid before Parliament</i>	<i>12th February 2004</i>
<i>Coming into force</i>	<i>13th February 2004</i>

At the Court at Buckingham Palace, the 11th day of February 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833[1], the British Settlements Acts 1887 and 1945[2], and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, it is hereby ordered, as follows: -

Citation, commencement, extent and application

1. - (1) This Order may be cited as the Sudan (Restrictive Measures) (Overseas Territories) Order 2004 and shall come into force on 13th February 2004.

(2)

(a) This Order shall extend to the territories listed in Schedule 1.

(b) Article 15 of this Order shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(c) In the application of this Order to any of the said territories the expression "the Territory" in this Order means that territory.

(3) Articles 3, 4 and 5 shall apply to any person within the Territory and any person elsewhere who is -

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

the law of the Territory.

ve the meanings hereby respectively assigned to

including technical assistance, services, financing

ns the member of the flight crew designated as
ereof, or, failing such a person, the person who is
he aircraft;

n any form, and in relation to information
ferences to its production include references to
le form;

sible vehicle or aircraft, includes the taking out
cle or aircraft notwithstanding that it is
or not it is moving under its own power; and
dingly;

icer administering the Government of the

erson (other than a pilot) for the time being in

e, means the person for the time being having

er of a ship is not the operator, means the
red;

in Part I of Schedule 1 to the Export of Goods,
hical Assistance (Control) Order 2003[3] made
s (Defence) Act 1939[4];

ed in navigation;

"stores" means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a ship or aircraft as merchandise for sale by retail to persons carried therein;

"vehicle" means a land transport vehicle.

RESTRICTED GOODS, TECHNICAL ASSISTANCE AND TRAINING

Supply of restricted goods

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

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

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

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

Exportation of restricted goods to Sudan

4. - (1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Sudan or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Sudan.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) and of an offence under article 3(1), he shall not be guilty of the offence under paragraph (3).

Provision of assistance, advice or training related to military activities

5. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person in Sudan any:

(a) assistance;

(b) advice; or

(c) training,

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

Use of ships, aircraft and vehicles: restricted goods

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

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is -

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

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

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

(a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

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

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Territory of the goods concerned to Sudan was authorised by a licence granted by the Governor under article 3 or 4.

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

GENERAL

Customs powers to demand evidence of destination which goods reach

7. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as the Governor may allow proof to the Governor's satisfaction that the goods have reached either -

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

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

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

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

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

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 Governor after the doing of the act authorised by the licence.

Declaration as to goods: powers of search

9. - (1) Any person who is about to leave the Territory shall, if he is required to do so by an officer authorised for the purpose by the Governor -

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

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

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

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

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

Investigation, etc. of suspected ships

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

(a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 6, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either -

(a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or

(b) to request the master of the ship to take any one or more of the following steps -

(i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;

(ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;

(iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and

(iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 13(3), where -

(a) a master refuses or fails to comply with a request made under paragraph (2)(b); or

(b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

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

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

(5) In this article "authorised officer" means -

(a) any commissioned naval or military officer;

(b) any British consular officer;

(c) any person authorised by the Governor for the purpose of this article either generally or a particular case.

Investigation, etc. of suspected aircraft

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

(a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) if the aircraft is then in the Territory, any authorised person may (either there and then upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, the

er or any of them to cause the aircraft and any of its cargo to
l notified that the aircraft and its cargo may depart.

provisions of article 13(3), where an authorised person has reason
has been made under paragraph (1)(c) may not be complied with,
ar to him to be necessary to secure compliance with that request
generality of the foregoing, may for that purpose -

, upon any land and upon that aircraft;

detention of, that aircraft and any of its cargo; and

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ny power conferred by this article, an authorised person shall, if
dence of his authority.

any person authorised by the Governor for the purpose of this
a particular case.

d vehicles

sed person has reason to suspect that any vehicle in the Territory
to be used in contravention of article 6 -

accompanied and assisted by persons under his authority) enter
d, for that purpose, may use or authorise the use of reasonable

ator and the driver of the vehicle or either of them to furnish such
vehicle and any goods contained in it and produce for his
so relating and such goods as he may specify; and

ay (either there and then or upon consideration of any
cument or goods produced in pursuance of a request made under
request the operator or the driver to cause the vehicle and any
ain in the Territory until notified that the vehicle may depart.

provisions of article 13(3), where any authorised person has
est that has been made under paragraph (1)(c) may not be
h steps as appear to him to be necessary to secure compliance
rejudice to the generality of the foregoing, may for that purpose -

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

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

(4) In this article -

"authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 10 to 12

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

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

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this 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 article 10, 11 or 12 to request that it be furnished or produced or to any person holding or acting in any office under or in the service of -

(i) the Crown in respect of the Government of the United Kingdom;

(ii) the Government of the Isle of Man;

(iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

(iv) the States of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, to any person in the service of the Government of any other country for the purpose of assisting that Government in securing compliance with or detecting evasion of measures in relation to Sudan decided upon by 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 Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

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

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say

(a) a master of a ship who disobeys any direction given under article 10(2)(a);

(b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who -

(i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 10, 11 or 12 by any person empowered to make it, or

(ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request;

(c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 10, 11 or 12.

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

Obtaining of evidence and information

14. The provisions of Schedule 3 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor -

(a) of evidence and information for the purpose of securing compliance with or detecting evasion of -

(i) this Order in the Territory; 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, any of the Channel Islands or the Isle of Man or any British overseas territory; and

(b) of evidence of the commission of -

(i) in the Territory, 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, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and proceedings

15. - (1) Any person guilty of an offence under article 3, 4, 5 or 6(3) 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 £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 13(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 3 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 £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 8(1) or (2) or article 9(4) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 13(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 3 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Any person guilty of an offence under article 7 or 9(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(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) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be commenced at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

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

(9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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 Governor

16. - (1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority under Schedule 3 to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor 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.

Miscellaneous

17. - (1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)(a)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St. Helena and Dependencies

South Georgia and South Sandwich Islands

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

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 1(2)(b)

APPLICATION OF ARTICLE 15 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1. - (1) Any person who commits an offence under article 3, 4, 5 or 6(3), or paragraph 5(b) or (d) of Schedule 3, shall be liable on conviction -

(a) if tried on Information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under article 8(1) or (2), 9(4), or 13(3)(b)(ii) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

3. Any person who commits an offence under article 13(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 3, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under article 7 or 9(3) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

5. Where a 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. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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.

SCHEDULE 3

Article 14

EVIDENCE AND INFORMATION

1. - (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which 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 couns 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 of failing to furnish information or produce a document whe 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 given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case -

(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 police officer or constable, together with any other persons named in the warrant and any other police officers or 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) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) 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 police officer or constable 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.

(7) In the application of this paragraph to the Sovereign Base Areas of Akrotiri and Dhekelia any reference to a justice of the peace includes a reference to a judge or associate judge

3. A person authorised by the Governor 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 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;

(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 States of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, to any person in the service of the Government of any other country for the purpose of assisting that Government in securing compliance with or detecting evasion of measures in relation to Sudan decided upon by 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 Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under 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.

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;

(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 applies to each of the territories specified in Schedule 1. It gives effect to a Common Position adopted by the Council of the European Union on 9th January 2004 which prohibits (a) the delivery or supply of arms and related matériel to Sudan, from Member States' territories, by their nationals, or using their flagged vessels and aircraft; (b) the provision of technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related matériel to any person, entity or body in, or for use in, Sudan; and (c) the provision of financing or financial assistance related to military activities to any person, entity or body, in or for use in, Sudan.

Notes:

[1] 1833 c. 85.

[2] 1887 c. 54 and 1945 c. 7.

[3] S.I. 2003/2764.

[4] 1939 c. 69.

2004 No. 1979

OVERSEAS TERRITORIES

The Burma (Restrictive Measures) (Overseas Territories) Order
2004

Made - - - - 27th July 2004

Laid before Parliament 28th July 2004

Coming into force - - 29th July 2004

At the Court at Buckingham Palace, the 27th day of July 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833⁽¹⁾, the British Settlements Acts 1887 and 1945⁽²⁾, and of all other powers enabling Her in that behalf, 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 Burma (Restrictive Measures) (Overseas Territories) Order 2004 and shall come into force on 29th July 2004.

- (a) This Order shall extend to the territories listed in Schedule 1.
- (b) Article 19 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.
- (c) In the application of this Order to any of the said territories the expression “the Territory” in this Order means that territory.

(2) Articles 3,4,5,7,8 and 9 shall apply to any person within the Territory and to any person elsewhere who is:

- (a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or
- (b) a body incorporated or constituted under the law of the Territory.

⁽¹⁾ 1833 c. 85.

⁽²⁾ 1887 c. 54 and 1945 c. 7.

Interpretation

2.—(1) In this Order, the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say –

“assistance” means any form of assistance including technical assistance, services, financing and financial assistance;

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

“document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“export” includes shipment as stores;

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

“funds, 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;

“Governor” means the Governor or other officer administering the Government of the Territory;

“listed person” means any member of the Government of Burma, or any natural or legal person, entity or body associated with them, as is listed in the Annex (as modified from time to time) to Council Common Position 2004/423/CFSP, adopted by the Council of the European Union on 26 April 2004;

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

“operator”, in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or the vehicle;

“owner”, in relation to a ship, where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;

“relevant institution” means –

- (a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;
- (b) any person who may lawfully accept deposits in or from within the Territory by way of business; and
- (c) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

“restricted goods” means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003⁽³⁾ made under the Export Control Act 2002⁽⁴⁾ and equipment that might be used for internal repression as listed in Schedule 3;

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

“shipment” includes loading into an aircraft;

(3) S.I. 2003/2764.

(4) 2002 c. 28.

“stores” means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a ship or aircraft as merchandise for sale by retail to persons carried therein;

“Supreme Court” means the court of the Territory having unlimited jurisdiction in civil proceedings;

“vehicle” means land transport vehicle.

(2) For the purpose of the definition of “relevant institution” in paragraph (1) –

(a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000⁽⁵⁾; and

(b) a person is not regarded as accepting deposits by way of business if –

(i) he does not hold himself out as accepting deposits on a day to day basis, and

(ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(3) In determining for the purposes of paragraph (2)(b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(4) For the purpose of identifying a “listed person” referred to in paragraph (1), the Governor shall cause a notice containing the names and other particulars of such listed persons to be published in the Gazette of the Territory as necessary from time to time.

RESTRICTED GOODS, ASSISTANCE AND TRAINING

Supply of restricted goods

3. Any person who, except under the authority of a licence granted by the Governor under this article or article 4,

(a) supplies or delivers,

(b) agrees to supply or deliver, or

(c) does any act calculated to promote the supply or delivery of,

restricted goods to any person or place in Burma shall be guilty of an offence under this Order unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person or place in Burma.

Exportation of restricted goods to Burma

4.—(1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Burma or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Burma.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) and of an offence under article 3, he shall not be guilty of the offence under paragraph (3).

⁽⁵⁾ 2000 c. 8.

Provision of assistance, advice or training

5. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person, entity or body in, or for use in, Burma any assistance, advice or training related to military activities or to the provision, manufacture, maintenance or use of any restricted goods shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person, entity or body in, or for use in, Burma.

Use of ships, aircraft and vehicles: restricted goods

6.—(1) Without prejudice to the generality of article 3, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Burma to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is –

- (a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or
- (b) a body incorporated or constituted under the law of the Territory.

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

- (a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (c) in the case of a vehicle, the operator of the vehicle,

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

(4) Nothing in paragraph (1) shall apply when the supply or delivery or exportation from the Territory of the goods concerned to Burma was authorised by a licence granted by the Governor under article 3 or 4.

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

FUNDS, FINANCIAL ASSETS OR ECONOMIC RESOURCES

Making funds, financial assets or economic resources available to any listed person

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

Freezing of funds, financial assets or economic resources

8.—(1) Where the Governor has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds, financial assets or economic resources are held is or may be a listed person, the Governor may by notice direct that those funds, financial assets or economic resources are not to be made available to any person, except under the authority of a licence granted by the Governor under article 7.

(2) A direction 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 Governor may by notice revoke a direction given under paragraph (1) at any time.
- (4) The expiry or revocation of a direction shall not affect the application of article 7 in respect of the funds, 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, 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, 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 that requirement 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, financial assets or economic resources are held may apply to the Supreme Court 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 Governor (and to any other person by, for or on behalf of whom those funds, 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 under this Order.
- (10) A recipient who fails to comply with such a requirement as is mentioned in paragraph (5) is guilty of an offence under this Order.

Facilitation of activities prohibited under article 7 or 8(9)

9. 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 7 or 8(9) is guilty of an offence under this Order.

Failure to disclose knowledge or suspicion of measures

10.—(1) A relevant institution is guilty of 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 listed person; or
 - (ii) has committed an offence under article 7, 8(9) or 12(2); and
- (b) it does not disclose to the Governor 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 Governor:

- (a) its knowledge or suspicion that a person is a listed person or a person who has committed an offence under article 7, 8(9) or 12(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

Customs powers to demand evidence of destination which goods reach

11. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by an officer authorised for the purpose by the Governor, furnish within such time as the Governor may allow proof to the Governor's satisfaction that the goods have reached a destination to which their exportation was not prohibited by this Order, and, if he fails to do so, he shall be guilty of an offence under this Order unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

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

12.—(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 Governor under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order:

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 Governor after the doing of the act authorised by the licence.

Declaration as to goods: power of search

13.—(1) Any person who is about to leave the Territory shall, if he is required to do so by any authorised person:

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

(2) Any authorised person, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid, provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

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

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

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

(6) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected ships

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

- (a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

- (b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and
 - (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 6, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).
- (2) The further action referred to in paragraph (1)(c) is either:
- (a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or
 - (b) to request the master of the ship to take any one or more of the following steps:
 - (i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;
 - (ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;
 - (iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and
 - (iv) to take her to any other destination that may be specified by the officer in agreement with the master.
- (3) Without prejudice to the provisions of article 17(3), where:
- (a) a master refuses or fails to comply with a request made under paragraph (2) (b), or
 - (b) an authorised officer otherwise has reason to suspect that a request that has been so made may not be complied with,
- any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.
- (4) Before or on exercising any power conferred by this article, an authorised officer shall, if requested to do so, produce evidence of his authority.
- (5) In this article "authorised officer" means:
- (a) any commissioned naval or military officer;
 - (b) any British consular officer;
 - (c) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

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

- (a) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify;
- (b) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force; and

- (c) if the aircraft is then in the Territory any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (a)) further request the charterer, operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 17(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose:

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

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

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

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

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

(2) Without prejudice to the provisions of article 17(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose:

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

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

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 14 to 16

17.—(1) No information furnished or document produced by any person in pursuance of a request made under article 14, 15 or 16 shall be disclosed except:

- (a) with the consent of the person by whom the information was furnished or the document was produced, provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by

any person who is entitled to that information or the possession of that document in his own right;

- (b) to any person who would have been empowered under article 14, 15 or 16 to request that it be furnished or produced 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 British overseas territory; or
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings:
 - (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

(2) Any power conferred by article 14, 15 or 16 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say:

- (a) a master of a ship who disobeys any direction given under article 14(2)(a);
- (b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who:
 - (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 14, 15 or 16 by any person empowered to make it, or
 - (ii) furnishes any document or information which to his knowledge is false in a material particular or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request;
- (c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any person (or any person acting under the authority of any such person) in the exercise of his powers under article 14, 15 or 16.

(4) Nothing in articles 14 to 17 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

18. The provisions of Schedule 4 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor:

- (a) of evidence or information for the purpose of securing compliance with or detecting evasion of:
 - (i) this Order in the Territory; or
 - (ii) any law making provision with respect to the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory; and
- (b) of evidence of the commission of –

- (i) in the Territory, 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, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and Proceedings

19.—(1) Any person guilty of an offence under article 3, 4(3), 5, 6(3), 7, 8(9) or 9 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 £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 17(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 4 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 £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 12(1) or (2) or article 13(4) 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 £5,000 or its equivalent.

(4) Any person guilty of an offence under article 8(10), 10, 17(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 4 shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Any person guilty of an offence under article 11 or 13(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(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) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

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

(9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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 Governor

20.—(1) The Governor may to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order to any

person, or class or description of persons, approved by him, and references in this Order to the Governor 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.

Miscellaneous

21.—(1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

27th July 2004

A. K. Galloway
Clerk to the Privy Council

SCHEDULE 1

Article 1(2)(a)

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
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

SCHEDULE 2

Article 1(2)(b)

APPLICATION OF ARTICLE 19 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1.—(1) Any person who commits an offence under article 3, 4, 5, 6(3), 7, 8(9) or 9, or paragraph 5(b) or (d) of Schedule 4, shall be liable on conviction:

(a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under article 12(1) or (2), 13(3), or 17(3)(b)(ii) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

3. Any person who commits an offence under article 17(3)(a), (b)(i) or (c), or paragraph (5)(a) or (c) of Schedule 4, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under article 8(10) or 10 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding £5,000 or its equivalent, or to both.

5. Any person who commits an offence under article 11 or 13(3) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

6. Where a 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. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

8. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

9. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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.

SCHEDULE 3

Article 2(1)

EQUIPMENT THAT MIGHT BE USED FOR INTERNAL REPRESSION

10. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.

11. Specially designed fingerprint equipment.

12. Power controlled searchlights.

13. Construction equipment provided with ballistic protection.

14. Hunting knives.

15. Specially designed production equipment to make shotguns.

16. Ammunition hand-loading equipment.

17. Communications intercept devices.
18. Solid-state optical detectors.
19. Image-intensifier tubes.
20. Telescopic weapon sights.
21. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:
 - (a) signal pistols;
 - (b) air- and cartridge-powered guns designed as industrial tools or humane animal stunners.
22. Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.
23. Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.
24. Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.
25. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.
26. Water cannon and specially designed or modified components therefor.
27. Vehicles equipped with a water cannon.
28. Vehicles specially designed or modified to be electrified to repel boarders and components therefor specially designed or modified for that purpose.
29. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.
30. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:
 - handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.
31. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.
32. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shock batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.
33. Electronic equipment capable of detecting concealed explosives and specially designed components therefor; except:
 - TV or X-ray inspection equipment.
34. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.
35. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:

- those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters or fire sprinkler actuators).

36. Equipment and devices designed for explosive ordnance disposal; except:

- (a) bomb blankets;
- (b) containers designed for folding objects known to be, or suspected of being improvised explosive devices.

37. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.

38. Software specially designed and technology required for all listed items.

39. Linear cutting explosive charges.

40. Explosives and related substances as follows:

- amatol,
- nitrocellulose (containing more than 12,5 % nitrogen),
- nitroglycol,
- pentaerythritol tetranitrate (PETN),
- picryl chloride,
- tinitorphenylmethylnitramine (tetryl),
- 2,4,6-trinitrotoluene (TNT)

41. Software specially designed and technology required for all listed items.

SCHEDULE 4

Article 18

EVIDENCE AND INFORMATION

42.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which 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 the foregoing sub-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.

(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.

43.—(1) If any judge, justice of the peace or magistrate is satisfied by information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case:

- (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 police officer or constable, together with any other persons named in the warrant and any other police officers or 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) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) 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 police officer or constable 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.

44. A person authorised by the Governor 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.

45. No information furnished or document produced (including any copy of an extract made of any document produced) by a person in pursuance of a request made under 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 the possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

- (b) to any person who would have been empowered under 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 British overseas territory; or
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings –
 - (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs, or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

46. 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 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 applies to each of the British overseas territories listed in Schedule 1. It imposes restrictive measures in respect of Burma and the continuing serious violations of human rights in that country and the failure of its military authorities to enter into substantive discussions with the democratic movement concerning a process leading to national reconciliation, respect for human rights and democracy. These measures include the prohibition of the delivery or supply of arms and related material and equipment that might be used for internal repression to Burma, and the prohibition of making available funds, financial assets or economic resources to listed persons and the freezing of their funds, financial assets or economic resources. It gives effect to measures adopted by the European Union in Council Common Position 2004/423/CFSP.

2004 No. 1980

OVERSEAS TERRITORIES

The Sudan (Restrictive Measures) (Overseas Territories)
(Amendment) Order 2004

<i>Made</i>	- - - -	<i>27th July 2004</i>
<i>Laid before Parliament</i>		<i>28th July 2004</i>
<i>Coming into force</i>	- -	<i>29th July 2004</i>

At the Court at Buckingham Palace, the 27th day of July 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(a), the British Settlements Acts 1887 and 1945(b), and of all other powers enabling Her in that behalf, 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 Sudan (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004 and shall come into force on 29th July 2004.

(2) In this Order “the Order” means the Sudan (Restrictive Measures) (Overseas Territories) Order 2004(c).

Amendment of the Order

2. In Article 2 the definition of “restricted goods” shall be replaced by the following definition:

““restricted goods” means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(d) made under the Export Control Act 2002(e).”

3. Article 5 of the Order shall be amended by:

- (a) replacing the words “person in Sudan” wherever that term appears, with the words “person, entity or body in, or for use in, Sudan”; and

(a) 1833 c. 85.

(b) 1887 c. 54 and 1945 c. 7.

(c) SI 2004/349

(d) SI 2003/2764

(e) 2002 c.28.

- (b) inserting after the term “military activities” the words “or to the provision, manufacture, maintenance or use of restricted goods”.

A K Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Sudan (Restrictive Measures) (Overseas Territories) Order 2004 to give effect more precisely to the Common Position adopted by the Council of the European Union on 9th January 2004. The amendment makes it clear that it is prohibited to provide assistance, advice or training related to the provision, manufacture, maintenance and use of arms and related matériel and that the prohibition also applies where advice, assistance or training is provided to any person, entity or body in, or for use in, Sudan. The opportunity has also been taken to amend the reference in the definition of restricted goods to correctly refer to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 being made under the Export Control Act 2002.

2004 No. 1983

UNITED NATIONS

The Iraq (United Nations Sanctions) (Overseas Territories)
(Amendment) Order 2004

<i>Made</i> - - - -	<i>27th July 2004</i>
<i>Laid before Parliament</i>	<i>28th July 2004</i>
<i>Coming into force</i> - -	<i>29th July 2004</i>

At the Court at Buckingham Palace, the 27th day of July 2004

Present,

The Queen's Most Excellent Majesty in Council

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, interpretation and extent

1.—(1) This Order may be cited as the Iraq (United Nations Sanctions) (Overseas Territories) (Amendment) Order 2004 and shall come into force on 29th July 2004.

(2) In this Order, “the principal Order” means the Iraq (United Nations Sanctions) (Overseas Territories) Order 2003(b).

(3) This Order shall extend to the territories listed in Schedule 1 to the principal Order.

Amendment of article 4 of principal Order

2. In article 4 of the principal Order, the definition of “restricted goods” shall be replaced by the following definition:

““restricted goods” means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(c) made under the Export Control Act 2002(d);”

(a) 1946 c. 45.

(b) S.I. 2003/1516.

(c) S.I. 2003/2764.

(d) 2002 c. 28.

New article 10a of principal Order

3. After article 10 of the principal Order, there shall be added a new article 10a as follows:

“Exception

10a. The privileges and immunities provided in articles 9 and 10 shall not apply with respect to any legal proceedings, nor to any resulting final judgement, arising out of a contractual obligation entered into by Iraq after 30th June 2004.”

A. K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, amends the Iraq (United Nations Sanctions) (Overseas Territories) Order 2003 to give effect to resolution 1546 adopted by the Security Council of the United Nations on 8th June 2004, and to update the definition of “restricted goods”.

2004 No. 3039

OVERSEAS TERRITORIES

The International Criminal Tribunal for the former Yugoslavia (Restrictive Measures) (Overseas Territories) Order 2004

Made - - - - - 17th November 2004

Laid before Parliament 18th November 2004

Coming into force - - - 19th November 2004

At the Court at Buckingham Palace, the 17th day of November 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(a), the British Settlements Acts 1887 and 1945(b), and of all other powers enabling Her in that behalf, 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 International Criminal Tribunal for the former Yugoslavia (Restrictive Measures) (Overseas Territories) Order 2004 and shall come into force on 19th November 2004.

- (a) This Order shall extend to the territories listed in Schedule 1.
- (b) Article 9 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.
- (c) In the application of this Order to any of the said territories the expression “the Territory” in this Order means that territory.

(2) Articles 3, 4 and 5 shall apply to any person within the Territory and to any person elsewhere who is:

- (a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person and is ordinarily resident in the Territory; or
- (b) a body incorporated or constituted under the law of the Territory.

(a) 1833 c. 85.

(b) 1887 c. 54 and 1945 c. 7.

Interpretation

2.—(1) In this Order, the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say –

“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, 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;

“Governor” means the Governor or other officer administering the Government of the Territory;

“ICTY” means the International Criminal Tribunal for the former Yugoslavia established by UN Security Council resolutions 808 (1993) and 827 (1993);

“listed person” means any person indicted by the ICTY and listed in the Annex (as modified from time to time) to Council Common Position 2004/694/CFSP, adopted by the Council of the European Union on 11 October 2004;

“relevant institution” means –

- (a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;
- (b) any person who may lawfully accept deposits in or from within the Territory by way of business; and
- (c) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

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

“Supreme Court” means the court of the Territory having unlimited jurisdiction in civil proceedings;

“vehicle” means land transport vehicle.

(2) For the purpose of the definition of “relevant institution” in paragraph (1) –

- (a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000(a); and
- (b) a person is not regarded as accepting deposits by way of business if –
 - (i) he does not hold himself out as accepting deposits on a day to day basis, and
 - (ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(3) In determining for the purposes of paragraph (2)(b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(4) For the purpose of identifying a “listed person” referred to in paragraph (1), the Governor shall cause a notice containing the names and other particulars of such listed persons to be published in the Gazette of the Territory as necessary from time to time.

(a) 2000 c. 8.

FUNDS, FINANCIAL ASSETS OR ECONOMIC RESOURCES

Making funds, financial assets or economic resources available to any listed person

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

Freezing of funds, financial assets or economic resources

4.—(1) Where the Governor has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds, financial assets or economic resources are held is or may be a listed person, the Governor may by notice direct that those funds, financial assets or economic resources are not to be made available to any person, except under the authority of a licence granted by the Governor 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 the direction is to have effect until it is revoked by notice under paragraph (3).

(3) The Governor may by notice revoke a direction 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, 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, 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, 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 that requirement 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, financial assets or economic resources are held may apply to the Supreme Court 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 Governor (and to any other person by, for or on behalf of whom those funds, 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 under this Order.

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

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 under this Order.

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 listed person; or
 - (ii) has committed an offence under article 3, 4(9) or 7(2); and
 - (b) it does not disclose to the Governor 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 Governor:
- (a) its knowledge or suspicion that a person is a listed person or a person who has committed an offence under article 3, 4(9) 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 under this Order.

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

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 Governor after the doing of the act authorised by the licence.

Obtaining of evidence and information

8. The provisions of Schedule 3 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor:

- (a) of evidence or information for the purpose of securing compliance with or detecting evasion of:
 - (i) this Order in the Territory; or
 - (ii) any law making provision with respect to the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory; and
- (b) of evidence of the commission of –
 - (i) in the Territory, 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, any of the Channel Islands or the Isle of Man or any British overseas territory.

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 £5,000 or its equivalent or to both.
- (2) Any person guilty of an offence under paragraph 5(b) or (d) of Schedule 3 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 £5,000 or its equivalent or to both.
- (3) Any person guilty of an offence under article 7(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 £5,000 or its equivalent.
- (4) Any person guilty of an offence under article 4(10), 6 or paragraph 5(a) or (c) of Schedule 3 shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or its equivalent 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) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.
- (7) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.
- (8) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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 Governor

10.—(1) The Governor may to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor 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.

Miscellaneous

11.—(1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law

substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(1)(a)

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
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

SCHEDULE 2

Article 1(1)(b)

APPLICATION OF ARTICLE 9 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1.—(1) Any person who commits an offence under article 3, 4(9) or 5, or paragraph 5(b) or (d) of Schedule 3, shall be liable on conviction:

- (a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;
- (b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under article 7(1) or (2) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

3. Any person who commits an offence under paragraph (5)(a) or (c) of Schedule 3, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under article 4(10) or 6 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding £5,000 or its equivalent, or to both.

5. Where a 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. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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.

SCHEDULE 3

Article 8

EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which 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 the foregoing sub-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.

(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 judge, justice of the peace or magistrate is satisfied by information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case:

- (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 police officer or constable, together with any other persons named in the warrant and any other police officers or 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) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) 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 police officer or constable 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 Governor 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 a person in pursuance of a request made under 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 the possession of a document only in his capacity as 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 States of Jersey, or
- (v) the Government of any British overseas territory; or
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings –
 - (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs, or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

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 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 applies to each of the British overseas territories listed in Schedule 1. It imposes restrictive measures in respect of certain persons indicted by the International Criminal Tribunal for the former Yugoslavia who remain at large. These measures prohibit making available funds, financial assets or economic resources to listed persons and the freezing of their funds, financial assets or economic resources. It gives effect to measures adopted by the European Union in Council Common Position 2004/694/CFSP.

STATUTORY INSTRUMENTS

2004 No.3040

CHILDREN AND YOUNG PERSONS

The Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2004

Made 17th November 2004

At the Court at Buckingham Palace, the 17th day of November 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 2 and 13 of the Child Abduction and Custody Act 1985[1], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2004.
2. The Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2003[2] is revoked.
3. In the Child Abduction and Custody (Parties to Conventions) Order 1986[3], for Schedules 1 and 2 there shall be substituted Schedules 1 and 2 set out in the Schedule to this Order.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE

Article 3

Schedules 1 and 2 substituted in the Child Abduction and Custody (Parties to Conventions) Order 1986

" SCHEDULE 1

Article 2

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION,
THE HAGUE, 25TH OCTOBER 1980

<i>Contracting States to the Convention</i>	<i>Territories specified in Declarations under Article 39 or 40 of the Convention</i>	<i>Date of Coming into Force of Convention as between the United Kingdom and the State or Territory</i>
Argentina	-	1st June 1991
Australia	Australian States and mainland Territories	1st January 1987
Austria	-	1st October 1988
The Bahamas	-	1st January 1994
Belarus	-	1st September 2003
Belgium	-	1st May 1999
Belize	-	1st October 1989
Bosnia and Herzegovina	-	7th April 1992
Brazil	-	1st March 2005
Burkina Faso	-	1st August 1992
Canada	Ontario	1st August 1986
	New Brunswick	1st August 1986
	British Columbia	1st August 1986
	Manitoba	1st August 1986
	Nova Scotia	1st August 1986
	Newfoundland	1st August 1986
	Prince Edward Island	1st August 1986
	Quebec	1st August 1986
	Yukon Territory	1st August 1986
	Saskatchewan	1st November 1986
	Alberta	1st February 1987
	Northwest Territories	1st April 1988
Chile	-	1st May 1994
China	Hong Kong Special Administrative Region	1st September 1997
	Macau Special Administrative Region	1st March 1999
Colombia	-	1st March 1996
Croatia	-	1st December 1991
Cyprus	-	1st February 1995
Czech Republic	-	1st March 1998
Denmark	-	1st July 1991
Ecuador	-	1st April 1992
Estonia	-	1st September 2003
Fiji	-	1st September 2003

Finland	-	1st August 1994
France	-	1st August 1986
Georgia	-	1st October 1997
Germany	-	1st December 1990
Greece	-	1st June 1993
Honduras	-	1st March 1994
Hungary	-	1st September 1986
Iceland	-	1st November 1996
Ireland	-	1st October 1991
Israel	-	1st December 1991
Italy	-	1st May 1995
Latvia	-	1st September 2003
Lithuania	-	1st March 2005
Luxembourg	-	1st January 1987
Macedonia	-	1st December 1991
Malta	-	1st March 2002
Mauritius	-	1st June 1993
Mexico	-	1st September 1991
Monaco	-	1st February 1993
Netherlands	-	1st September 1990
New Zealand	-	1st August 1991
Norway	-	1st April 1989
Panama	-	1st May 1994
Peru	-	1st September 2003
Poland	-	1st November 1992
Portugal	-	1st August 1986
Romania	-	1st February 1993
St Kitts and Nevis	-	1st August 1994
Serbia and Montenegro	-	27th April 1992
Slovakia	-	1st February 2001
Slovenia	-	1st June 1994
South Africa	-	1st October 1997
Spain	-	1st September 1987
Sweden	-	1st June 1989
Switzerland	-	1st August 1986
Turkey	-	1st August 2001
Turkmenistan	-	1st March 1998
United States of America	-	1st July 1988
Uruguay	-	1st September 2003
Uzbekistan	-	1st September 2003
Venezuela	-	1st January 1997
Zimbabwe	-	1st July 1995"

"SCHEDULE 2

Article 3

EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS
CONCERNING CUSTODY OF CHILDREN AND ON THE RESTORATION OF CUSTODY
OF CHILDREN, LUXEMBOURG, 20th MAY 1980

<i>Contracting States to the Convention</i>	<i>Territories specified in Declarations under Article 24 or 25 of the Convention</i>	<i>Date of Coming into Force of Convention as between the United Kingdom and the State or Territory</i>
Austria	-	1st August 1986
Belgium	-	1st August 1986
Cyprus	-	1st October 1986
Czech Republic	-	1st July 2000
Denmark	-	1st August 1991
Finland	-	1st August 1994
France	-	1st August 1986
Germany	-	1st February 1991
Greece	-	1st July 1993
Iceland	-	1st November 1996
Ireland	-	1st October 1991
Italy	-	1st June 1995
Latvia	-	1st August 2002
Liechtenstein	-	1st August 1997
Lithuania	-	1st March 2005
Luxembourg	-	1st August 1986
Malta	-	1st February 2000
Netherlands	-	1st September 1990
Norway	-	1st May 1989
Poland	-	1st March 1996
Portugal	-	1st August 1986
Spain	-	1st August 1986
Sweden	-	1st July 1989
Switzerland	-	1st August 1986
Turkey	-	1st June 2000"

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Child Abduction and Custody (Parties to Convention) Order 1986 to add Brazil and Lithuania to the list of Contracting States to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on 25th October 1980 (Cm. 33); and to add

Lithuania to the list of Contracting States to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, signed at Luxembourg on 20th May 1980 (Cm.191).

Notes:

[1] 1985 c.60.

[2] S.I. 2003/1518.

[3] S.I. 1986/1159.

2004 No. 3333

OVERSEAS TERRITORIES

**The Burma (Restrictive Measures) (Overseas Territories)
(Amendment) Order 2004**

<i>Made</i>	- - - -	<i>16th December 2004</i>
<i>Laid before Parliament</i>		<i>10th January 2005</i>
<i>Coming into force</i>	- -	<i>11th January 2005</i>

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(a), the British Settlements Acts 1887 and 1945(b), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Burma (Restrictive Measures) (Overseas Territories) (Amendment) Order 2004 and shall come into force on 11th January 2005.

(2) In this Order, “the principal Order” means the Burma (Restrictive Measures) (Overseas Territories) Order 2004(c).

(3) This Order shall extend to the territories listed in Schedule 1 to the principal Order.

Amendments to principal Order

2.—(1) Article 1(2) of the principal Order is amended by replacing “Articles 3, 4, 5, 7, 8 and 9” in the first line with “Articles 3, 4, 5, 7, 8, 8a and 9”.

(2) Article 2(1) of the principal Order is amended by:

(a) inserting, in the appropriate place in alphabetical order, the following definitions:

(a) 1833 c. 85.

(b) 1887 c. 54 and 1945 c.7.

(c) S.I. 2004/1979.

“the European Community” means the customs territory of the European Community as defined in article 3(3) of Council Regulation (EEC) No 2913/92 of 12th November 1992(a);

“Gazette” means the official gazette of a Territory or any other form in which official information is normally made available in that Territory;

“listed Burmese state-owned enterprise” means any enterprise as is listed in Annex IV (as modified from time to time) to “the Regulation”;

“the Regulation” means Council Regulation (EC) No. 798/2004 of 26 April 2004(b) concerning certain restrictive measures in respect of Burma, as amended from time to time.

(3) Article 2(4) of the principal Order is amended by inserting after the words “For the purposes of identifying”, the words “a “listed Burmese state-owned enterprise” or” and by inserting after the words “the names and other particulars of such”, the words “listed Burmese state-owned enterprises and”.

(4) After article 2(4) of the principal Order, this following new subsection is inserted:

“(5) Except where this Order provides otherwise, expressions used in the Regulation which are also used in this Order have the same meaning in this Order as they have in the Regulation.”.

(5) After article 2 of the principal Order, the following new article is inserted:

“European Community matters

2a. The Governor shall make available to persons in the Territory, in such manner as he may think fit the text of the Regulation, together with the text of any amending Council Regulations, whether those Regulations were made before or after the coming into force of this Order.”.

(6) The heading above article 7 of the principal Order is amended by replacing “OR ECONOMIC RESOURCES” with “, ECONOMIC RESOURCES OR INVESTMENT”.

(7) After article 8 of the principal Order, the following new article is inserted:

“Prohibition on investment in Burmese state-owned enterprises

8a.—(1) Subject to the provisions of this Order, Article 8a of the Regulation shall have effect in the Territory, as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory, so as to prohibit:

- (a) the granting of any financial loan or credit to the listed Burmese state-owned enterprises, or the acquisition of bonds, certificates of deposit, warrants or debentures issued by those enterprises; and
- (b) the acquisition or extension of a participation in the listed Burmese state-owned enterprises, including the acquisition in full of such enterprises and the acquisition of shares and securities of a participating nature.

(2) Any person who commits a breach of any prohibition in paragraph (1) is guilty of an offence.

(3) Paragraph (1) shall be without prejudice to the execution of trade contracts for the supply of goods or services on usual commercial payment conditions and the usual supplementary agreements in connection with the execution of these contracts such as export credit insurances, as provided by Article 8a(3) of the Regulation.

(a) OJ No L 302, 19.10.92, p1 as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ No L 236, 23.9.2003, p33).

(b) OJ No L 125, 28.4.2004, p. 4, as amended by Council Regulation (EC) No 1853/2004 of 25 October 2004 (OJ No L 323, 26.10.2004, p.11) and as amended from time to time.

(4) The provisions of paragraph 1(a) shall be without prejudice to the execution of an obligation arising from contracts or agreements concluded before 25 October 2004, as provided by Article 8a(4) of the Regulation.

(5) The prohibition in paragraph 1(b) shall not prevent the extension of a participation in a listed Burmese state-owned enterprise, if such extension is compulsory under an agreement concluded with the listed Burmese state-owned enterprise concerned before 25 October 2004, provided that the Governor, the United Kingdom Treasury and the European Commission shall be informed prior to any such transaction.”.

(8) The heading above article 9 of the principal Order is amended by replacing “article 7 or 8(9)” with “article 7, 8a or 8(9)”.

(9) Article 9 of the principal Order is amended by replacing “article 7 or 8(9)” with “article 7, 8a(2) or 8(9)”.

(10) The first line of article 10 of the principal Order is amended by inserting “an” immediately before “offence”.

(11) Article 10(1)(a)(i) of the principal Order is amended by inserting “or a listed Burmese state-owned enterprise” immediately after “listed person”.

(12) Article 10(1)(a)(ii) of the principal Order is amended by replacing “article 7, 8(9) or 12(2)” with “article 7, 8a(2), 8(9) or 12(2)”.

(13) Article 10(2)(a) of the principal Order is amended by inserting in the first line the words “or a listed Burmese state-owned enterprise” after “a listed person” and by replacing “article 7, 8(9) or 12(2)” with “article 7, 8a(2), 8(9) or 12(2)”.

(14) Article 19(1) of the principal Order is amended by inserting “8a(2),” after “7,”.

(15) Sub-paragraph 1(1) of Schedule 2 to the principal Order is amended by inserting “8a(2),” after “7,” in the second line.

(16) The paragraphs in Schedule 3 to the principal Order are renumbered so as to commence at the number “1” rather than “10”.

(17) The paragraphs in Schedule 4 to the principal Order are renumbered so as to commence at the number “1” rather than “42”.

(18) Sub-paragraph 1(3) (as so renumbered) of Schedule 4 to the principal Order is replaced with the following:

“(3) Where a person is convicted of an offence under paragraph 5 of this Schedule of failing to furnish 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 provide the document.”.

(19) Paragraph 4 (as so renumbered) of Schedule 4 to the principal Order is amended by replacing the words “any copy of an extract” in the second line with the words “any copy or extract”.

A.K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Burma (Restrictive Measures) (Overseas Territories) Order (SI 2004/1979) (the principal Order) to give effect to further restrictive measures in respect of Burma agreed by the European Union in Common Position 2004/740/CFSP (25 October 2004). Council Regulation (EC) No. 798/2004 of 26 April 2004 (the Regulation), as amended by Council Regulation (EC) No 1853/2004 of 25 October 2004, implements these measures in EU Member States and this Order extends them to the British overseas territories listed in Schedule 1 to the principal Order. The measures consist of a ban, with certain exemptions, on new investment in listed Burmese state-owned enterprises.

This Order also makes minor amendments to the principal Order to correct various errors.

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**THE
SOUTH GEORGIA
AND THE
SOUTH SANDWICH ISLANDS GAZETTE**

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13th May 2005

The following are published in this Gazette -

Appointment of Acting Attorney General;

Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004, (SI 2004/3101), Commencement in South Georgia and the South Sandwich Islands;

Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004, (2004 No. 3101);

Trade in Goods, (Control) (Overseas Territories) Order 2004, (SI 2004/3102), Commencement in South Georgia and the South Sandwich Islands;

Trade in Goods (Control) (Overseas Territories) Order 2004, (2004 No. 3102);

Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004 (SI 2004/3103), Commencement in South Georgia and the South Sandwich Islands;

Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004, (2004 No. 3103).

SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS

APPOINTMENT OF ACTING ATTORNEY GENERAL

IN EXERCISE of my powers under section 7 of the South Georgia and the South Sandwich Islands Order 1985 and all other powers me enabling I **HOWARD JOHN STREDDER PEARCE** Commander of the Royal Victorian Order Commissioner for South Georgia and the South Sandwich Islands **HEREBY** appoint **MELANIE LOUISE BEST CHILTON** to discharge the functions and duties of the post of Attorney General of South Georgia and the South Sandwich Islands during the absence from the Falkland Islands of the substantive holder of the post of Attorney General **DAVID GEOFFREY LANG** from 19 March 2005 until his return.

Given under my hand and the Public Seal at Stanley on the 24th day of March 2005

H. J. S. Pearce C.V.O.,
Commissioner

**Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control)
(Overseas Territories) Order 2004 (SI 2004/3101)**

Commencement in South Georgia and the South Sandwich Islands

Pursuant to paragraph 1 of Schedule 2 to this Order I **APPOINT** the date of publication of the Order in the Gazette as the date on which it shall be extended to South Georgia and the South Sandwich Islands.

Pursuant to paragraph 23 of Schedule 2 to this Order the address for delivery of notices under the Order is to the Commissioner, Government House, Stanley, Falkland Islands.

Pursuant to article 6 of this Order I notify that copies of Schedules 1, 2 and 3, and Part 1 of Schedule 4, to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 ("the 2003 Order") (SI 2003/2764 as amended by SI 2004/1050, SI 2004/2561 and SI 2004/2741) are available on request from the Attorney General's Chambers, Cable Cottage, Thatcher Drive, Stanley, Falkland Islands. Alternatively, they may be downloaded free of charge from the HMSO internet website at www.hmso.gov.uk.

Pursuant to section 9 of the Export Control Act 2002 ("the Act") in its application to South Georgia and the South Sandwich Islands under article 4 of and Schedule 3 to this Order I notify that copies of guidance given or published by the Secretary of State for Trade and Industry under section 9 of the Act as it applies in the United Kingdom may be obtained on application from the Attorney General's Chambers, Thatcher Drive, Stanley, Falkland Islands. Alternatively it may be downloaded free of charge from the DTI Export Control Organisation internet website at www.dti.gov.uk/export.control/publications.htm. All such guidance shall be modified so that references to the UK will be read as references to South Georgia and the South Sandwich Islands and references to the Secretary of State will be read as references to the Commissioner.

Pursuant to article 7 of this Order the documents therein stated may be obtained on application from the Attorney General's Chambers, Thatcher Drive, Stanley, Falkland Islands. Interested persons are advised that all EC Regulations in force, and all amendments to them are published on the internet on the Eur-Lex website at www.europa.eu.int/eur-lex/en/search/search_lif.html and may be downloaded free of charge from that site.

Dated this third day of May 2005

H. Hall,
Acting Commissioner

2004 No. 3101

OVERSEAS TERRITORIES

**Export of Goods, Transfer of Technology and Provision of
Technical Assistance (Control) (Overseas Territories) Order
2004**

Made - - - -

16th December 2004

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 16(5) of the Export Control Act 2002(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows: —

Citation

1. This Order may be cited as the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004.

Extent and interpretation

2.—(1) This Order shall extend to the territories listed in Schedule 1.

(2) In the application of this Order to any of the said territories —

- (a) “the Territory” means that territory;
- (b) any reference to “the Governor” means the Governor or other officer administering the Government of that territory; and
- (c) any reference to the official gazette of a Territory includes a reference to any form in which official information is normally made available in that Territory.

(3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to the sums expressed in sterling in Schedule 2 or, as applicable, in Schedule 4.

Extension of Order to territories

3. The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(a) (the “UK Order”), as modified in Schedule 2, extends to the territories listed in Schedule 1.

Guidance about the exercise of functions under this Order

4. Section 9 of the Export Control Act 2002 (guidance about the exercise of functions under control orders), as modified in Schedule 3, extends to the territories listed in Schedule 1.

Application to the Sovereign Base Areas of Akrotiri and Dhekelia of provisions relating to penalties for offences and proceedings

5. Schedule 4 shall have effect for the application of articles 16, 17, 18 and 19 of the UK Order, as modified in Schedule 2, to the Sovereign Base Areas of Akrotiri and Dhekelia.

Duty to make available Schedules

6. The Governor shall make available to persons in the Territory, in such manner as he may think fit, the provisions of Schedules 1, 2 and 3, and Part 1 of Schedule 4, to the UK Order as from time to time in force in the law of the United Kingdom.

European Community matters

7.—(1) The Governor shall make available to persons in the Territory, in such manner as he may think fit —

- (a) the text of Council Regulation (EC) No. 1334/2000 of 22nd June 2000(b), together with the text of any amending Council Regulations, whether those Regulations were made before or after the coming into force of this Order in the Territory;
- (b) a list of those countries which are for the time being Member States of the European Community; and
- (c) a list of the competent authorities empowered by each member state to authorise exports under Council Regulation (EC) No. 1334/2000 of 22nd June 2000.

(2) A certificate given by or on behalf of the Governor in pursuance of sub-paragraph (1)(a), (b) or (c), or as to whether a place is within or outside the European Community, shall be conclusive evidence of the matters stated therein for the purposes of this Order, and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Exercise of powers of the Governor

8. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

A.K. Galloway
Clerk of the Privy Council

(a) S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.

(b) OJ No L 159, 30.06.2000, p1.

SCHEDULE 1

Article 2(1)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla
Bermuda
Cayman Islands
Falklands Islands
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
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 3

PROVISIONS OF THE EXPORT OF GOODS, TRANSFER OF TECHNOLOGY AND PROVISION OF TECHNICAL ASSISTANCE (CONTROL) ORDER 2003 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Commencement

1. This Order shall be extended to each Territory listed in Schedule 1 on such day as the Governor may by order, published in the official gazette of the Territory, appoint.

Interpretation

2.—(1) In this Order the following expressions have the meanings given to them below, save where an expression is also defined in a Schedule where it has, for the purposes of that Schedule, that meaning —

“the Act” means the Export Control Act 2002(a);

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

“competent authority” means in respect of any territory to which this Order applies, the Governor, in respect of the United Kingdom, the Secretary of State, and, in respect of any other Member State, any authority empowered by that Member State to grant “exportation” or “transfer” authorisation under “the Regulation”;

“country” includes territory;

(a) 2002 c. 28.

“customs authorities” means the authorities which, under the law of the territory, have responsibility for the control of imports and exports;

“dual-use” in relation to “goods” or “technology”, means “goods” or “technology” which can be used for both civil and military purposes, and includes any “goods” or “technology” which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

“the European Community” means the customs territory of the European Community as defined in article 3(3) of Council Regulation (EEC) No 2913/92 of 12th November 1992(a);

“exportation” includes “shipment” as “stores” and, unless the context otherwise requires, means exportation from the Territory to any destination outside the Territory, except “export” in relation to the exportation from the Territory of “dual-use” “goods”, “software” and “technology” which has the same meaning that it would have in article 2(b) of “the Regulation” if the Territory were a Member State of the European Community;

“exporter” and other cognate expressions shall be construed accordingly;

“goods” means tangible goods, both used and unused and includes any goods on which “software” or “technology” is recorded;

“goods in transit” means any “goods” imported into the Territory (which for this purpose shall be treated as a Member State of the European Community) for “transit or transshipment”;

“importation” and “exportation” in relation to a “vessel”, “vehicle”, submersible vehicle or “aircraft” include the taking into or out of the Territory of the “vessel”, “vehicle”, submersible vehicle or “aircraft”, notwithstanding that the “vessel”, “vehicle”, submersible vehicle or “aircraft” is conveying “goods” or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

“microprogramme” means a sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register;

“normal commercial journey” means a journey providing transport services in the ordinary course of business;

“programme” means a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer;

“in the public domain” means available without restriction upon further dissemination (no account being taken of restrictions arising solely from copyright);

“the Regulation” means Council Regulation (EC) No. 1334/2000 of 22nd June 2000(b) as amended from time to time (whether the amendments were made before or after the coming into force of this Order in the Territory);

“any relevant use” means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;

“scheduled journey” means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such manner that its benefits are available to members of the public from time to time seeking to take advantage of it;

“shipment” (and cognate expressions) and “stores” have the same meanings as in the laws of the Territory relating to customs and excise;

(a) OJ No L 302, 19.10.92, p1 as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ No L 236, 23.9.2003, p33).

(b) OJ No L159, 30.06.2000, p1.

“software” means one or more “programmes” or “microprogrammes” fixed in any tangible medium of expression;

“surface effect vehicle” means any air cushion “vehicle” (whether side wall or skirted) and any “vehicle” using the wing-in-ground effect for positive lift;

“technical assistance” means any technical support related to repairs, development, manufacture, assembly, testing, “use”, maintenance or any other technical service;

“technology” means information (including but not limited to information comprised in software and documents such as blueprints, manuals, diagrams and designs) that is capable of use in connection with the development, production or use of any goods;

“transfer”, in relation to any “software” or “technology”, means the “transfer by any electronic means” or “transfer by non-electronic means” (or any combination of electronic and non-electronic means) from a person or place within the Territory;

“transferor” and other cognate expressions shall be construed accordingly (except that where the transfer is to a destination outside “the European Community”, “transferor” has the same meaning as “exporter” in the definition in article 2(c) of “the Regulation” to the extent that that definition applies);

“transfer by any electronic means”, in relation to any “software” or “technology”, means a transmission of “software” or “technology” by facsimile, telephone or other electronic media (except that oral transmission of “technology” by telephone is included only where the “technology” is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if it had been so read);

“transfer by any non-electronic means”, in relation to any “software” or “technology”, means a disclosure of “software” or “technology” by any means (or combination of means), including oral communication, other than as the “exportation” of “goods” or the “transfer by any electronic means”;

“transit or transshipment” means transit through the Territory or transshipment with a view to re-exportation of the “goods” in question or transshipment of those “goods” for use as “stores”;

“United Kingdom person” means a United Kingdom national or a body incorporated or constituted under the law of the Territory; and for the purposes of this definition, a United Kingdom national is an individual who is ordinarily resident in the Territory and is a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a person who under the British Nationality Act 1981(a) is a British subject or a British protected person within the meaning of that Act;

“vehicle” includes a railway carriage; and

“vessel” includes any ship, “surface effect vehicle”, vessel of small waterplane area or hydrofoil and the hull or part of the hull of a vessel.

(2) Any reference in this Order to time after an event is a reference to a period of that length of time beginning on the day after that event.

(3) Except where this Order otherwise provides, expressions used in the Regulation which are also used in this Order have the same meaning in this Order as they have in the Regulation.

(a) 1981 c.61.

PART I

CONTROL ON THE EXPORT OF GOODS

Export of military and certain other goods

3.—(1) Subject to the provisions of this Order, goods of a description specified in Schedule 1 to the UK Order are prohibited to be exported to any destination.

(2) Sub-paragraph (1) does not prohibit the exportation of any goods in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

(3) Subject to the provisions of this Order, or any contrary provisions in a licence, a licence granted by the Governor in relation to any goods specified in Schedule 1 to the UK Order shall also authorise the exportation or transfer of the minimum technology required for the installation, operation, maintenance and repair of the goods to the same destination as the goods.

Export of dual-use goods and end-use control

4.—(1) Subject to the provisions of this Order, goods of a description specified in Schedule 2 to the UK Order are prohibited to be exported to the destinations specified in that Schedule as being prohibited destinations in relation to those goods.

(2) Subject to the provisions of this Order, articles 3 and 4 of the Regulation shall have effect in the Territory so as to prohibit the exportation of dual-use goods to any destination outside the European Community as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory.

(3) Subject to the provisions of this Order —

- (a) goods specified in Annex I but not in Annex IV to the Regulation;
- (b) goods of a description specified in Schedule 2 to the UK Order; or
- (c) goods not specified in Annex I to the Regulation or Schedule 2 to the UK Order but for the exportation of which from the Territory or the European Community an authorisation is, or in accordance with sub-paragraph (2) would be, required pursuant to:
 - (i) article 4(1) of the Regulation; or
 - (ii) article 4(2), (3) or (4) of the Regulation,

are prohibited to be exported to any destination in any Member State where the exporter knows at the time of exportation that the final destination of such goods is outside the Territory or the European Community and no processing or working is to be performed on those goods in any Member State to which they are to be exported.

(4) Subject to the provisions of this Order, dual-use goods not listed in Annex I to the Regulation, which the exporter has grounds for suspecting are or may be intended, in their entirety or in part, for any relevant use, are prohibited to be exported to any destination outside the Territory or the European Community, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.

(5) Subject to the provisions of this Order, goods of a description specified in Annex I to the Regulation, which are goods in transit, are prohibited to be exported to any destination.

(6) Subject to the provisions of this Order, sub-paragraphs (1), (2), (3), (4) and (5) do not prohibit the exportation of any goods in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

End-use control and goods in transit

5.—(1) Subject to the provisions of this Order, goods which are goods in transit are prohibited to be exported to any destination where —

- (a) the exporter (or, if the exporter is not within the Territory, any agent of the exporter within the Territory concerned in the exportation or intended exportation) has been informed by a competent authority that such goods are or may be intended, in their entirety or in part, for any relevant use; or
 - (b) the exporter is aware that such goods are intended, in their entirety or in part, for any relevant use; or
 - (c) the exporter has grounds for suspecting that such goods are or may be intended, in their entirety or in part, for any relevant use, unless the exporter has made all reasonable enquires as to their proposed use and is satisfied that they will not be so used.
- (2) Subject to the provisions of this Order, sub-paragraph (1) does not prohibit the exportation of any goods in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

PART II

CONTROLS ON THE TRANSFER OF TECHNOLOGY

Electronic transfer of controlled military and certain other technology

6.—(1) Subject to the provisions of this Order, no person shall transfer by any electronic means to a person or place outside the Territory any software or technology of a description specified in Schedule 1 to the UK Order.

(2) Subject to the provisions of this Order, sub-paragraph (1) does not prohibit the transfer of any software or technology of a description specified in Schedule 1 to the UK Order in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

Electronic transfer of controlled dual-use technology and software and end-use controls

7.—(1) Subject to the provisions of this Order, no person shall transfer by any electronic means any dual-use software or technology of a description specified in Schedule 2 to the UK Order, where the transfer is to a person or place in any destination specified in that Schedule as being a prohibited destination in relation to that software or technology.

(2) Subject to the provisions of this Order, articles 3 and 4 of the Regulation shall have effect in the Territory so as to prohibit the transfer by electronic means of any dual-use technology or software to a person or place outside the European Community as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory.

(3) Subject to the provisions of this Order, no person shall transfer by any electronic means to a person or place in any Member State any dual-use software or technology that is either —

- (a) specified in Annex I but not in Annex IV to the Regulation;
- (b) specified in Schedule 2 to the UK Order; or
- (c) not specified in Annex I to the Regulation or Schedule 2 to the UK Order but for the transfer of which from the Territory or the European Community an authorisation is, or in accordance with sub-paragraph (2) would be, required pursuant to —
 - (i) article 4(1) of the Regulation; or
 - (ii) article 4(2), (3) or (4) of the Regulation,

if he knows at the time of the transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in any Member State to which it is to be transferred.

(4) Subject to the provisions of this Order, no person shall transfer by any electronic means any dual-use software or technology not listed in Annex I to the Regulation to a person or place not within the Territory or the European Community where he has grounds for suspecting that such software or technology is or may be intended, in its entirety or in part, for any relevant use, unless he has made all reasonable enquiries as to its proposed use and is satisfied that it will not be so used.

(5) Subject to the provisions of this Order, sub-paragraphs (1), (2), (3) and (4) do not prohibit the transfer of any dual-use software or technology in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

Electronic transfer of all software and technology and end-use controls

8.—(1) Subject to the provisions of this Order, no person shall transfer by any electronic means any software or technology to a person or place within the Territory, where —

- (a) he has been informed by the Governor or the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used otherwise than within the Territory or the European Community.

(2) Subject to the provisions of this Order and where sub-paragraph (3) applies, no United Kingdom person shall transfer by any electronic means any software or technology from any place not within the Territory or the European Community to —

- (a) a person or place not within the Territory or the European Community; or
- (b) a person or place within the Territory or any Member State if he knows at the time of transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in the Territory or in any Member State to which it is to be transferred.

(3) This sub-paragraph applies where —

- (a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(4) Subject to the provisions of this Order, no United Kingdom person shall transfer by any electronic means any software or technology from any place not within the Territory or the European Community to a person or place within the Territory or the European Community where —

- (a) he has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used otherwise than within the Territory or the European Community.

(5) For the purposes of sub-paragraphs (1) and (4) a person has reason to believe that software or technology may be used otherwise than within the Territory or the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Governor or the Secretary of State that it may be or is intended to be so used.

(6) Nothing in sub-paragraph (1), (2) or (4) shall be taken to prohibit the transfer of any software or technology in the public domain.

(7) Sub-paragraphs (1), (2) and (4) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

Non-electronic transfer of all software and technology and end-use controls

9.—(1) Subject to the provisions of this Order, and where sub-paragraph (2) applies, no person ('the person concerned') shall transfer by any non-electronic means any software or technology to —

- (a) a person or place not within the Territory or the European Community; or
- (b) a person or place within the Territory or any Member State if he knows at the time of transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in the Territory or any Member State to which it is to be transferred.

(2) This sub-paragraph applies where —

- (a) the person concerned has been informed by the Governor or the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the person concerned is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(3) Subject to the provisions of this Order, articles 3 and 4 of the Regulation shall have effect in the Territory so as to prohibit the transfer by any non-electronic means of dual-use software and technology to any person or place not within the territory or the European Community as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory.

(4) Subject to the provisions of this Order, no person shall transfer by any non-electronic means any software or technology to a person or place within the Territory where —

- (a) he has been informed by the Governor or the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used otherwise than within the Territory or the European Community.

(5) Subject to the provisions of this Order and where sub-paragraph (6) applies, no United Kingdom person shall transfer by any non-electronic means any software or technology from any place not within the Territory or the European Community to —

- (a) a person or place not within the Territory or the European Community; or
- (b) a person or place within the Territory or any Member State if he knows at the time of transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in the Territory or the Member State to which it is to be transferred.

(6) This sub-paragraph applies where —

- (a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(7) For the purposes of sub-paragraph (4) a person has reason to believe that software or technology may be used otherwise than within the Territory or the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Governor or the Secretary of State that it may be or is intended to be so used.

(8) Nothing in sub-paragraph (1), (3), (4) or (5) shall be taken to prohibit the transfer of any software or technology in the public domain.

(9) Sub-paragraphs (1), (3), (4) and (5) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

PART III

CONTROL ON THE PROVISIONS OF TECHNICAL ASSISTANCE

End-use control on technical assistance

10.—(1) Subject to sub-paragraphs (3) and (4), no person shall directly or indirectly provide to a person or place not within the Territory or the European Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which —

- (a) he has been informed by the Governor is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware is intended, in its entirety or in part, for any relevant use.

(2) Subject to sub-paragraphs (3) and (4), no United Kingdom person shall directly or indirectly provide from a place not within the Territory or the European Community to any person or place not within the Territory or the European Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which —

- (a) he has been informed by the Governor is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware is intended, in its entirety or in part, for any relevant use.

(3) For the purposes of sub-paragraphs (1) and (2) —

- (a) a person directly provides technical assistance if in particular he provides technical assistance or agrees to do so; and
- (b) a person indirectly provides technical assistance if in particular he makes arrangements under which another person provides technical assistance or agrees to do so.

(4) Sub-paragraphs (1) and (2) do not prohibit the provision of any technical assistance in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

PART IV

EXCEPTIONS TO THE CONTROLS IN PARTS I, II AND III

Aircraft, vessels, firearms and ammunition and goods transit

11.—(1) Nothing in paragraph 4 shall be taken to prohibit the exportation of any aircraft the immediately preceding importation of which was on a scheduled journey and which is intended for further scheduled journeys.

(2) Nothing in paragraph 3 shall be taken to prohibit the exportation of any aircraft which is being exported (except to Iran or a country or destination specified in Schedule 3 to the UK Order) after temporary importation into the Territory provided there has been no change of ownership or

registration since such importation and that no goods of a description specified in Schedule 1 to the UK Order have been incorporated into the aircraft since such importation other than by way of replacement for a component essential for the departure of the aircraft.

(3) Nothing in paragraph 4 shall be taken to prohibit the exportation of any aircraft on a scheduled journey.

(4) Nothing in paragraph 3 or 4 shall be taken to prohibit the exportation of any aircraft which is departing temporarily from the Territory on trials.

(5) Nothing in paragraph 3 or 4 shall be taken to prohibit the exportation of any vessel which is departing temporarily from the Territory on trials.

(6) Nothing in paragraph 3 shall be taken to prohibit the exportation of any vessel registered or constructed outside the Territory which is being exported (except to Iran or a country or destination specified in Schedule 3 to the UK Order) after temporary importation into the Territory provided that no goods of a description specified in Schedule 1 to the UK Order have been incorporated into the vessel since such importation other than by way of replacement for a component essential for the departure of the vessel.

(7) Nothing in paragraph 4 shall be taken to prohibit the exportation of any vessel proceeding on a normal commercial journey.

(8) [omitted]

(9) Nothing in paragraph 3 shall be taken to prohibit the exportation of any firearm authorised to be possessed or, as the case may be, purchased or acquired by a valid certificate, licence or other authority under the law of the Territory, related ammunition and sight using non-electronic image enhancement for use therewith —

(a) to any destination in a Member State by the holder of a certificate, licence or other authority in respect of that firearm granted under the law of the Territory, or

(b) to any other destination other than to Iran or a country or destination specified in Schedule 3 to the UK Order,

provided that the firearm, related ammunition and sight using non-electronic image enhancement form part of the personal effects of the holder of the authority and, in a case to which sub-paragraph (b) applies, the authority is produced by the holder, or his duly authorised agent, with the firearm and ammunition to the customs authorities at the place of exportation.

(10) Subject to paragraph 5 and sub-paragraph (11) below, nothing in paragraph 3, 4(1), 4(2), 4(3)(a), (b), (c)(ii) or (5) shall be taken to prohibit the exportation of any goods which are goods in transit provided that the conditions in sub-paragraph (12) below are met.

(11) Sub-paragraph (10) does not apply to —

(a) anti-personnel landmines;

(b) any goods falling within paragraph c. or g. of entry PL5001 in Part I of Schedule 1 to the UK Order;

(c) components specially designed for goods falling within sub-paragraph (a);

(d) equipment, software or technology falling within entry ML18, ML21 or ML22 in Part 1 of Schedule 1 to the UK Order specifically related to goods falling within sub-paragraph (a) or (b);

(e) any goods being exported to Iran or North Korea; or

(f) any goods of a description specified in Schedule 1 to the UK Order being exported to any country or destination specified in Schedule 3 to the UK Order.

(12) The conditions are that —

(a) the goods remain on board a vessel or aircraft for the entire period that they remain in the Territory or are goods on a through bill of lading or through air waybill and in any event are exported within 30 days of their importation;

(b) the destination of those goods following exportation from the Territory has been determined in the country from which they were originally exported prior to their original

exportation in connection with the transaction which has given rise to transit or transshipment and has not been changed prior to their exportation from the Territory, or the goods are being returned to that country; and

- (c) the goods in question were exported from that country in accordance with any laws or regulations relating to the exportation of goods applying therein at the time of exportation of those goods.

PART V

LICENCES

Licences

12.—(1) The Governor may grant licences.

(2) [omitted]

(3) [omitted]

(4) Any licence granted or issued by the Governor in pursuance of this Order may be —

- (a) either general or individual;
- (b) limited so as to expire on a specified date unless renewed; and
- (c) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised under that licence.

(5) Any licence granted under this Order may be amended, suspended or revoked by the Governor at any time and in such circumstances and on such terms as he thinks fit by serving notice to that effect on the holder of the licence.

Registration with the Governor

13.—(1) Not later than 30 days after any person first does any act under the authority of —

- (a) any general licence granted by the Governor that does not provide otherwise,
- (b) any individual licence granted under paragraph 4 or 5 by the Governor that does not provide otherwise,

the person in question shall give to the Governor written notice of his name and the address at which copies of the records referred to in paragraph 14(1) may be inspected by any person authorised by the Governor or the customs authorities under paragraph 14(4).

(2) A person who has given to the Governor written notice of particulars under sub-paragraph (1) shall, not later than 30 days after any change in those particulars, give to the Governor written notice of the changed particulars.

Record keeping and inspection

14.—(1) Any person acting under the authority of any general licence granted under this Order shall keep detailed registers or records.

(2) The registers or records shall contain sufficient detail as may be necessary to allow the following information, where appropriate, to be identified —

- (a) a description of the goods that have been exported or the software or technology that has been transferred;
- (b) the date of the exportation or transfer;
- (c) the quantity of the goods;
- (d) the name and address of the person referred to in sub-paragraph (1);
- (e) the name and address of any consignee of the goods;

- (f) in so far as it is known to the person referred to in sub-paragraph (1) the name and address of the end-user of the goods, software or technology; and
- (g) any further information required to be kept by the competent authority who has authorised the exportation or transfer.

(3) [omitted]

(4) The register or records referred to in sub-paragraph (1) shall be kept for at least 3 years from the end of the calendar year in which the authorised act took place, and the person referred to in sub-paragraph (1) shall permit any such registers or records to be inspected and copied by any person authorised by the Governor or the customs authorities.

(5) [omitted]

(6) Any person authorised by the Governor or the customs authorities shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any reasonable hour to enter for the purpose of sub-paragraph (4) the premises of the address which has most recently been notified to the Governor under paragraph 13.

(7) Where the registers or records required to be maintained under this paragraph are kept in a form which is not legible the exporter or transferor shall, at the request of the person authorised by the Governor or the customs authorities, reproduce such registers or records in a legible form.

(8) [omitted]

(9) Any person who exports or transfers to any Member State any goods, software or technology listed in Part 2 of category 5 in Annex I to the Regulation but not listed in Annex IV to the Regulation shall maintain registers or records in relation to each such exportation or transfer that contain such of the information specified in Part II of Schedule 4 to the UK Order as he can reasonably be expected to obtain and such other of that information as comes into his possession. These registers or records shall be kept for at least 3 years from the end of the calendar year in which the authorised act took place, and he shall permit any such registers or records to be inspected and copied by any person authorised by the Governor or the customs authorities. Sub-paragraphs (6) and (7), and the provision in sub-paragraph (4) relating to inspection and copying, shall apply to the production of such documents or records as they apply in respect of registers or records referred to in sub-paragraph (4) or (as the case may be) in respect of entry into premises for the purpose of sub-paragraph (4).

Licence refusals etc. and appeals

15.—(1) In the event that the Governor decides not to grant a licence under this Order to any person who has applied for a licence, he shall be provided with a written notification setting out the reason or reasons for the decision.

(2) In the event that the Governor decides to suspend a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) In the event that the Governor decides to revoke a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(4) Any person who has a licence application refused under this Order or who has a licence suspended or revoked under paragraph 12 shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Governor.

(5) Any appeal submitted under sub-paragraph (4) shall specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal.

(6) Pending determination of any appeal submitted under sub-paragraph (4), any decision taken by the Governor shall continue to have effect.

PART VI

GENERAL

Offences and penalties

16.—(1) Any person who contravenes a prohibition or restriction in —

- (a) paragraph 6, 7(1), 7(3)(a), 7(3)(b) or 7(3)(c)(ii); or
- (b) article 3(1), 4(2) or 4(3) of the Regulation,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5000 or the equivalent.

(2) Any person who contravenes a prohibition or restriction in —

- (a) paragraph 4(3)(c)(i), 4(4) or 5;
- (b) paragraph 7(3)(c)(i), 7(4), 8(2), 8(4), 9(1), 10(1) or 10(2);
- (c) paragraph 8(1) or 9(4); or
- (d) article 4(1) of the Regulation,

shall be guilty of an offence and may be arrested.

(3) A person guilty of an offence under sub-paragraph (2) shall be liable: —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine of any amount or to imprisonment for a term not exceeding two years, or to both.

(4) Any person knowingly concerned in the exportation of any good or the transfer of software or technology, or in the attempted exportation of any good or the attempted transfer of software or technology, with intent to evade any prohibition or restriction in —

- (a) paragraph 6, 7(1), 7(3), 7(4), 8(2), 8(4), 9(1) or 9(5);
- (b) paragraph 8(1) or 9(4); or
- (c) article 3(1), 4(1), 4(2) or 4(3) of the Regulation,

shall be guilty of an offence.

(5) Any person knowingly concerned in the provision, or attempted provision, of technical assistance related to the supply, delivery, manufacture, maintenance or use of anything, with intent to evade any prohibition or restriction in paragraph 10, shall be guilty of an offence.

(6) A person guilty of an offence under sub-paragraph (4) or (5) shall be liable: —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both.

(7) Any person who fails to comply with the requirement in article 4(4) of the Regulation shall be guilty of an offence and liable: —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent;
- (b) on conviction on indictment, to a fine of any amount or to imprisonment for a term not exceeding two years, or to both.

(8) 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.

(9) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

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

(11) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the 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 has not been obtained.

Misleading applications for licences

17.—(1) Where for the purpose of obtaining any licence under this Order any person either —

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or
- (b) 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) A person guilty of an offence under sub-paragraph (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both,

and any licence which may have been granted by the Governor in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time it was granted.

Failure to comply with licence conditions

18.—(1) Subject to the provisions of sub-paragraph (3), any person who —

- (a) has done any act under the authority of a licence granted by the Governor under this Order; and
- (b) fails to comply with any conditions attaching to that licence,

shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both.

(3) No person shall be guilty of an offence under sub-paragraph (1) where —

- (a) the condition in question had been previously modified by the Governor;
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified; and
- (c) the condition with which he failed to comply was modified after the doing of the act authorised by the licence.

Customs powers to require evidence of destination

19.—(1) Any person who exports or ships any goods subject to controls by the Act shall, if so required by the customs authorities, provide within such time as they may determine evidence of

the destination to which the goods were delivered and, if he fails to do so, he shall be guilty of an offence.

(2) Any person guilty of an offence under sub-paragraph (1) shall be liable on summary conviction to a fine not exceeding £5000 or the equivalent.

Customs powers

20. Goods which are brought to any place in the Territory for the purpose of being exported may be detained by the customs authorities as if they were liable to forfeiture, if and so long as they have reason to believe that the Governor (after, if necessary, having had the impending exportation brought to his attention) might inform the exporter as provided in article 4(1), (2) or (3) of the Regulation or paragraph 5.

Application of customs and excise laws

21.—(1) It shall be the duty of the customs authorities to take such action as they consider appropriate to secure the enforcement of the provisions of this Order described in sub-paragraph (3).

(2) [omitted]

(3) The provisions referred to in sub-paragraph (1) are paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 17, 18 and 19 but excluding paragraphs 8(1) and 9(4). Paragraph 14 shall be enforced only insofar as the obligation relates to the powers of the customs authorities.

(4) The provisions of the laws of the Territory relating to customs and excise relating to proceedings for offences, mitigation of penalties, proof and other matters apply in relation to offences and penalties created by this Order and proceedings for such offences as they apply in relation to offences and penalties and proceedings for offences under those laws.

(5) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the customs authorities by virtue of sub-paragraph (3) shall not be offences for which, under any provision of the laws of the Territory, proceedings may only be instituted by those authorities.

(6) In any case where a person would, apart from this sub-paragraph, be guilty of —

- (a) an offence under the provisions of the laws of the Territory relating to the import or export of goods; and
- (b) a corresponding offence under this Order,

he shall not be guilty of the offence mentioned in sub-paragraph (a) of this sub-paragraph.

(7) Sub-paragraph (6) does not apply in respect of prohibitions or restrictions on the exportation of firearms falling within any description of weapons subject under the law of the Territory to a general prohibition on their possession, purchase, acquisition, manufacture, sale or transfer without the permission of the Governor.

Use and disclosure of information

22.—(1) This paragraph applies to information which is held by —

- (a) the Governor, or
- (b) the customs authorities,

in connection with the operation of controls imposed by this Order on the exportation of goods, the transfer of technology or participation in the provision of services connected with the development, production or use of goods or technology.

(2) Information to which this paragraph applies may be used for the purposes of, or for any purposes connected with —

- (a) the exercise of functions in relation to any control imposed by this Order or by any other order made under the Act;

- (b) giving effect to any European Community or other international obligation of the United Kingdom;
- (c) facilitating the exercise by an authority or international organisation outside the Territory of functions which correspond to functions conferred by or in connection with any activity subject to control by this Order or any other order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this paragraph unless the making of the disclosure is proportionate to the object of the disclosure.

(4) For the purposes of this paragraph "information" is any information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this paragraph shall be taken to affect any power to disclose information that exists apart from this paragraph.

(6) The information that may be disclosed by virtue of this paragraph includes information obtained before the commencement of this Order.

Service of notices

23. Any notice to be given to the Governor by a person under this Order may be given by an agent of his, and shall be sent by post or delivered to the Governor at an address specified in the official gazette of the Territory.

Repeals and revocations

24. [omitted]

Transitional arrangements

25.—(1) Licences issued by the Governor of a territory to which this Order applies before the date of the coming into force of this Order in that Territory ("the relevant date") permitting anything to be done or omitted to be done for which, apart from this paragraph, a licence under this Order would be required on or after the relevant date shall continue to have effect for the period for which they were issued, and any such licence shall be deemed to have been issued under this Order.

(2) The provisions of the law of the Territory in force before the relevant date shall continue to apply in relation to any export for which such a licence was required before that date which has occurred before that date and to any export which takes place on or after the relevant date in respect of which such a licence has been issued before that date.

SCHEDULE 3

Article 4

SECTION 9 OF EXPORT CONTROL ACT 2002 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Section 9 of the Export Control Act 2002 extends to each of the territories listed in Schedule 1, modified as follows:

"9.—(1) This section applies to licensing powers and other functions conferred on any person by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004 in the territories to which that Order extends.

(2) The Governor shall publish in such manner as he may think fit any guidance given and published (or treated as given and published) by the Secretary of State under this section as it applies in the United Kingdom relevant to the exercise of the powers and other

functions to which this section applies in the Territory, with such exceptions and modifications as appear to the Governor to be appropriate.

(3) Any person exercising a licensing power or other function to which this section applies shall have regard to any guidance which relates to that power or other function.

(4) In application of this section to any of the said territories the expression "the Territory" means that territory and "the Governor" means the Governor or other person administering the Government of that territory."

SCHEDULE 4

Article 5

APPLICATION TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA OF PROVISIONS RELATING TO PENALTIES FOR OFFENCES AND PROCEEDINGS

1. Any person who commits an offence under paragraph 16(1) or 19(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

2. Any person who commits an offence under paragraph 16(2) of Schedule 2 shall be liable on conviction—

(1) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both;

(2) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

3. Any person who commits an offence under paragraph 16(4) or (5) of Schedule 2 shall be liable on conviction—

(1) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding ten years, or to a fine of any amount, or to both;

(2) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under paragraph 16(7), 17(1) or 18(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both.

5. Where a 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. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the territory having jurisdiction where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the territory except by or with the consent of the principal public officer of the territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the 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 has not been obtained.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Export Control Act 2002, extends with modifications the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764 amended by S.I. 2004/1050, 2004/2561 and 2004/2741) (the UK Order) to the territories listed in Schedule 1. The Order establishes a new framework for the control of strategic goods, software and technology. This Order brings together controls on the export or transfer of military and dual-use goods, software and technology, controls on goods, software and technology related to weapons of mass destruction (WMD) and the provision of WMD-related technical assistance. The controls in this Order apply to persons in the territories listed in Schedule 1 and in respect of certain provisions, to United Kingdom persons ordinarily resident in those territories anywhere in the world.

This Order gives effect in the territories to Council Regulation (EC) No. 1334/2000 of 22 June 2000 (O.J. No. L 159, 30.06.2000 p.1.) setting up a regime for the control of exports of dual-use items and technology (the Regulation), as if the territories were part of the European Community. Military and para-military goods, software and technology whose export or transfer is controlled are specified in Schedule 1 to the UK Order. Dual-use goods, software and technology, the export or transfer of which are controlled, in addition to those set out in the Annexes to the Regulation, are specified in Schedule 2 to the UK Order.

This Order imposes WMD end-use controls on "any relevant use" in connection with WMD. A relevant use is any use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons.

The Order also introduces controls on:

(a) the transfer by electronic means of listed military technology in Schedule 1 to the UK Order. Electronic transfer includes transfers by fax, e-mail or telephone;

(b) the transfer by any means of technology intended for use in connection with WMD or a related missile programme. This supplements the end-use controls on the physical export of goods, software and technology and the electronic transfer of technology contained in the Regulation. This control will apply to anyone in the territories or any United Kingdom person ordinarily resident in a territory wherever located who communicates technology which the provider knows, or has been informed by a competent authority, is or might be intended for use outside the European Community and the territories in connection with WMD or missiles capable of delivering WMD; and

(c) the provision of technical assistance in relation to WMD. This control will apply to anyone in the territories or any United Kingdom person ordinarily resident in a territory wherever located who provides or facilitates the provision of technical assistance outside the territories where he knows, or is informed by a competent authority, that it is or may be intended for use in connection with WMD or missiles capable of delivering WMD. This control, together with the WMD transfer controls, implements the European Joint Action of 22 June 2000 concerning the control of technical assistance related to certain military end-uses (2000/401/CFSP).

The UK Order, as extended to the territories, is divided into six parts:

Part I deals with controls on the export of military goods, dual-use goods and goods in transit with a WMD end-use;

Part II deals with controls on the electronic transfer of military and dual-use technology and the transfer of technology with a WMD end-use by both electronic and non-electronic means;

Part III deals with controls on the provision of WMD technical assistance;

Part IV sets out exceptions to the controls in Parts I, II and III;

Part V provides for the granting of licences, record keeping and appeals. Paragraph 15 sets out the procedure for appealing against any decision of the Governor to refuse, suspend or revoke any licence issued under the Order. Appeals must be made within 28 days of the date of the written notification recording the Governor's decision; and

Part VI sets out the penalties and means of enforcement for breach of the controls in the Regulation and Parts I, II and III. In paragraph 16 the maximum penalty for the intentional breach of controls on exports, transfer of technology and technical assistance is set at ten years, the maximum penalty permitted under section 7(1) of the Export Control Act 2002.

Schedule 3 extends with modifications the provisions of section 9 of the Export Control Act 2002 to the territories listed in Schedule 1.

Schedule 4 provides for offences, enforcement and penalties for breach of the controls in Schedule 2 in respect of the Sovereign Base Areas of Akrotiri and Dhekelia.

Trade in Goods (Control) (Overseas Territories) Order 2004 (SI 2004/3102)

Commencement in South Georgia and the South Sandwich Islands

Pursuant to paragraph 1 of Schedule 2 to this Order I **APPOINT** the date of publication of the Order in the Gazette as the date on which it shall be extended to South Georgia and the South Sandwich Islands.

Pursuant to paragraph 14 of Schedule 2 to this Order the address for delivery of notices under the Order is to the Commissioner, Government House, Stanley, Falkland Islands.

Pursuant to section 9 of the Export Control Act 2002 ("the Act") in its application to South Georgia and the South Sandwich Islands under article 4 of and Schedule 3 to this Order I notify that copies of guidance given or published by the Secretary of State for Trade and Industry under section 9 of the Act as it applies in the United Kingdom may be obtained on application from the Attorney General's Chambers, Thatcher Drive, Stanley, Falkland Islands. Alternatively it may be downloaded free of charge from the DTI Export Control Organisation website at www.dti.gov.uk/export.control/publications.htm. All such guidance shall be modified so that references to the UK will be read as references to South Georgia and the South Sandwich Islands and references to the Secretary of State will be read as references to the Commissioner.

Dated this third day of May 2005

H. Hall,
Acting Commissioner

2004 No. 3102

OVERSEAS TERRITORIES

Trade in Goods (Control) (Overseas Territories) Order 2004

Made - - - - *16th December 2004*

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 16(5) of the Export Control Act 2002(a) is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows: —

Citation

1. This Order may be cited as the Trade in Goods (Control) (Overseas Territories) Order 2004.

Extent and interpretation

- 2.—(1) This Order shall extend to the territories listed in Schedule 1.
- (2) In the application of this Order to any of the said territories —
 - (a) the expression “the Territory” means that territory;
 - (b) any reference to “the Governor” means the Governor or other officer administering the Government of that territory; and
 - (c) any reference to the official gazette of a Territory includes a reference to any form in which official information is normally made available in that Territory.
- (3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in Schedule 2 or, as applicable, in Schedule 5.

Extension of Order to territories

3. The Trade in Goods (Control) Order 2003(b) (the “UK Order”), as modified in Schedule 2, extends to the territories listed in Schedule 1.

(a) 2002 c.28.

(b) S.I. 2003/2765.

Guidance about the exercise of functions under this Order

4. Section 9 of the Export Control Act 2002 (guidance about the exercise of functions under control orders), as modified in Schedule 3, extends to the territories listed in Schedule 1.

Modification of Schedule 4 (Restricted Goods)

5.—(1) Where any modification is made to the Schedule to the UK Order, whether before or after the coming into force of this Order in the Territory, the Governor shall, by order published in the official gazette of the Territory, make the like modification to Schedule 4.

(2) An order under paragraph (1) may make transitional provisions in connection with any modification made by the order.

Application to the Sovereign Base Areas of Akrotiri and Dhekelia of provisions relating to penalties for offences and proceedings

6. Schedule 5 shall have effect for the application of articles 9, 10 and 11 of the UK Order, as modified in Schedule 2, to the Sovereign Base Areas of Akrotiri and Dhekelia.

Exercise of powers of the Governor

7. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

Bermuda

Cayman Islands

Falkland Islands

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

Turks and Caicos Islands

Virgin Islands

**PROVISIONS OF THE TRADE IN GOODS (CONTROL) ORDER
2003 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED
IN SCHEDULE 1**

Commencement and application

1.—(1) This Order shall be extended to each Territory listed in Schedule 1 on such day as the Governor may by order, published in the official gazette of the Territory, appoint.

(2) Paragraphs 3(1) and 4 apply to any person within a Territory and paragraph 3(2) applies to any person elsewhere who is a United Kingdom person.

Interpretation

2.—(1) In this Order: —

“to acquire” in relation to “controlled goods”, means to buy, hire, borrow or to accept them as a gift, and cognate expressions shall be construed accordingly;

“the Act” means the Export Control Act 2002(a);

“controlled goods” means goods used and unused, for the time being listed in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(b) as extended to the Territory by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control)(Overseas Territories) Order 2004(c), the transfer, acquisition or disposal of which are prohibited by this Order, but does not include goods which are “restricted goods”. For the avoidance of doubt, “controlled goods” does not include software and technology;

“country” includes territory;

“customs authorities” means the authorities which, under the law of the Territory, have responsibility for the control of imports and exports;

“to dispose of” in relation to “controlled goods”, means to sell, let on hire, lend or to give them as a gift, and cognate expressions shall be construed accordingly;

“goods in transit” means any controlled goods imported into the Territory for transit or transshipment;

“restricted goods” means goods, both used and unused, specified in Schedule 4 which would otherwise be “controlled goods”, the supply and delivery of which are prohibited by this Order;

“a third country” means any country that is not the Territory;

“transfer” means to move “controlled goods” over which one has rights of disposal from one third country to another third country;

“the UK Order” means the Trade in Goods (Control) Order 2003(d); and

“United Kingdom person” means a United Kingdom national or a body incorporated or constituted under the law of the Territory, and, for the purposes of this definition, a United Kingdom national is an individual who is ordinarily resident in the Territory and is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National

(a) 2002 c. 28.

(b) S.I. 2003/2764, as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.

(c) S.I. 2004/3101.

(d) S.I. 2003/2765.

(Overseas), a person who under the British Nationality Act 1981(a) is a British subject, or a British protected person within the meaning of that Act.

(2) Any reference in this Order to time after an event is a reference to a period of that length of time beginning on the day after that event.

Supply and delivery of restricted goods

3.—(1) Subject to the provisions of this Order, no person shall directly or indirectly —

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of,

any restricted goods, where that person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly —

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of,

any restricted goods, where that person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country.

(3) Sub-paragraph (1) applies to any act, or any part of any act, done in the Territory.

(4) Sub-paragraph (2) applies to any act, or any part of any act, done outside the Territory.

(5) Sub-paragraphs (1) and (2) do not apply to any restricted goods that are present in the Territory unless they are goods in transit.

(6) For the purpose of sub-paragraphs (1) and (2), restricted goods that are goods in transit shall be considered to be located in a third country.

(7) Nothing in sub-paragraph (1) or (2) shall be taken to prohibit any activities authorised by a licence in writing granted under this Order or under any other order made under the Act, provided that all the conditions attaching to the licence are complied with.

(8) Nothing in sub-paragraph (1)(b) or (c) or (2)(b) or (c) shall apply where the supply or delivery of the restricted goods to the person or place concerned is authorised by a licence in writing granted under this Order or under any other order made under the Act.

Transfer, acquisition or disposal of controlled goods

4.—(1) Subject to the provisions of this Order, no person shall —

- (a) arrange the transfer of controlled goods from one third country to another third country; or
- (b) acquire or dispose, or agree to acquire or dispose, of any controlled goods, where that person knows or has reason to believe that such an acquisition or disposal will or may result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no person shall —

- (a) arrange or negotiate; or
- (b) agree to arrange or negotiate,

(a) 1981 c. 61.

a contract for the acquisition or disposal of any controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(3) Subject to the provisions of this Order, no person shall in return for a fee, commission or other consideration —

- (a) do any act; or
- (b) agree to do any act,

calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(4) Sub-paragraphs (1), (2) and (3) apply to any act, or any part of any act, done in the Territory.

(5) Sub-paragraphs (1), (2) and (3) shall not apply to any person whose sole involvement in relation to the transfer, acquisition or disposal of any controlled goods is to provide or agree to provide —

- (a) transportation services,
- (b) financing or financial services,
- (c) insurance or reinsurance services, or
- (d) general advertising or promotion services.

(6) Sub-paragraphs (1), (2) and (3) do not apply to controlled goods that are present in the Territory unless they are goods in transit.

(7) For the purposes of sub-paragraphs (1), (2) and (3), controlled goods that are goods in transit shall be considered to be located in a third country.

(8) Nothing in sub-paragraph (1), (2) or (3) shall be taken to prohibit any activities authorised by a licence in writing granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

LICENCES

Granting and revocation of licences etc

5.—(1) The Governor may grant licences authorising any act that would otherwise be prohibited under this Order.

(2) Any licence granted by the Governor in pursuance of this Order may be —

- (a) either general or individual;
- (b) limited so as to expire on a specified date unless renewed; and
- (c) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised under that licence.

(3) Any licence granted under this Order shall be in writing and may be amended, suspended or revoked by the Governor at any time and in such circumstances and on such terms as he thinks fit by serving a notice to that effect on the holder of the licence.

Registration with the Governor

6.—(1) Not later than 30 days after any person first does any act under the authority of any general licence granted by the Governor that does not provide otherwise, that person shall give to the Governor written notice of his name and the address at which copies of the records referred to in paragraph 7(1) may be inspected by any person authorised by the Governor or the customs authorities under paragraph 7(4).

(2) A person who has given to the Governor written notice of particulars under sub-paragraph (1) shall, not later than 30 days after any change in those particulars, give to the Governor written notice of the changed particulars.

Record keeping and inspection

7.—(1) Any person who does any act under the authority of any general licence under this Order shall keep registers or records in accordance with this paragraph.

(2) The registers or records shall contain sufficient detail as may be necessary to allow the following information to be identified —

- (a) a description of the restricted or controlled goods that have been supplied, delivered, transferred, acquired or disposed of, or for which arrangements or negotiations for their acquisition or disposal have been made or entered into;
- (b) the date or the period of time over which the relevant activities relating to the supply, delivery, transfer, acquisition or disposal of the restricted or controlled goods were carried out;
- (c) the quantity of the restricted or controlled goods;
- (d) the name and address of the end-user of the restricted or controlled goods;
- (e) the name and address of the supplier of the restricted or controlled goods; and
- (f) any further information required to be kept by the Governor.

(3) The registers or records referred to in sub-paragraph (1) shall be kept for at least 4 years from the end of the calendar year in which the authorised act took place.

(4) The person referred to in sub-paragraph (1) shall permit any such records to be inspected and copied by any person authorised by the Governor or the customs authorities.

(5) Any person authorised by the Governor or the customs authorities shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any reasonable hour to enter for the purpose of sub-paragraph (4) the premises, the address of which has been most recently notified to the Governor under paragraph 6.

(6) Where the registers or records required to be maintained under this paragraph are kept in a form which is not legible the person required under sub-paragraph (1) to maintain such records shall at the request of the person authorised by the Governor or the customs authorities, as the case may be, reproduce such registers or records in a legible form.

Licence refusals etc. and appeals

8.—(1) In the event that the Governor decides not to grant a licence under this Order to any person who has applied for a licence, that person shall be provided with a written notification setting out the reason or reasons for the decision.

(2) In the event that the Governor decides to suspend a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) In the event that the Governor decides to revoke a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(4) Any person who has had a licence application refused under paragraph 5 or who has had a licence suspended or revoked under that paragraph shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Governor.

(5) Any appeal submitted under sub-paragraph (4) shall specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal.

(6) Pending determination of any appeal submitted under sub-paragraph (4), any decision taken by the Governor shall continue to have effect.

GENERAL

Offences and penalties

9.—(1) Any person who contravenes a prohibition in paragraph 3 or 4 shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or the equivalent.

(2) Any person knowingly concerned in the supply, delivery, transfer, acquisition or disposal of any restricted or controlled goods with intent to evade any prohibition or restriction in paragraph 3(1) or 4 shall be guilty of an offence.

(3) Any person knowingly concerned in the supply or delivery of any restricted goods with intent to evade any prohibition or restriction in paragraph 3(2) shall be guilty of an offence.

(4) A person guilty of an offence under sub-paragraph (2) or (3) shall be liable —

(a) on summary conviction to a fine not exceeding £5,000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or

(b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding ten years, 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) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(7) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

(8) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the 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 has not been obtained.

Misleading applications for licences etc.

10.—(1) Where for the purpose of obtaining a licence under this Order any person either —

(a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or

(b) 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) A person guilty of an offence under sub-paragraph (1) shall be liable —

(a) on summary conviction to a fine not exceeding £5,000 or the equivalent; or

(b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both,

and any licence which may have been granted by the Governor in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time it was granted.

Failure to comply with licence conditions

11.—(1) Subject to sub-paragraph (3), any person who —

- (a) has done any act under the authority of a licence granted by the Governor under this Order, and
 - (b) fails to comply with —
 - (i) any conditions attaching to that licence;
 - (ii) any obligation under paragraph 6; or
 - (iii) any obligation under paragraph 7,
- shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5,000 or the equivalent; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both.

(3) No person shall be guilty of an offence under sub-paragraph (1) where —

- (a) the licence condition in question had been previously modified by the Governor; and
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified; and
- (c) the condition with which he failed to comply was modified by the Governor after the doing of the act authorised by the licence.

Application of customs and excise law

12.—(1) It shall be the duty of the customs authorities to take such action as they consider appropriate to secure the enforcement of paragraphs 3, 4, 10 and 11 and any obligation arising under paragraph 7 insofar as the obligation relates to the powers of the customs authorities.

(2) The provisions of the law of the Territory relating to proceedings for offences, mitigation of penalties, proof and other matters in respect of the control of imports and exports apply in relation to offences and penalties under this Order, and proceedings for such offences, as they apply in relation to offences and penalties and proceedings for offences under those provisions.

(3) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the customs authorities by virtue of sub-paragraph (1) shall not be offences in respect of which, under any law of the Territory relating to the control of imports and exports, proceedings may be taken only by, or by order of, the customs authorities.

Use and disclosure of information

13.—(1) This paragraph applies to information which is held by —

- (a) the Governor; or
- (b) the customs authorities,

in connection with the operation of controls imposed by this Order, on activities which facilitate or are otherwise connected with the supply or delivery of restricted goods or the transfer, acquisition or disposal of controlled goods.

(2) Information to which this paragraph applies may be used for the purposes of, or for any purposes connected with —

- (a) the exercise of functions in relation to any control imposed by this Order or by any other order made under the Act;
- (b) giving effect to any European Community or other international obligation of the United Kingdom;

- (c) facilitating the exercise by an authority or international organisation outside the Territory of functions which correspond to functions conferred by or in connection with any activity subject to control by this Order or any other order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this paragraph unless the making of the disclosure is proportionate to the object of the disclosure.

(4) For the purposes of this paragraph, "information" is any information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this paragraph shall be taken to affect any power to disclose information that exists apart from this paragraph.

(6) The information that may be disclosed by virtue of this paragraph includes information obtained before the commencement of this Order.

Service of notices

14. Any notice to be given by any person under this Order may be given by an agent of that person and shall be sent by post or delivered to the Governor at an address specified in the official gazette of the Territory.

SCHEDULE 3

Article 4

SECTION 9 OF THE EXPORT CONTROL ACT 2002 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Section 9 of the Export Control Act 2002 extends to each of the territories listed in Schedule 1, modified as follows:

"9.—(1) This section applies to licensing powers and other functions conferred on any person by the Trade in Goods (Control) (Overseas Territories) Order 2004 in the territories to which that Order extends.

(2) The Governor shall publish in such manner as he may think fit any guidance given and published (or treated as given and published) by the Secretary of State under this section as it applies in the United Kingdom relevant to the exercise of the powers and other functions to which this section applies in the Territory, with such exceptions and modifications as appear to the Governor to be appropriate.

(3) Any person exercising a licensing power or other function to which this section applies shall have regard to any guidance which relates to that power or other function.

(4) In the application of this section to any of the said territories, "the Territory" means that territory and "the Governor" means the Governor or other officer administering the Government of that territory."

SCHEDULE 4

Article 5

RESTRICTED GOODS

The following are restricted goods for the purposes of this Order:

Certain Security and Para-Military Police Equipment

1. Any good falling within paragraph c. or g. of PL5001 in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(a) as extended to the Territory by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004(b).

Certain Missiles

2. Missiles capable of a range of 300km or more, and specially designed components therefor.

SCHEDULE 5

Article 6

APPLICATION TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA OF PROVISIONS RELATING TO PENALTIES FOR OFFENCES AND PROCEEDINGS

1. Any person who commits an offence under paragraph 9(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or the equivalent.

2. Any person who commits an offence under paragraph 9(2) or (3) of Schedule 2 shall be liable on conviction –

(1) if tried on information before the Senior Judge's Court, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both;

(2) if tried before the Judge's Court, to a fine not exceeding £5,000 or the equivalent, or to imprisonment for a term not exceeding six months, or to both.

3. Any person who commits an offence under paragraph 10(1) or 11(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount.

4. Where a 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

5. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

6. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

7. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the 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 has not been obtained.

(a) S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.

(b) S.I. 2004/3101.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Export Control Act 2002 (2002 c. 28) (the Act), extends with modifications the Trade in Goods (Control) Order 2003 (S.I. 2003/2765) (the UK Order) to the territories listed in Schedule 1. It controls the trade between one overseas country and another of military and para-military goods and specified missiles for the time being listed in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764, as amended by S.I. 2004/1050, 2004/2561 and 2004/2741) as extended to those overseas territories by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004 (S.I. 2004/3101). In this Order these goods are referred to as “controlled goods”. Further controls are imposed on “restricted goods” as listed in Schedule 4. The controls in this Order do not apply to software or technology or to activities connected to trade in controlled goods that are situated in a territory (with the exception of goods in transit via the territory).

In relation to restricted goods, paragraph 3 of Schedule 2 prohibits any person within a territory, or a United Kingdom person (as defined in the Order) elsewhere, from supplying or delivering, or doing any act calculated to promote the supply or delivery of, restricted goods without a licence from the Governor (or a licence granted under any other order made under the Act).

In relation to controlled goods, paragraph 4 of Schedule 2 prohibits any person in a territory from transferring, acquiring or disposing, or arranging or negotiating a contract for the acquisition or disposal, of controlled goods without a licence from the Governor (or a licence granted under any other order made under the Act). In addition, the provisions on controlled goods prohibit any person in a territory in return for a fee, commission or other consideration from doing any act or agreeing to do any act, without a licence, which would promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods where that person knows or has reason to believe that the goods will be moved from one third country to another third country.

Schedule 2 exempts persons whose sole involvement in the movement of controlled goods from one overseas country to another is to provide transport, finance, insurance or general advertising or promotion services.

The remaining paragraphs in Schedule 2 do the following:

Paragraphs 5-7 provide for the issuing of licences by the Governor, registration, record keeping and inspection and licence refusals and appeals;

Paragraphs 8-12 provide for offences, enforcement and penalties for the breach of the controls;

Paragraph 13 sets out the purposes for which information obtained by the Governor, or the customs authorities, can be disclosed; and

Paragraph 14 states the address where notices to be given by any person under this Order are to be sent.

Schedule 3 extends with modifications the provisions of section 9 of the Export Control Act 2002 to the territories listed in Schedule 1.

Schedule 4 to this Order sets out the goods which are restricted under this Order and article 5 provides for the Governor to make modifications to Schedule 4 in the event of modifications to the Schedule to the UK Order.

Schedule 5 provides for offences, enforcement and penalties for the breach of the controls in respect of the Sovereign Base Areas of Akrotiri and Dhekelia.

**Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004
(SI 2004/3103)**

Commencement in South Georgia and the South Sandwich Islands

Pursuant to paragraph 1 of Schedule 2 to this Order I **APPOINT** the date of publication of the Order in the Gazette as the date on which it shall be extended to South Georgia and the South Sandwich Islands.

Pursuant to paragraph 13 of Schedule 2 to this Order the address for delivery of notices under the Order is to the Commissioner, Government House, Stanley, Falkland Islands.

Pursuant to section 9 of the Export Control Act 2002 ("the Act") in its application to South Georgia and the South Sandwich Islands under article 4 of and Schedule 3 to this Order, I notify that copies of guidance given or published by the Secretary of State for Trade and Industry under section 9 of the Act as it applies in the United Kingdom may be obtained on application from the Attorney General's Chambers, Thatcher Drive, Stanley, Falkland Islands. Alternatively it may be downloaded free of charge from the DTI Export Control Organisation website at www.dti.gov.uk/export.control/publications.htm. All such guidance shall be modified so that references to the UK will be read as references to South Georgia and the South Sandwich Islands and references to the Secretary of State will be read as references to the Commissioner.

Dated this third day of May 2005

H. Hall,
Acting Commissioner

2004 No. 3103

OVERSEAS TERRITORIES

Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004

Made - - - - 16th December 2004

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 16(5) of the Export Control Act 2002(a) is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows: —

Citation

1. This Order may be cited as the Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004.

Extent and interpretation

2.—(1) This Order shall extend to the territories listed in Schedule 1.

(2) In the application of this Order to any of the said territories —

- (a) the expression “the Territory” means that territory;
- (b) any reference to “the Governor” means the Governor or other officer administering the Government of that Territory; and
- (c) any reference to the official gazette of a Territory includes a reference to any form in which official information is normally made available in that Territory.

(3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in Schedule 2 or, as applicable, in Schedule 5.

Extension of Order to territories

3. The Trade in Controlled Goods (Embargoed Destinations) Order 2004(b) (the “UK Order”), as modified in Schedule 2, extends to the territories listed in Schedule 1.

(a) 2002 c. 28.

(b) S.I. 2004/318 as amended by S.I. 2004/1049 and 2004/2741.

Guidance about the exercise of functions under this Order

4. Section 9 of the Export Control Act 2002 (guidance about the exercise of functions under control orders), as modified in Schedule 3, extends to the territories listed in Schedule 1.

Modification of Schedule 4 (Embargoed Destinations)

5.—(1) Where any modification is made to the Schedule to the UK Order, whether before or after the coming into force of this Order in the territory, the Governor shall, by order published in the official gazette of the Territory, make the like modification to Schedule 4.

(2) An order under paragraph (1) may make transitional provisions in connection with any modification made by such order.

Application to the Sovereign Base Areas of Akrotiri and Dhekelia of provisions relating to penalties for offences and proceedings

6. Schedule 5 shall have effect for the application of articles 8, 9 and 10 of the UK Order, as modified in Schedule 2, to the Sovereign Base Areas of Akrotiri and Dhekelia.

Exercise of powers of the Governor

7. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla
Bermuda
Cayman Islands
Falkland Islands
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
Turks and Caicos Islands
Virgin Islands

**PROVISIONS OF THE TRADE IN CONTROLLED GOODS
(EMBARGOED DESTINATIONS) ORDER 2004 AS EXTENDED TO
THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1**

Commencement

1. This Order shall come into force in each Territory listed in Schedule 1 on such day as the Governor may by order, published in the official gazette of the Territory, appoint.

Interpretation

2.—(1) In this Order: —

“the Act” means the Export Control Act 2002(a);

“controlled goods” means goods used and unused, specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(b) as extended to certain territories by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004(c), the supply and delivery of which are prohibited by this Order. For the avoidance of doubt “controlled goods” does not include software and technology;

“country” includes territory;

“customs authorities” means the authorities which, under the law of the Territory, have responsibility for the control of imports and exports;

“embargoed destination” means a country listed in Schedule 4;

“goods in transit” means any controlled goods imported into the Territory for transit or transshipment; and

“United Kingdom person” means a United Kingdom national or a body incorporated or constituted under the law of the Territory, and, for the purposes of this definition, a United Kingdom national is an individual who is ordinarily resident in the Territory and is a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a person who under the British Nationality Act 1981(d) is a British subject or a British protected person within the meaning of that Act.

(2) Any reference in this Order to time after an event is a reference to a period of that length of time beginning on the day after that event.

CONTROLS ON TRADE IN CONTROLLED GOODS

Supply and delivery of controlled goods

3.—(1) Subject to the provisions of this Order, no person shall directly or indirectly —

(a) supply or deliver;

(b) agree to supply or deliver; or

(c) do any act calculated to promote the supply or delivery of,

any controlled goods to any person or place in an embargoed destination.

(a) 2002 c. 28.

(b) S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.

(c) S.I. 2004/3101.

(d) 1981 c. 61.

(2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly —

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of,

any controlled goods to any person or place in an embargoed destination.

(3) Sub-paragraph (1) applies to any act, or any part of any act, done in the Territory.

(4) Sub-paragraph (2) applies to any act, or any part of any act, done outside the Territory.

(5) Sub-paragraphs (1) and (2) do not apply to any controlled goods that are present in the Territory unless they are goods in transit.

(6) For the purposes of sub-paragraphs (1) and (2), controlled goods that are goods in transit shall be considered to be located in a place outside the Territory.

(7) Nothing in sub-paragraph (1) or (2) shall be taken to prohibit any activities authorised by a licence granted by the Governor under this Order or any other order made under the Act, provided that all the conditions attaching to the licence are complied with.

(8) Nothing in sub-paragraph (1)(b) or (c) or (2)(b) or (c) shall apply where the supply or delivery of the controlled goods to the person or place concerned is authorised by a licence granted by the Governor under this Order or any other order made under the Act.

LICENCES

Granting and revocation of licences etc.

4.—(1) The Governor may grant licences authorising any act that would otherwise be prohibited under this Order.

(2) Any licence granted by the Governor in pursuance of this Order may be —

- (a) either general or individual;
- (b) limited so as to expire on a specified date unless renewed; and
- (c) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised under that licence.

(3) Any licence granted under this Order shall be in writing and may be amended, suspended or revoked by the Governor at any time and in such circumstances and on such terms as he thinks fit by serving a notice to that effect on the holder of the licence.

Registration with the Governor

5.—(1) Not later than 30 days after any person first does any act under the authority of any general licence granted by the Governor that does not provide otherwise, that person shall give to the Governor written notice of his name and the address at which copies of the records referred to in paragraph 6(1) may be inspected by any person authorised by the Governor or the customs authorities under paragraph 6(4).

(2) A person who has given to the Governor written notice of particulars under sub-paragraph (1) shall, not later than 30 days after any change in those particulars, give to the Governor written notice of the changed particulars.

Record keeping and inspection

6.—(1) Any person who does any act under the authority of any general licence under this Order shall keep registers or records in accordance with this paragraph.

(2) The registers or records shall contain sufficient detail as may be necessary to allow the following information to be identified —

- (a) a description of the controlled goods that have been supplied or delivered, or for which arrangements for their supply or delivery have been made;
- (b) the date or the period of time over which the goods were supplied or delivered or activities relating to the supply or delivery of controlled goods were carried out;
- (c) the quantity of the controlled goods;
- (d) the name and address of the end-user of the controlled goods;
- (e) the name and address of the supplier of the controlled goods; and
- (f) any further information required to be kept by the Governor.

(3) The registers or records referred to in sub-paragraph (1) shall be kept for at least 4 years from the end of the calendar year in which the authorised act took place.

(4) The person referred to in sub-paragraph (1) shall permit any such records to be inspected and copied by any person authorised by the Governor or the customs authorities.

(5) Any person authorised by the Governor or the customs authorities shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any reasonable hour to enter for the purpose of sub-paragraph (4) the premises, the address of which has been most recently notified to the Governor under paragraph 5.

(6) Where the registers or records required to be maintained under this paragraph are kept in a form which is not legible the person required under sub-paragraph (1) to maintain such records shall at the request of the person authorised by the Governor or the customs authorities, as the case may be, reproduce such registers or records in a legible form.

Licence refusals etc. and appeals

7.—(1) In the event that the Governor decides not to grant a licence under this Order to any person who has applied for a licence, that person shall be provided with a written notification setting out the reason or reasons for the decision.

(2) In the event that the Governor decides to suspend a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) In the event that the Governor decides to revoke a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(4) Any person who has had a licence application refused under paragraph 4 or who has had a licence suspended or revoked under that paragraph shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Governor.

(5) Any appeal submitted under sub-paragraph (4) shall specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal.

(6) Pending determination of any appeal submitted under sub-paragraph (4), any decision taken by the Governor shall continue to have effect.

GENERAL

Offences and penalties

8.—(1) Any person who contravenes a prohibition or restriction in paragraph 3 shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or the equivalent.

(2) Any person who knowingly contravenes any prohibition or restriction in paragraph 3 shall be guilty of an offence and may be arrested.

(3) A person guilty of an offence under sub-paragraph (2) shall be liable —

- (a) on summary conviction to a fine not exceeding £5,000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both.

(4) No person shall be guilty of an offence under sub-paragraph (1) if he is able to show that he did not know, and had no reason to suppose, that the goods were destined for an embargoed destination.

(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) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(7) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

(8) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the 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 has not been obtained.

Misleading applications for licences etc.

9.—(1) Where for the purpose of obtaining a licence under this Order any person either —

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or
- (b) 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) A person guilty of an offence under sub-paragraph (1) shall be liable —

- (a) on summary conviction to a fine not exceeding £5,000 or the equivalent; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both,

and any licence which may have been granted by the Governor in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time it was granted.

Failure to comply with licence conditions

10.—(1) Subject to sub-paragraph (3), any person who —

- (a) has done any act under the authority of a licence granted by the Governor under this Order, and
- (b) fails to comply with —
 - (i) any conditions attaching to that licence;
 - (ii) any obligation under paragraph 5; or

- (iii) any obligation under paragraph 6,
- shall be guilty of an offence.
- (2) A person guilty of an offence under sub-paragraph (1) shall be liable —
 - (a) on summary conviction to a fine of not exceeding £5,000 or the equivalent; or
 - (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or both.
 - (3) No person shall be guilty of an offence under sub-paragraph (1) where —
 - (a) the licence condition in question had been previously modified by the Governor; and
 - (b) the alleged failure to comply would not have been a failure had the licence not been so modified; and
 - (c) the condition with which he failed to comply was modified by the Governor after the doing of the act authorised by the licence.

Application of customs and excise laws

11.—(1) It shall be the duty of the customs authorities to take such action as they consider appropriate to secure the enforcement of paragraphs 3, 9 and 10(1)(b)(i), or any obligation arising under paragraph 6 insofar as the obligation relates to the powers of the customs authorities.

(2) The provisions of the law of the Territory relating to proceedings for offences, mitigation of penalties, proof and other matters in respect of the import and export of goods apply in relation to offences and penalties under this Order, and proceedings for such offences, as they apply in relation to offences and penalties and proceedings for offences under those provisions.

(3) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the customs authorities by virtue of sub-paragraph (1) shall not be offences in respect of which under any law of the Territory relating to customs and excise proceedings may be taken only by, or by order of, the customs authorities.

Use and disclosure of information

12.—(1) This paragraph applies to information which is held by —

- (a) the Governor, or
- (b) the customs authorities,

in connection with the operation of controls imposed by this Order on activities which facilitate or are otherwise connected with the supply or delivery of controlled goods.

(2) Information to which this paragraph applies may be used for the purposes of, or for any purposes connected with —

- (a) the exercise of functions in relation to any control imposed by this Order or by any other order made under the Act;
- (b) giving effect to any European Community or other international obligation of the United Kingdom;
- (c) facilitating the exercise by an authority or international organisation outside the Territory of functions which correspond to functions conferred by or in connection with any activity subject to control by this Order or any other order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this paragraph unless the making of the disclosure is proportionate to the object of the disclosure.

(4) For the purposes of this paragraph “information” is any information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this paragraph shall be taken to affect any power to disclose information that exists apart from this paragraph.

(6) The information that may be disclosed by virtue of this paragraph includes information obtained before the commencement of this Order.

Service of Notices

13. Any notice to be given by any person under this Order may be given by an agent of that person and shall be sent by post or delivered to the Governor at an address to be specified in the official gazette of the Territory.

SCHEDULE 3

Article 4

SECTION 9 OF THE EXPORT CONTROL ACT 2002 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Section 9 of the Export Control Act 2002 extends to each of the territories listed in Schedule 1, modified as follows:

“9.—(1) This section applies to licensing powers and other functions conferred on any person by the Trade in Controlled Goods (Embargoed Destinations)(Overseas Territories) Order 2004 in the territories to which that Order extends.

(2) The Governor shall publish in such manner as he may think fit any guidance given and published (or treated as given and published) by the Secretary of State under this section as it applies in the United Kingdom relevant to the exercise of the powers and other functions to which this section applies in the Territory, with such exceptions and modifications as appear to the Governor to be appropriate.

(3) Any person exercising a licensing power or other function to which this section applies shall have regard to any guidance which relates to that power or other function.

(4) In the application of this section to any of the said territories, “the Territory” means that territory and “the Governor” means the Governor or other officer administering the Government of that territory.”.

SCHEDULE 4

Article 5

EMBARGOED DESTINATIONS

Armenia

Azerbaijan

Bosnia and Herzegovina

Burma (Myanmar)

Democratic Republic of the Congo

Iran

Ivory Coast (Côte d'Ivoire)

Sudan

SCHEDULE 5

Article 6

APPLICATION TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA OF PROVISIONS RELATING TO PENALTIES FOR OFFENCES AND PROCEEDINGS

1. Any person who commits an offence under paragraph 8(1) of Schedule 2 shall be guilty of a misdemeanour and liable on conviction to a fine not exceeding £5,000 or the equivalent.

2. Any person who commits an offence under paragraph 8(2) of Schedule 2 shall be liable on conviction —

(1) if tried on information before the Senior Judge's Court, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both;

(2) if tried before the Judge's Court, to a fine not exceeding £5,000 or the equivalent, or to imprisonment for a term not exceeding six months, or to both.

3. Any person who commits an offence under paragraph 9(1) or 10(1) of Schedule 2 shall be guilty of a misdemeanour and liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both.

4. Where a 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

5. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

6. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

7. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the 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 has not been obtained.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Export Control Act 2002 (the Act), extends with modifications the Trade in Controlled Goods (Embargoed Destinations) Order 2004 (S.I. 2004/318 as amended by S.I. 2004/1049 and 2004/2741) (the UK Order) to the territories listed in Schedule 1. It prohibits trade in certain goods between any overseas country and the embargoed destinations listed in Schedule 4. In this Order, these goods are referred to as "controlled goods", and are found in part 1 of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764, as amended by S.I. 2004/1049, 2004/2561 and 2004/2741) as extended to the overseas territories by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004 (SI

2004/3101). The controls in this Order do not apply to software and technology or to activities connected to trade in controlled goods that are situated in a territory to which it applies (with the exception of goods in transit via the territory).

In relation to controlled goods, paragraph 3 of Schedule 2 prohibits any person within a listed territory, or a United Kingdom person (as defined in the Order) elsewhere, from supplying or delivering, agreeing to supply or deliver, or doing any act calculated to promote the supply or delivery of, controlled goods to any embargoed destination listed in Schedule 4, without a licence from the Governor (or a licence granted under any other order made under the Act).

The remaining paragraphs in Schedule 2 do the following:

Paragraphs 4-7 provide for the issuing and revocation of licences granted by the Governor, registration, record keeping and inspection and licence refusals and appeals;

Paragraphs 8-11 provide for offences, enforcement and penalties for the breach of the controls;

Paragraph 12 sets out the purposes for which information obtained by the Governor or customs authorities of a territory can be disclosed; and

Paragraph 13 states the address where notices are to be sent.

Schedule 3 extends with modifications the provisions of section 9 of the Export Control Act 2002 to the territories listed in Schedule 1.

Schedule 4 sets out the embargoed destinations under this Order, and article 5 provides for the Governor to make modifications to Schedule 4 in the event of modifications to the Schedule to the UK Order.

Schedule 5 provides for offences, enforcement and penalties for the breach of the controls in Schedule 2 in respect of the Sovereign Base Areas of Akrotiri and Dhekelia.

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**THE
SOUTH GEORGIA
AND THE
SOUTH SANDWICH ISLANDS GAZETTE**

PUBLISHED BY AUTHORITY

No. 3

13th May 2005

The following are published in this Gazette -

**The Ivory Coast (Restrictive Measures) (Overseas Territories) Order 2005,
(2005 No. 242);**

The Chemical Weapons (Overseas Territories) Order 2005, (2005 No. 854);

STATUTORY INSTRUMENTS

2005 No. 242

OVERSEAS TERRITORIES

The Ivory Coast (Restrictive Measures) (Overseas Territories) Order 2005

<i>Made</i>	<i>9th February 2005</i>
<i>Laid before Parliament</i>	<i>10th February 2005</i>
<i>Coming into force</i>	<i>11th February 2005</i>

At the Court at Buckingham Palace, the 9th day of February 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 112 of the Saint Helena Act 1833(a), the British Settlements Acts 1887 and 1945(b), and of all other powers enabling Her in that behalf, 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 Ivory Coast (Restrictive Measures) (Overseas Territories) Order 2005 and shall come into force on 11th February 2005.

(2) This Order shall extend to the territories listed in Schedule 1.

(3) Article 19 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(4) In the application of this Order to any of the said territories, the expression "the Territory" in this Order means that territory, and references to the official gazette of a Territory include a reference to any form in which official information is normally made available in that Territory.

(5) Articles 3, 4, 5, 7, 8 and 9 shall apply to any person within the Territory and any person elsewhere who is -

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

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

(a) 1833 c.85.

(b) 1887 c.54 and 1945 c.7.

2. - (1) In this Order the following expressions have the meanings hereby respectively assigned to them, that is to say -

"aircraft" means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

"assistance" means any form of assistance including technical assistance, services, financing and financial assistance;

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

"designated person" means an individual, designated by the Committee established pursuant to paragraph 14 of resolution 1572 (2004) adopted by the Security Council of the United Nations on 15 November 2004, as constituting a threat to the peace and national reconciliation process in Côte d'Ivoire for the purposes 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;

"export" includes "shipment" as "stores";

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

"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 derivatives 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;;

"Governor" means the Governor or other officer administering the Government of the Territory;

"Ivory Coast" means the Republic of Côte d'Ivoire;

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

"operator", in relation to an "aircraft" or "vehicle", means the person for the time being having the management of the "aircraft" or "vehicle";

"owner", in relation to a "ship", where the owner is not the "operator", means the "operator" and any person to whom it is chartered;

"relevant institution" means -

(a) the person or body responsible for carrying out in the Territory the functions of a monetary authority;

(b) any person who may lawfully accept deposits in or from within the Territory by way of business; and

(c) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

"restricted goods" means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(a) made under the Export Control Act 2002(b), as extended to the territories listed in Schedule 1 thereto by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004(c), and equipment that might be used for internal repression as listed in Schedule 3;

"ship" includes every description of vessel used in navigation;

"shipment" includes loading into an "aircraft";

"stores" means goods for use in a "ship" or "aircraft" and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a "ship" or "aircraft" as merchandise for sale by retail to persons carried therein; and

"vehicle" means a land transport vehicle.

(2) For the purpose of the definition of "relevant institution" in paragraph (1) -

(a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000(d); and

(b) a person is not regarded as accepting deposits by way of business if -

(i) he does not hold himself out as accepting deposits on a day to day basis, and

(ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(c) In determining for the purposes of sub-paragraph (b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(3) For the purposes of identifying "designated persons" referred to in paragraph (1), the Governor shall cause a notice containing the names and other particulars of such designated persons to be published in the official gazette of the Territory as necessary from time to time.

RESTRICTED GOODS, ASSISTANCE AND TRAINING

Supply of restricted goods

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

(a) supplies or delivers;

(b) agrees to supply or deliver; or

(c) does any act calculated to promote the supply or delivery of,

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

(a) S.I. 2003/2764 as amended by S.I. 2004/1050, 20045/2561 and 2004/2741.

(b) 2002 c.28.

(c) S.I. 2004/3101.

(d) 2002 c.8.

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

Exportation of restricted goods to Ivory Coast

4. - (1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Ivory Coast or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Ivory Coast.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) above and of an offence under article 3(1), he shall not be guilty of the offence under paragraph (3) above.

Provision of assistance, advice or training related to military activities and provision, manufacture, maintenance or use of restricted goods

5. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person, entity or body in, or for use in, Ivory Coast any assistance, advice or training related to military activities or to the provision, manufacture, maintenance or use of restricted goods shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person, entity or body in, or for use in, Ivory Coast.

Use of ships, aircraft and vehicles: restricted goods

6. - (1) Without prejudice to the generality of article 3, and except under the authority of a licence granted by the Governor under article 3 or 4, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Ivory Coast to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is -

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

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

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

(a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

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

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Territory of the goods concerned to Ivory Coast was authorised by a licence granted by the Governor under article 3 or 4.

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

MAKING FUNDS AVAILABLE AND FREEZING OF FUNDS

Making funds available to designated persons

7. Any person who, except under the authority of a licence granted by the Governor under this article, makes any funds available to or for the benefit of any designated person or any person acting on behalf of a designated person shall be guilty of an offence under this Order.

Freezing of funds

8. - (1) Where the Governor has 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 Governor 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 Governor under article 7.

(2) A direction 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 Governor may by notice revoke a direction given under paragraph (1) at any time.

(4) The expiry or revocation of a direction shall not affect the application of article 7 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 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 direction has been given under paragraph (1), any person by, for or on behalf of whom those funds are held may apply to the Supreme Court 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 Governor (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 article 7 or 8(9)

9. 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 7 or 8(9) is guilty of an offence under this Order.

Failure to disclose knowledge or suspicion of measures

10. - (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 7, 8(9), 9 or 17(2); and

(b) it does not disclose to the Governor 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 Governor -

(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 7, 8(9), 9 or 17(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.

CUSTOMS POWERS AND INVESTIGATIONS

Customs powers to demand evidence of destination which goods reach

11. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as the Governor may allow proof to the Governor's satisfaction that the goods have reached either -

(a) a destination to which they were authorised to be exported by a licence granted under this Order; or

(b) a destination to which their exportation was not prohibited by this Order,

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

Declaration as to goods: powers of search

12. - (1) Any person who is about to leave the Territory shall, if he is required to do so by an officer authorised for the purpose by the Governor -

(a) declare whether or not he has with him any restricted goods which are destined for Ivory Coast or for delivery, directly or indirectly, to or to the order of any person in Ivory Coast; and

(b) produce any such goods as aforesaid which he has with him.

(2) Any such officer, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid, provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

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

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

Investigation, etc. of suspected ships

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

(a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 6, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either -

(a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or

(b) to request the master of the ship to take any one or more of the following steps -

(i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;

(ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;

(iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and

(iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 16(3), where -

(a) a master refuses or fails to comply with a request made under paragraph (2)(b); or

(b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

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

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

(5) In this article "authorised officer" means -

(a) any commissioned naval or military officer;

(b) any British consular officer;

(c) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

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

(a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) if the aircraft is then in the Territory, any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, the operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 16(3), where an authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and upon that aircraft;

(b) detain, or authorise the detention of, that aircraft and any of its cargo; and

(c) use, or authorise the use of, reasonable force.

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

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

15. - (1) Where any authorised person has reason to suspect that any vehicle in the Territory has been or is being or is about to be used in contravention of paragraph (1) of article 6 -

(a) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify;

(c) any authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the Territory until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 16(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

(a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;

(b) detain, or authorise the detention of, that vehicle and any goods contained in it; and

(c) use, or authorise the use of, reasonable force.

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

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 13 to 15

16. - (1) No information furnished or document produced by any person in pursuance of a request made under article 13, 14 or 15 shall be disclosed except -

(a) with the consent of the person by whom the information was furnished or the document was produced, provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this 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 article 13, 14 or 15 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; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, 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 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 Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

(2) Any power conferred by article 13, 14 or 15 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say -

(a) a master of a ship who disobeys any direction given under article 13(2)(a);

(b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who -

(i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 13, 14 or 15 by any person empowered to make it, or

(ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular, to such a person in response to such a request;

(c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 13, 14 or 15.

(4) Nothing in articles 13 to 15 or this article shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

GENERAL

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

17. - (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 Governor 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.

Obtaining of evidence and information

18. Schedule 4 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor -

(a) of evidence and information for the purpose of securing compliance with or detecting evasion of -

(i) this Order in the Territory; 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, any of the Channel Islands or the Isle of Man or any British overseas territory; and

(b) of evidence of the commission of -

(i) in the Territory, 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 the matters regulated by this Order, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any British overseas territory.

Penalties and proceedings

19. - (1) Any person guilty of an offence under article 3(1), 4(3), 5, 6(3), 7, 8(9), 9 or 11 shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine of any amount or to both; or

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 16(3)(b)(ii) or paragraph 5(b) or 5(d) of Schedule 4 shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of any amount or to both; or

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 8(10), 10(1), 12(4), 17(1) or 17(2) shall be liable -

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of any amount or to both;

(b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 16(3)(a), 16(3)(b)(i), 16(3)(c), or paragraph 5(a) or 5(c) of Schedule 4 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Any person guilty of an offence under article 12(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(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) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be commenced at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

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

(9) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions; but 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 Governor

20. - (1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority under Schedule 4 to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor 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 at any time by written notice given by the Governor to each recipient of the licence.

(3) 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.

(4) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in this Order.

Miscellaneous

21. - (1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St. Helena and Dependencies
South Georgia and South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 1(3)

APPLICATION OF ARTICLE 19 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA

1. Any person who commits an offence under article 3(1), 4(3), 5, 6(3), 7, 8(9), 9 or 11 shall be liable on conviction -

(a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine of any amount, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under 16(3)(b)(ii), or paragraph 5(b) or 5(d) of Schedule 4, shall be liable on conviction -

(a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

3. Any person who commits an offence under article 8(10), 10(1), 12(4), 17(1) or 17(2) is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both.

4. Any person who commits an offence under article 16(3)(a), 16(3)(b)(i) or 16(3)(c), or paragraph 5(a) or 5(c) of Schedule 4, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

5. Any person who commits an offence under article 12(3) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

6. Where a 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. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

8. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

9. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but 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.

SCHEDULE 3

Article 2(1)

EQUIPMENT THAT MIGHT BE USED FOR INTERNAL REPRESSION

1. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.

2. Specially designed fingerprint equipment.

3. Power controlled searchlights.

4. Construction equipment provided with ballistic protection.

5. Hunting knives.
6. Specially designed production equipment to make shotguns.
7. Ammunition hand-loading equipment.
8. Communications intercept devices.
9. Solid-state optical detectors.
10. Image-intensifier tubes.
11. Telescopic weapon sights.
12. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:
 - (1) signal pistols;
 - (2) air- and cartridge-powered guns designed as industrial tools or humane animal stunners.
13. Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.
14. Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.
15. Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.
16. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.
17. Water cannon and specially designed or modified components therefor.
18. Vehicles equipped with a water cannon.
19. Vehicles specially designed or modified to be electrified to repel boarders and components therefor specially designed or modified for that purpose.
20. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.
21. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:
 - (1) handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.
22. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.
23. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shock batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.
24. Electronic equipment capable of detecting concealed explosives and specially designed components therefor;

except:

(1) TV or X-ray inspection equipment.

25. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.

26. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:

(1) those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflators, electric-surge arresters or fire sprinkler actuators).

27. Equipment and devices designed for explosive ordnance disposal; except:

(1) bomb blankets;

(2) containers designed for folding objects known to be, or suspected of being improvised explosive devices.

28. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.

29. Software specially designed and technology required for all listed items.

30. Linear cutting explosive charges.

31. Explosives and related substances as follows:

(1) amatol,

(2) nitrocellulose (containing more than 12,5 % nitrogen),

(3) nitroglycol,

(4) pentaerythritol tetranitrate (PETN),

(5) picryl chloride,

(6) tinitorphenylmethylnitramine (tetryl),

(7) 2,4,6-trinitrotoluene (TNT)

32. Software specially designed and technology required for all listed items.

SCHEDULE 4

Article 18

EVIDENCE AND INFORMATION

1. - (1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce to him any document in his possession or control, which 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 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 5(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. - (1) If any justice of the peace is satisfied by information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case -

(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 police officer or constable, together with any other persons named in the warrant and any other police officers or 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) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) 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 police officer or constable 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;

but 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.

(7) In the application of this paragraph to the Sovereign Base Areas of Akrotiri and Dhekelia any reference to a justice of the peace includes a reference to a judge or associate judge.

3. A person authorised by the Governor 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 or extract made of any document produced) by any person in pursuance of a request made under 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 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 States of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, 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 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 Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or

(ii) for any offence under 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.

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 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 applies to each of the territories specified in Schedule 1. This instrument gives effect to certain measures in resolution 1572 adopted by the Security Council of the United Nations on 15 November 2004, as implemented in the EU. UNSCR 1572 (2004) amongst other things imposes an arms embargo, with certain exemptions, on Ivory Coast with immediate effect; and provided for an assets freeze and travel ban against certain persons to come into effect on 15 December 2004. The targeted persons will be those designated by the Sanctions Committee as constituting a threat to the peace and national reconciliation process in Ivory Coast. These measures are implemented in the EU by Common Position CSFP/852/2004 adopted on 13 December 2004, which extends the arms embargo to equipment which might be used for internal repression and bans financial assistance related to military activities subject to the embargo. Aspects of the sanctions falling within Community competence will be implemented in two EC Regulations.

STATUTORY INSTRUMENTS

2005 No. 854

CHEMICAL WEAPONS

The Chemical Weapons (Overseas Territories) Order 2005

<i>Made</i>	<i>22nd March 2005</i>
<i>Coming into force</i>	<i>22nd April 2005</i>

At the Court at Buckingham Palace, the 22nd day of March 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 39(3) of the Chemical Weapons Act 1996(a) and section 57 of the Anti-terrorism, Crime and Security Act 2001(b), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows -

Citation and commencement

1. This Order may be cited as the Chemical Weapons (Overseas Territories) Order 2005 and shall come into force on 22nd April 2005.

Extent and construction

2. - (1) The provisions of the Chemical Weapons Act 1996, excepted, adapted and modified as in Schedule 1 to this Order, shall extend to the territories listed in Schedule 3 to this Order.

(2) The provisions of the Chemical Weapons Act 1996, as so excepted, adapted and modified, shall -

(a) in their application to the British Antarctic Territory and the British Indian Ocean Territory, be subject to the further exceptions, adaptations and modifications set out in Schedule 4 to this Order;

(b) in their application to Pitcairn, Henderson, Ducie and Oeno Islands, be subject to the further adaptations and modifications set out in Schedule 5 to this Order;

(c) in their application to Bermuda, be subject to the further adaptations and modifications set out in Schedule 6 to this Order;

(d) in their application to the Turks and Caicos Islands, be subject to the further adaptations and modifications set out in Schedule 7 to this Order;

(e) in their application to the Sovereign Base Areas of Akrotiri and Dhekelia, be subject to the further exceptions, adaptations and modifications set out in Schedule 8 to this Order.

(a) 1996 c.6.

(b) 2001 c.24.

3. - (1) Sections 50 to 56 of the Anti-terrorism, Crime and Security Act 2001, excepted and modified as in Schedule 2 to this Order, shall extend to the territories listed in Schedule 3 to this Order.

(2) Sections 50 to 56 of the Anti-terrorism, Crime and Security Act 2001, as so excepted and modified, shall -

(a) in their application to the British Antarctic Territory and the British Indian Ocean Territory, be subject to the further modification set out in Schedule 4A to this Order;

(b) in their application to Pitcairn, Henderson, Ducie and Oeno Islands, be subject to the further modification set out in Schedule 5A to this Order;

(c) in their application to the Sovereign Base Areas of Akrotiri and Dhekelia, be subject to the further modification set out in Schedule 8A to this Order.

Interpretation

4. - (1) Except as otherwise provided, in the application of each Act to any of the territories to which it is extended, the expression "the Territory" means that territory.

(2) In each Act, "Governor" means the Governor or other officer administering the government of the Territory.

(3) In each Act, "justice of the peace" means a justice of the peace or a magistrate.

(4) In each Act, "Attorney General" means the Attorney General of the Territory or, in his absence, any other person for the time being discharging his functions.

A.K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2

PROVISIONS OF THE CHEMICAL WEAPONS ACT 1996 AS EXCEPTED, ADAPTED AND MODIFIED AND EXTENDED TO THE TERRITORIES LISTED IN SCHEDULE 3

Introduction

General interpretation

1. - (1) Chemical weapons are -

(a) toxic chemicals and their precursors;

(b) munitions and other devices designed to cause death or harm through the toxic properties of toxic chemicals released by them;

(c) equipment designed for use in connection with munitions and devices falling within paragraph (b).

(2) Subsection (1) is subject to sections 2(2) and (3), 10(1) and 11(2) (by virtue of which an object is not a chemical weapon if the use or intended use is only for permitted purposes).

(3) Permitted purposes are -

- (a) peaceful purposes;
- (b) purposes related to protection against toxic chemicals;
- (c) legitimate military purposes;
- (d) purposes of enforcing the law.

(4) Legitimate military purposes are all military purposes except those which depend on the use of the toxic properties of chemicals as a method of warfare in circumstances where the main object is to cause death, permanent harm or temporary incapacity to humans or animals.

(5) A toxic chemical is a chemical which through its chemical action on life processes can cause death, permanent harm or temporary incapacity to humans or animals; and the origin, method of production and place of production are immaterial.

(6) A precursor is a chemical reactant which takes part at any stage in the production (by whatever method) of a toxic chemical.

(7) References to an object include references to a substance.

(8) The Convention is the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed at Paris on 13 to 15 January 1993(a).

(9) This section applies for the purposes of this Act.

Chemical Weapons

Use etc of chemical weapons

2. - (1) No person shall -

- (a) use a chemical weapon;
- (b) develop or produce a chemical weapon;
- (c) have a chemical weapon in his possession;
- (d) participate in the transfer of a chemical weapon;
- (e) engage in military preparations, or in preparations of a military nature, intending to use a chemical weapon.

(2) For the purposes of subsection (1)(a) an object is not a chemical weapon if the person uses the object for permitted purposes; and in deciding whether permitted purposes are intended the types and quantities of objects shall be taken into account.

(3) For the purposes of subsection (1)(b), (c), (d) or (e) an object is not a chemical weapon if the person does the act there mentioned with the intention that the object will be used only for permitted purposes; and in deciding whether permitted purposes are intended the types and quantities of objects shall be taken into account.

(a) Miscellaneous No.21 (1993) Cm.2331.

- (4) For the purposes of subsection (1)(d) a person participates in the transfer of an object if -
- (a) he acquires or disposes of the object or enters into a contract to acquire or dispose of it, or
 - (b) he makes arrangements under which another person acquires or disposes of the object or another person enters into a contract to acquire or dispose of it.
- (5) For the purposes of subsection (4) -
- (a) to acquire an object is to buy it, hire it, borrow it or accept it as a gift;
 - (b) to dispose of an object is to sell it, let it on hire, lend it or give it.
- (6) In proceedings for an offence under subsection (1)(a), (c) or (d) relating to an object it is a defence for the accused to prove -
- (a) that he neither knew nor suspected nor had reason to suspect that the object was a chemical weapon, or
 - (b) that he knew or suspected it to be a chemical weapon and as soon as reasonably practicable after he first so knew or suspected he took all reasonable steps to inform the Governor or a police officer of his knowledge or suspicion.
- (7) Nothing in subsection (6) prejudices any defence which it is open to a person charged with an offence under this section to raise apart from that subsection.
- (8) A person contravening this section is guilty of an offence and liable on conviction on indictment to imprisonment for life.

Application of section 2

3. - (1) Section 2 applies to acts done in the Territory or elsewhere.
- (2) So far as it applies to acts done outside the Territory, section 2 applies to United Kingdom nationals, and bodies incorporated under the law of the Territory.
- (3) For the purposes of this section a United Kingdom national is an individual who is -
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981(a) is a British subject, or
 - (c) a British protected person within the meaning of that Act.
- (4) Proceedings for an offence committed under section 2 outside the Territory may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the Territory.

Suspicious objects

4. - (1) If -
- (a) the Governor has grounds to suspect that an object is a chemical weapon, and

(a) 1981 c.61.

(b) at least one person falls within subsection (2),

the Governor may serve on any person falling within that subsection a copy of a notice falling within subsection (3).

(2) The persons falling within this subsection are -

(a) any person who appears to the Governor to have the object in his possession, and

(b) any person not falling within paragraph (a) and who appears to the Governor to have an interest which the Governor believes is materially affected by the notice.

(3) A notice falling within this subsection is a notice which -

(a) describes the object and states its location;

(b) states that the Governor suspects that the object is a chemical weapon and gives the reasons for his suspicion;

(c) states that he is considering whether to secure its destruction under sections 5 to 7;

(d) states that any person may make representations that the object is not a chemical weapon;

(e) states that a person on whom the notice is served and who has the object in his possession must not relinquish possession before a date specified in the notice.

Power to remove or immobilise objects

5. - (1) If the Governor has reasonable cause to believe that -

(a) an object is on premises to which the public has access or which are occupied by a person who consents to action being taken under this subsection, and

(b) the object is a chemical weapon,

the Governor may authorise a person to enter the premises and to search them.

(2) If a justice of the peace is satisfied on information on oath that there is reasonable cause to believe that an object is on premises (of whatever nature) and that it is a chemical weapon, he may issue a warrant in writing authorising a person acting under the authority of the Governor to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(3) A person who acts under an authorisation given under subsection (1) or (2) may take with him such other persons and such equipment as appear to him to be necessary.

(4) If a person enters premises under an authorisation given under subsection (1) or (2) and the object is found there he may make the object safe and -

(a) he may seize and remove it if it is reasonably practicable to do so, or

(b) he may in any other case affix a warning to the object or to something in a conspicuous position

near the object, stating that the object is not to be moved or interfered with before a date specified in the warning.

(5) For the purposes of subsection (4) an object is made safe if, without being destroyed, it is prevented from being an immediate danger (as where a fuse is neutralised or the object is smothered in foam).

(6) The powers conferred on an authorised person under this section shall only be exercisable, if the authorisation under subsection (1) or the warrant so provides, in the presence of a police officer.

(7) This section applies whether or not any copy of a notice has been served under section 4.

Power to destroy removed objects

6. - (1) This section applies if an object is removed from premises under section 5, and for the purposes of this section -

(a) the first six-month period is the period of six months beginning with the day after the removal;

(b) the second six-month period is the period of six months beginning with the day after the first six-month period ends.

(2) If at any time in the second six-month period the Governor decides that the object should be destroyed he may authorise a person to destroy it; but this is subject to subsections (3) to (5).

(3) If at any time in the first six-month period -

(a) any person appears to the Governor to have had the object in his possession immediately before its removal, or

(b) any person not falling within paragraph (a) appears to the Governor to have an interest which the Governor believes would be materially affected by the object's destruction,

the Governor must serve on such a person a copy of a notice falling within subsection (4).

(4) A notice falling within this subsection is a notice which -

(a) describes the object and states its location;

(b) states that the Governor proposes to secure its destruction and gives the reasons for his proposal;

(c) states that the person on whom the copy of the notice is served may object to the Governor's proposal;

(d) states that an objection (if made) must be made in writing to the Governor before such date as is specified in the notice and must state why the object should not be destroyed.

(5) Before he reaches a decision under subsection (2) the Governor must -

(a) allow any person on whom a copy of a notice has been served under subsection (3) time to respond, and

(b) take into account any objections to the object's proposed destruction (whether made in response to a notice or otherwise).

(6) If an object is removed from premises under section 5 and destroyed under this section the Governor may recover from a responsible person any costs reasonably incurred by the Governor in connection with the removal and destruction; and a responsible person is any person who had possession of the object immediately before its removal.

(7) If -

- (a) an object is removed from premises under section 5,
- (b) at the end of the second six-month period the Governor has not authorised the destruction of the object, and
- (c) a person had possession of the object immediately before its removal,

the Governor must return the object to the person mentioned in paragraph (c) or, if there is more than one, to such of them as the Governor thinks appropriate.

Power to enter premises and destroy objects

7. - (1) This section applies if a warning has been affixed under section 5, and for the purposes of this section -

- (a) the first six-month period is the period of six months beginning with the day after the warning was affixed;
- (b) the second six-month period is the period of six months beginning with the day after the first six-month period ends.

(2) If at any time in the second six-month period the Governor decides that the object should be destroyed it may be destroyed as provided by subsections (6) to (9); but this is subject to subsections (3) to (5).

(3) If at any time in the first six-month period -

- (a) any person appears to the Governor to have had the object in his possession immediately before the warning was affixed, or
- (b) any person not falling within paragraph (a) appears to the Governor to have an interest which the Governor believes would be materially affected by the object's destruction,

the Governor must serve on such a person a copy of a notice falling within subsection (4).

(4) A notice falling within this subsection is a notice which -

- (a) describes the object and states its location;
- (b) states that the Governor proposes to secure its destruction and gives the reasons for his proposal;
- (c) states that the person on whom the copy of the notice is served may object to the Governor's proposal;
- (d) states that an objection (if made) must be made in writing to the Governor before such date as is specified in the notice and must state why the object should not be destroyed.

(5) Before he reaches a decision under subsection (2) the Governor must –

(a) allow any person on whom a copy of a notice has been served under subsection (3) time to respond, and

(b) take into account any objections to the object's proposed destruction (whether made in response to a notice or otherwise).

(6) If -

(a) at any time in the second six-month period the Governor decides that the object should be destroyed, and

(b) the object is on premises to which the public has access or which are occupied by a person who consents to action being taken under this subsection,

the Governor may authorise a person to enter the premises and to destroy the object if it is found there.

(7) If (whatever the nature of the premises concerned) a justice of the peace is satisfied on information on oath that a warning has been affixed under section 5, and that the Governor has decided at any time in the second six-month period that the object should be destroyed, he may issue a warrant in writing authorising a person acting under the authority of the Governor to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to destroy the object if it is found there.

(8) A person who acts under an authorisation given under subsection (6) or (7) may take with him such other persons and such equipment as appear to him to be necessary.

(9) The powers conferred on an authorised person under this section shall only be exercisable, if the authorisation under subsection (6) or the warrant so provides, in the presence of a police officer.

(10) Where an object is destroyed under this section the Governor may recover from a responsible person any costs reasonably incurred by the Governor in connection with the destruction; and a responsible person is any person who had possession of the object immediately before the warning was affixed under section 5.

Compensation for destruction

8. - (1) This section applies if a person claims that -

(a) an object has been destroyed under section 6 or 7,

(b) he had an interest which was materially affected by the destruction and he sustained loss as a result, and

(c) no copy of a notice was served on him under the section concerned (whether or not one was served on any other person).

(2) If the person concerned makes an application under this section to the supreme court of the Territory, and the court finds that his claim is justified, the court may order the Governor to pay to the applicant such amount (if any) by way of compensation as the court considers just.

(3) If the court believes that the object would have been destroyed even if a copy of a notice had been

served on the applicant under the section concerned the court must not order compensation to be paid under this section.

Offences relating to destruction etc

9. - (1) If -

- (a) a copy of a notice is served on a person under section 4,
- (b) the notice relates to an object in his possession at the time the copy is served,
- (c) he relinquishes possession before the date specified under section 4(3)(e), and
- (d) he has no reasonable excuse for so relinquishing possession, he is guilty of an offence.

(2) If a person wilfully obstructs a person in -

- (a) entering or searching premises under an authorisation given under section 5(1) or (2) or 7(6) or (7),
- (b) making an object safe, seizing or removing an object, or affixing a warning, under section 5(4),
- (c) destroying an object under an authorisation given under section 6(2) or 7(6) or (7), or
- (d) attempting to do anything mentioned in paragraphs (a) to (c),

the person so obstructing is guilty of an offence.

(3) If -

- (a) a warning is affixed under section 5(4),
- (b) a person interferes with the warning, or moves or interferes with the object before the date specified in the warning, and
- (c) he has no reasonable excuse for doing so,

he is guilty of an offence.

(4) A person guilty of an offence under any of the preceding provisions of this section is liable -

- (a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;
- (b) on conviction on indictment, to a fine.

(5) A person who knowingly makes a false or misleading statement in response to a copy of a notice served under section 4, 6 or 7 is guilty of an offence and liable -

- (a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Destruction etc: supplementary

10. - (1) If an object is in the possession of a person who intends that it will be used only for permitted purposes, it is not a chemical weapon for the purposes of sections 4(1) and (3) and 5(1) and (2); and in deciding whether permitted purposes are intended the types and quantities of objects shall be taken into account.

(2) For the purposes of sections 4 to 9 -

(a) to the extent that an object consists of a toxic chemical or precursor, it is destroyed if it is permanently prevented from being used other than for permitted purposes;

(b) to the extent that an object consists of a munition or other device designed to cause death or harm through toxic chemicals released by it, it is destroyed if it is permanently prevented from doing so;

(c) to the extent that an object consists of equipment designed for use in connection with a munition or other device, it is destroyed if it is permanently prevented from being so used.

(3) In sections 5 to 9 "premises" includes land (including buildings), moveable structures, vehicles, vessels, aircraft and hovercraft.

(4) Nothing in sections 4 to 7 affects any power arising otherwise than by virtue of those sections (such as a power to dispose of property in police possession in connection with the investigation of a suspected offence).

Premises for producing chemical weapons etc

Premises or equipment for producing chemical weapons

11. - (1) No person shall -

(a) construct premises he intends to be used to produce chemical weapons;

(b) alter premises in circumstances where he intends that they will be used to produce chemical weapons;

(c) install or construct equipment he intends to be used to produce chemical weapons;

(d) alter equipment in circumstances where he intends that it will be used to produce chemical weapons;

(e) permit the construction on land he occupies of premises he intends to be used to produce chemical weapons;

(f) permit premises on land he occupies to be altered in circumstances where he intends that they will be used to produce chemical weapons;

(g) permit the installation or construction on land he occupies of equipment he intends to be used to produce chemical weapons;

(h) permit equipment on land he occupies to be altered in circumstances where he intends that it will be used to produce chemical weapons.

(2) For the purposes of subsection (1) an object is not a chemical weapon if the person intends that the object will be used only for permitted purposes; and in deciding whether permitted purposes are intended

the types and quantities of objects shall be taken into account.

(3) A person contravening this section is guilty of an offence and liable on conviction on indictment to imprisonment for life.

Suspicious equipment or buildings

12. - (1) If -

(a) the Governor has grounds to suspect that any equipment or building is a chemical weapons production facility, and

(b) at least one person falls within subsection (2),

the Governor may serve on any person falling within that subsection a copy of a notice falling within subsection (3).

(2) The persons falling within this subsection are -

(a) any person who appears to the Governor to occupy the land on which the equipment or building is situated,

(b) if the Governor's suspicion relates to equipment, any person not falling within paragraph (a) and who appears to the Governor to have the equipment in his possession, and

(c) any person not falling within paragraph (a) or (b) and who appears to the Governor to have an interest which the Governor believes is materially affected by the notice.

(3) A notice falling within this subsection is a notice which -

(a) describes the equipment or building and states its location;

(b) states that the Governor suspects that the equipment or building is a chemical weapons production facility and gives the reasons for his suspicion;

(c) states that he is considering whether to require the equipment or building to be destroyed or altered;

(d) states that any person may make representations that the equipment or building is not a chemical weapons production facility.

(4) If the notice relates to equipment it must state that a person on whom the notice is served and who has the equipment in his possession must not relinquish possession of or alter or use, the equipment before a date specified in the notice.

Notice requiring destruction or alteration

13. - (1) If -

(a) the Governor has reasonable cause to believe that any equipment or building is a chemical weapons production facility, and

(b) at least one person falls within subsection (2),

the Governor may serve on each person falling within that subsection a copy of a notice falling within subsection (3).

(2) The persons falling within this subsection are -

- (a) any person who appears to the Governor to occupy the land on which the equipment or building situated,
- (b) if the Governor's belief relates to equipment, any person not falling within paragraph (a) and who appears to the Governor to have the equipment in his possession, and
- (c) any person not falling within paragraph (a) or (b) and who appears to the Governor to have an interest which the Governor believes would be materially affected by the destruction or alteration of the equipment or building.

(3) A notice falling within this subsection is a notice which -

- (a) describes the equipment or building and states its location;
- (b) states that the Governor believes the equipment or building is a chemical weapons production facility;
- (c) requires the equipment or building to be destroyed or altered (as the case may be) in a manner, and before a date, specified in the notice.

(4) If a notice under this section requires any equipment or building to be altered, a further notice under this section may -

- (a) revoke the first notice, and
- (b) require the equipment or building to be destroyed;

and the preceding provisions of this section shall apply to the further notice accordingly.

(5) This section applies whether or not any copy of a notice has been served under section 12.

Power where notice not complied with

14. - (1) For the purposes of this section the qualifying condition is that -

- (a) a notice has been prepared under section 13,
- (b) the provisions of section 13(1) to (3) have been complied with in relation to the notice,
- (c) the notice has not been revoked, and
- (d) any requirement set out in the notice has not been complied with.

(2) If a justice of the peace is satisfied on information on oath that the qualifying condition is fulfilled he may issue a warrant in writing authorising a person acting under the authority of the Governor to take remedial action under this section.

(3) If a person is authorised by a warrant to take remedial action under this section he may -

- (a) enter the land on which the equipment or building is situated, if necessary by force;
 - (b) do whatever is required to secure that the equipment or building is destroyed or altered in a manner specified in the notice;
 - (c) take with him such other persons and such equipment as appear to him to be necessary to help him to exercise the powers mentioned in paragraphs (a) and (b).
- (4) The powers conferred on an authorised person under this section shall only be exercisable, if the warrant so provides, in the presence of a police officer.
- (5) If anything is done in exercise of the powers mentioned in this section, the Governor may recover from a responsible person any costs reasonably incurred by the Governor in connection with the exercise of those powers; and a responsible person is -
- (a) in the case of equipment, any person in possession of the equipment at the time the land is entered;
 - (b) in the case of a building, any person occupying the land at the time it is entered.

Position where no notice can be served

15. - (1) For the purposes of this section the qualifying condition is that -

- (a) the Governor has reasonable cause to believe that any equipment or building is a chemical weapons production facility,
 - (b) in the period of six months beginning with the day after he formed his belief it has not been possible to serve a copy of a notice under section 13 because of the circumstances mentioned in subsection (2), and
 - (c) the Governor has drawn up proposals for the destruction or alteration of the equipment or building in a manner specified in the proposals.
- (2) The circumstances are that -
- (a) no person appeared to the Governor to occupy the land on which the equipment or building is situated,
 - (b) if the Governor's belief relates to equipment, no person appeared to the Governor to have the equipment in his possession, and
 - (c) no person appeared to the Governor to have an interest which the Governor believed would be materially affected by the destruction or alteration of the equipment or building.
- (3) If a justice of the peace is satisfied on information on oath that the qualifying condition is fulfilled, he may issue a warrant in writing authorising a person acting under the authority of the Governor to take remedial action under this section.
- (4) If a person is authorised by a warrant to take remedial action under this section he may -
- (a) enter the land on which the equipment or building is situated, if necessary by force;

(b) do whatever is required to secure that the equipment or building is destroyed or altered in a manner specified in the proposals drawn up by the Governor;

(c) take with him such other persons and such equipment as appear to him to be necessary to help him to exercise the powers mentioned in paragraphs (a) and (b).

(5) The powers conferred on an authorised person under this section shall only be exercisable, if the warrant so provides, in the presence of a police officer.

(6) If anything is done in exercise of the powers mentioned in this section, the Governor may recover from a responsible person any costs reasonably incurred by the Governor in connection with the exercise of those powers; and a responsible person is -

(a) in the case of equipment, any person in possession of the equipment at the time the land is entered;

(b) in the case of a building, any person occupying the land at the time it is entered.

Compensation for destruction or alteration

16. - (1) This section applies if a person claims that -

(a) any equipment or building has been destroyed or altered in compliance with a notice falling within section 13(3) or has been destroyed or altered under section 14,

(b) he had an interest which was materially affected by the destruction or alteration and he sustained loss as a result, and

(c) no copy of a notice was served on him under section 13.

(2) This section also applies if a person claims that -

(a) any equipment or building has been destroyed or altered under section 15, and

(b) he had an interest which was materially affected by the destruction or alteration and he sustained loss as a result.

(3) If the person concerned makes an application under this section to the supreme court of the Territory, and the court finds that his claim is justified, the court may order the Governor to pay to the applicant such amount (if any) by way of compensation as the court considers just.

(4) If the court believes that the equipment or building would have been destroyed or altered even if a copy of a notice had been served on the applicant under section 13 the court must not order compensation to be paid under this section.

Offences relating to destruction etc

17. - (1) If -

(a) a copy of a notice is served on a person under section 12,

(b) the notice relates to equipment in his possession at the time the copy is served,

(c) he relinquishes possession of, or alters or uses, the equipment before the date specified under

section 12(4), and

(d) he has no reasonable excuse for doing so,

he is guilty of an offence.

(2) If -

(a) a copy of a notice is served on a person under section 13,

(b) the notice relates to equipment in his possession at the time the copy is served or to a building situated on land he occupies at that time,

(c) any requirement set out in the notice is not fulfilled, and

(d) he has no reasonable excuse for the requirement not being fulfilled,

he is guilty of an offence.

(3) If a person wilfully obstructs -

(a) a person exercising, or attempting to exercise, the powers mentioned in section 14(3)(a) or (b) or 15(4)(a) or (b), or

(b) any other person taken with him as mentioned in section 14(3)(c) or 15(4)(c) and helping him, or attempting to help him, to exercise those powers,

the person so obstructing is guilty of an offence.

(4) A person guilty of an offence under any of the preceding provisions of this section is liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

(5) A person who knowingly makes a false or misleading statement in response to a notice served under section 12 is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Destruction etc: supplementary

18. - (1) In sections 12 to 15 "chemical weapons production facility" has the meaning given by the definition of that expression in the Convention, and for this purpose -

(a) expressions used in the definition in the Convention shall be construed in accordance with the Convention, and

(b) section 1 shall be ignored.

(2) For the purposes of sections 12 to 16 "destroyed" and "destruction", in relation to a building, mean demolished and demolition.

(3) Nothing in sections 12 to 15 affects any power arising otherwise than by virtue of those sections (such as a power to dispose of property in police possession in connection with the investigation of a suspected offence).

Chemicals for permitted purposes

Restriction on use etc

19. - (1) Subject to section 20 (which relates to licences) no person shall -

(a) use a Schedule 1 toxic chemical or precursor for a permitted purpose, or

(b) produce or have in his possession a Schedule 1 toxic chemical or precursor with the intention that it will be used for a permitted purpose.

(2) A Schedule 1 toxic chemical or precursor is a toxic chemical or precursor listed in Schedule 1 to the annex on chemicals to the Convention; and for ease of reference that Schedule is set out in the Schedule to this Act.

(3) A person contravening this section is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

Licences

20. - (1) Section 19 does not apply to anything done in accordance with the terms of a licence granted by the Governor and having effect at the time it is done.

(2) The Governor may -

(a) grant a licence in such circumstances and on such terms as he thinks fit;

(b) vary or revoke a licence by serving a notice to that effect on the person to whom the licence was granted.

(3) A variation or revocation shall take effect at such reasonable time as is specified in the notice served under subsection (2)(b).

(4) The Governor may by order make provision with respect to appealing against a refusal to grant, renew or vary a licence or against a variation or revocation of a licence.

(5) [omitted]

(6) A person who knowingly makes a false or misleading statement for the purpose of obtaining a licence or renewal or variation of a licence, or of opposing a variation or revocation of a licence, is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Information and records

Information for purposes of Act

21. - (1) If the Governor has grounds to suspect that a person is committing or has committed an offence under this Act the Governor may by notice served on the person require him to give in such form as is specified in the notice, and within such reasonable period as is so specified, such information as -

(a) the Governor has reasonable cause to believe will help to establish whether the person is committing or has committed such an offence, and

(b) is specified in the notice.

(2) A person who without reasonable excuse fails to comply with a notice served on him under subsection (1) is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

(3) A person on whom a notice is served under subsection (1) and who knowingly makes a false or misleading statement in response to it is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Information and records for the purposes of Convention

22. - (1) The Governor may by notice served on any person require him to give in such form as is specified in the notice, and within such reasonable period as is so specified, such information as -

(a) the Governor has reasonable cause to believe is or will be needed in connection with anything to be done for the purposes of the Convention, and

(b) is specified in the notice;

and the information required by a notice may relate to a state of affairs subsisting before the coming into force of this Act or of the Convention.

(2) The Governor may by notice served on any person require him to keep such records as -

(a) the Governor has reasonable cause to believe will facilitate the giving of information the person may at any time be required to give under subsection (1), and

(b) are specified in the notice.

(3) A person who without reasonable excuse fails to comply with a notice served on him under subsection (1) or (2) is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

(4) A person on whom a notice is served under subsection (1) and who knowingly makes a false or misleading statement in response to it is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Identifying persons who have information

23. - (1) The Governor may make regulations requiring persons of any description specified in the regulations to inform him that they are of such a description.

(2) Any such description must be so framed that persons within it are persons on whom the Governor is likely to want to serve a notice under section 22.

(3) If regulations are made under this section the Governor shall arrange for a statement of the fact that they have been made to be published in such manner as is likely to bring them to the attention of persons affected by them.

(4) A person who without reasonable excuse fails to comply with a requirement imposed by the regulations is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

(5) A person who knowingly makes a false or misleading statement in response to a requirement imposed by the regulations is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) [omitted]

Inspections under Convention

Inspections: interpretation

24. For the purposes of sections 25 to 28 -

(a) the verification annex is the annex on implementation and verification to the Convention;

(b) a routine inspection is an inspection conducted pursuant to Parts II to IX of that annex;

(c) a challenge inspection is an inspection conducted pursuant to Parts II and X of that annex;

(d) an assistance inspection is an inspection conducted pursuant to Parts II and XI of that annex;

(e) "in-country escort", "inspector", "inspection team" and "observer" have the meanings given by Part I of that annex.

Rights of entry etc for purposes of inspections

25. - (1) If it is proposed to conduct a routine inspection, a challenge inspection or an assistance inspection in the Territory, the Governor may issue an authorisation under this section in respect of that inspection.

(2) An authorisation under this section shall -

- (a) contain a description of the area (the specified area) in which the inspection is to be conducted,
- (b) specify the type of inspection concerned,
- (c) state the names of the members of the inspection team by whom the inspection is to be carried out, and
- (d) in the case of a challenge inspection, state the name of any observer who may accompany the team.

(3) Such an authorisation shall have the effect of authorising the inspection team -

- (a) to exercise within the specified area such rights of access, entry and unobstructed inspection as are conferred on them by the verification annex, and
- (b) to do such other things within that area in connection with the inspection as they are entitled to do by virtue of the verification annex (including things concerning the maintenance, replacement or adjustment of any instrument or other object).

(4) Such an authorisation shall in addition have the effect of -

- (a) authorising an in-country escort to accompany the inspection team in accordance with the provisions of the verification annex, and
- (b) authorising any police officer to give such assistance as the in-country escort may request for the purpose of facilitating the conduct of the inspection in accordance with the verification annex;

and the name of the person in charge of the in-country escort shall be stated in the authorisation.

(5) An authorisation under this section in the case of a challenge inspection shall in addition have the effect of authorising the observer to exercise within the specified area such rights of access and entry as are conferred on him by the verification annex.

(6) Any police officer giving assistance in accordance with subsection (4)(b) may use such reasonable force as he considers necessary for the purpose mentioned in that provision.

(7) The occupier of any premises -

- (a) in relation to which it is proposed to exercise a right of entry in reliance on an authorisation under this section, or
- (b) on which an inspection is being carried out in reliance on such an authorisation,

person acting on behalf of the occupier of any such premises, shall be entitled to require a copy of the authorisation to be shown to him by a member of the in-country escort.

The validity of any authorisation purporting to be issued under this section in respect of any inspection shall not be called in question in any court of law at any time before the conclusion of that inspection.

Accordingly, where an authorisation purports to be issued under this section in respect of any inspection, no proceedings (of whatever nature) shall be brought at any time before the conclusion of the inspection if they would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of the inspection.

(10) If in any proceedings any question arises whether a person at any time was or was not, in relation to any routine, challenge or assistance inspection, a member of the inspection team or a member of the in-country escort or the observer, a certificate issued by or under the authority of the Governor stating any fact relating to that question shall be conclusive evidence of that fact.

(11) If an authorisation is issued under this section the Governor may issue an amendment varying the specified area, and -

(a) from the time when the amendment is expressed to take effect this section shall apply as if the specified area were the area as varied;

(b) subsection (8) shall apply to the amendment as it applies to the authorisation;

(c) the Governor may issue further amendments varying the specified area and in such a case paragraphs (a) and (b) shall apply.

Offences in connection with inspections

6. - (1) If an authorisation has been issued under section 25 in respect of any inspection, a person is guilty of an offence if he -

(a) refuses without reasonable excuse to comply with any request made by a police officer or a member of the in-country escort for the purpose of facilitating the conduct of that inspection in accordance with the verification annex,

(b) interferes without reasonable excuse with any container, instrument or other object installed in the course of that inspection in accordance with the verification annex, or

(c) wilfully obstructs any member of the inspection team or of the in-country escort, or the observer, in the conduct of that inspection in accordance with the verification annex.

(2) Subsection (1)(b) applies to interference which occurs at any time while the container, instrument or other object is retained in accordance with the verification annex.

(3) A person guilty of an offence under this section is liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to a fine.

Privileges and immunities in connection with inspections

27. - (1) Members of inspection teams and observers shall enjoy the same privileges and immunities as are enjoyed by diplomatic agents in accordance with the following provisions of the 1961 Articles, namely -

- (a) Article 29,
- (b) paragraphs 1 and 2 of Article 30,
- (c) paragraphs 1, 2 and 3 of Article 31, and
- (d) Article 34.

(2) Such persons shall, in addition, enjoy the same privileges as are enjoyed by diplomatic agents in accordance with paragraph 1(b) of Article 36 of the 1961 Articles, except in relation to articles the importing or exporting of which is prohibited by law or controlled by the enactments relating to quarantine.

(3) Samples and approved equipment carried by members of an inspection team shall be inviolable and exempt from customs duties.

(4) The privileges and immunities accorded to members of inspection teams and observers by virtue of this section shall be enjoyed by them at any time when they are in the Territory -

(a) in connection with the carrying out there of a routine inspection, a challenge inspection or an assistance inspection, or

(b) while in transit to or from the territory of another party to the Convention in connection with the carrying out of such an inspection there.

(5) If -

(a) immunity from jurisdiction of a member of an inspection team is waived in accordance with the verification annex, and

(b) a notice made by the Governor and informing the member of the waiver is delivered to him in person,

then, from the time the notice is so delivered, this section shall not have effect to confer that immunity on the member.

(6) If in any proceedings any question arises whether a person is or is not entitled to any privilege or immunity by virtue of this section, a certificate issued by or under the authority of the Governor stating any fact relating to that question shall be conclusive evidence of that fact.

(7) In this section -

"the 1961 Articles" means the Articles which are set out in Schedule 1 to the Diplomatic Privileges Act 1964 (Articles of Vienna Convention on Diplomatic Relations of 1961 having force of law in United Kingdom)(a);

(a) 1964 c.81.

"approved equipment" and "samples" shall be construed in accordance with the verification annex;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978)(a).

Reimbursement of expenditure

28. The Governor may reimburse any person in respect of expenditure incurred in connection with a routine inspection, a challenge inspection or an assistance inspection.

Offences: miscellaneous

Power to search and obtain evidence

29. - (1) If a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that an offence under this Act is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, he may issue a warrant in writing authorising a person acting under the authority of the Governor to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(2) A person who enters the premises under the authority of the warrant may -

(a) take with him such other persons and such equipment as appear to him to be necessary;

(b) inspect any document found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under this Act;

(c) take copies of, or seize and remove, any such document;

(d) inspect, seize and remove any device or equipment found on the premises which he has reasonable cause to believe may be required as such evidence;

(e) inspect, sample, seize and remove any substance found on the premises which he has reasonable cause to believe may be required as such evidence;

(f) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any document, device, equipment or substance;

but no woman or girl shall be searched except by a woman.

(3) The powers conferred by a warrant under this section shall only be exercisable, if the warrant so provides, in the presence of a police officer.

Forfeiture in case of conviction

30. - (1) The court by or before which a person is convicted of an offence under this Act may order that anything shown to the court's satisfaction to relate to the offence shall be forfeited, and either destroyed or otherwise dealt with in such manner as the court may order.

(2) In particular, the court may order the thing to be dealt with as the Governor may see fit; and in such a case the Governor may direct that it be destroyed or otherwise dealt with.

(3) Where -

(a) 1978 c.30.

(a) the court proposes to order anything to be forfeited under this section, and

(b) a person claiming to have an interest in it applies to be heard by the court,

the court must not order it to be forfeited unless he has been given an opportunity to show cause why the order should not be made.

30A. [omitted]

Offences: other provisions

31. - (1) Proceedings for an offence under section 2 or 11 shall not be instituted except by or with the consent of the Attorney General.

(2) Proceedings for an offence under any provision of this Act other than section 2 or 11 shall not be instituted except by or with the consent of the Governor.

(3) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) 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.

(4) In subsection (3) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) [omitted]

Other miscellaneous provisions

Disclosure of information

32. - (1) This section applies to information if -

(a) it was obtained under, or in connection with anything done under, this Act or the Convention, and

(b) it relates to a particular business or other activity carried on by any person.

(2) So long as the business or activity continues to be carried on the information shall not be disclosed except -

(a) with the consent of the person for the time being carrying on the business or activity,

(b) in connection with anything done for the purposes of the Convention,

(c) in connection with anything done for the purposes of this Act,

(d) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings,

(e) in connection with the enforcement of any restriction on imports or exports,

in an emergency involving danger to the public,

or ensuring the security of the Territory, or

the International Court of Justice for the purpose of enabling that Court to deal with any dispute under the Convention.

A person who discloses information in contravention of this section is guilty of an offence and

on conviction, to a fine not exceeding £5,000 or its equivalent;

on indictment, to imprisonment for a term not exceeding two years or to a fine or to

if a person proposes to disclose information to which this section applies in circumstances which would by virtue of paragraphs (b) to (h) of subsection (2) not contravene this section, the disclosure of that information notwithstanding any obligation not to disclose it that would otherwise

A copy of any provision of this Act, or a copy of a notice under any such provision, may be

delivered to him in person,

or by post to him at his usual or last-known residence or place of business in the

in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its principal office or sending it by post to the secretary or clerk of that body corporate

Notwithstanding the foregoing provisions of this section, this Act binds the Crown.

A declaration made by the Crown of a provision made by or under this Act shall make the Crown liable to the jurisdiction of the supreme court of the Territory may, on the application of a person appearing to be interested, declare unlawful any act or omission of the Crown which constitutes such a

Notwithstanding subsection (2), the provisions made by or under this Act apply to persons in the Territory as they apply to other persons.

(4) Nothing in this section affects Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (meaning of Her Majesty in her private capacity)(a) were contained in this Act.

38. [omitted]

Citation

39. - (1) [omitted]

(2) [omitted]

(3) [omitted]

(4) This Act shall be cited as the Chemical Weapons Act 1996.

SCHEDULE TO THE ACT

Section 19

SCHEDULED TOXIC CHEMICALS AND PRECURSORS

(CAS registry number)

A. TOXIC CHEMICALS:

- | | | |
|-----|---|--|
| (1) | O-Alkyl (less than or equal to C ₁₀ , incl. cycloalkyl) alkyl
(Me, Et, n-Pr or i-Pr)-phosphonofluoridates
eg. Sarin: O-Isopropyl methylphosphonofluoridate (107-44-8)
Soman: O-Pinacolyl methylphosphonofluoridate (96-64-0) | |
| (2) | O-Alkyl (less than or equal to C ₁₀ , incl. cycloalkyl)
N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidocyanidates
eg. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate (77-81-6) | |
| (3) | O-Alkyl (H or less than or equal to C ₁₀ , incl. cycloalkyl)
S-2 dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me,
Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated
salts
eg. VX: O-Ethyl S-2-diisopropylaminoethyl methyl
phosphonothiolate (50782-69-9) | |
| (4) | Sulfur mustards:
2-Chloroethylchloromethylsulfide (2625-76-5)
Mustard gas: Bis (2-chloroethyl) sulfide (505-60-2)
Bis (2-chloroethylthio) methane (63869-13-6)
Sesquimustard: 1,2-Bis (2-chloroethylthio) ethane (3563-36-8)
1,3-Bis (2-chloroethylthio)-n-propane (63905-10-2)
1,4-Bis (2-chloroethylthio)-n-butane (142868-93-7)
1,5-Bis (2-chloroethylthio)-n-pentane (142868-94-8)
Bis (2-chloroethylthiomethyl) ether (63918-90-1)
O-Mustard: Bis (2-chloroethylthioethyl) ether (63918-89-8) | |
| (5) | Lewisites:
Lewisite 1: 2-Chlorovinylchloroarsine (541-25-3)
Lewisite 2: Bis (2-chlorovinyl) chloroarsine (40334-69-8)
Lewisite 3: Tris (2-chlorovinyl) arsine (40334-70-1) | |

(a) 1947 c.44.

- | | | |
|-----|--------------------------------------|--------------|
| (6) | Nitrogen mustards: | |
| | HN1: Bis (2-chloroethyl) ethylamine | (538-07-8) |
| | HN2: Bis (2-chloroethyl) methylamine | (51-75-2) |
| | HN3: Tris (2-chloroethyl) amine | (555-77-1) |
| (7) | Saxitoxin | (35523-89-8) |
| (8) | Ricin | (9009-86-3) |

B. PRECURSORS

- | | | |
|------|---|--------------|
| (9) | Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides
eg DF: Methylphosphonyldifluoride | (676-99-3) |
| (10) | O-Alkyl (H or less than or equal to C ₁₀ , incl. cycloalkyl)
O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me,
Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts
eg QL: O-Ethyl O-2 diisopropylaminoethyl methylphosphonite | (57856-11-8) |
| (11) | Chlorosarin: O-Isopropyl methylphosphonochloridate | (1445-76-7) |
| (12) | Chlorosoman: O-Pinacolyl methylphosphonochloridate | (7040-57-5) |

Notes:

1. This Schedule sets out Schedule 1 to the annex on chemicals to the Convention as corrected.
2. In this Schedule the reference to the CAS registry is to the chemical abstract service registry.
3. This Schedule must be read subject to the following proposition, which is based on a note in the Convention: where reference is made to groups of dialkylated chemicals, followed by a list of alkyl groups in parentheses, all chemicals possible by all possible combinations of alkyl groups listed in the parentheses must be taken to be listed in the Schedule.

SCHEDULE 2

Article

SECTIONS 50 TO 56 OF THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001, AS
EXCEPTED AND MODIFIED AND EXTENDED TO THE TERRITORIES LISTED IN SCHEDULE

Assisting or inducing weapons-related acts overseas

Assisting or inducing certain weapons-related acts overseas

50. - (1) A person who aids, abets, counsels or procures, or incites, a person who is not a United Kingdom person to do a relevant act outside the United Kingdom is guilty of an offence.

(2) For this purpose a relevant act is an act that, if done by a United Kingdom person, would contravene section 2 of the Chemical Weapons Act 1996 (offences relating to chemical weapons).

(3) [omitted]

(4) A person accused of an offence under this section in relation to a relevant act which would contravene section 2 of the Chemical Weapons Act 1996 may raise any defence which would be open to a person accused of the corresponding offence ancillary to an offence under that provision.

(5) A person accused of an offence under this section is liable on conviction on indictment to imprisonment for life.

(6) This section applies to acts done outside the Territory, but only if they are done by a United Kingdom person.

(7) Nothing in this section prejudices any criminal liability existing apart from this section.

Supplemental provisions relating to Section 50

Extraterritorial application

51. - (1) Proceedings for an offence committed under section 50 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any part of the Territory.

(2) [omitted]

Powers of entry

52. - (1) If a justice of the peace is satisfied on information on oath that there are reasonable grounds for suspecting that evidence of the commission of an offence under section 50 is to be found on any premises, he may issue a warrant authorising an authorised officer to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(2) The powers of a person who enters the premises under the authority of the warrant include power -

(a) to take with him such other persons and such equipment as appear to him to be necessary;

(b) to inspect, seize and retain any substance, equipment or document found on the premises;

(c) to require any document or other information which is held in electronic form and is accessible from the premises to be produced in a form -

(i) in which he can read and copy it; or

(ii) from which it can readily be produced in a form in which he can read and copy it;

(d) to copy any document which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under section 50.

(3) A police officer who enters premises under the authority of a warrant or by virtue of subsection (2)(a) may -

(a) give such assistance as an authorised officer may request for the purpose of facilitating the exercise of any power under this section; and

(b) search or cause to be searched any person on the premises who the constable has reasonable cause to believe may have in his possession any document or other thing which may be required as evidence for the purposes of proceedings in respect of an offence under section 50.

(4) No police officer shall search a person of the opposite sex.

(5) The powers conferred by a warrant under this section shall only be exercisable, if the warrant so provides, in the presence of a police officer.

(6) A person who -

(a) wilfully obstructs an authorised officer in the exercise of a power conferred by a warrant under this section; or

(b) fails without reasonable excuse to comply with a reasonable request made by an authorised officer or a police officer for the purpose of facilitating the exercise of such a power,

is guilty of an offence.

(7) A person guilty of an offence under subsection (6) is liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent; and

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

(8) In this section "authorised officer" means an officer acting under the authority of the Governor.

53. [omitted]

Offences

54. - (1) A person who knowingly or recklessly makes a false or misleading statement for the purpose of obtaining (or opposing the variation or withdrawal of) authorisation for the purposes of section 50 is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable -

(a) on summary conviction, to a fine not exceeding £5,000 or its equivalent;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

(3) Where an offence under section 50 or subsection (1) above committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) a director, manager, secretary or other similar officer of the body corporate; or

(b) 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.

(4) In subsection (3) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Consent to prosecutions

55. Proceedings for an offence under section 50 shall not be instituted except by or with the consent of the Attorney General.

Interpretation

56. - (1) In the foregoing provisions "United Kingdom person" means a United Kingdom national or

body incorporated under the law of the Territory.

(2) For this purpose a United Kingdom national is an individual who is -

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981(a) is a British subject; or

(c) a British protected person within the meaning of that Act.

SCHEDULE 3

Articles 2 and 3

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena and Dependencies

South Georgia and the South Sandwich Islands

Turks and Caicos Islands

Virgin Islands

Sovereign Base Areas of Akrotiri and Dhekelia

(a) 1981 c.61.

SCHEDULE 4

Article 2

FURTHER EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF THE BRITISH ANTARCTIC TERRITORY AND THE BRITISH INDIAN OCEAN TERRITORY

1. The following provisions shall not extend to the British Antarctic Territory and the British Indian Ocean Territory:

section 5(6)
section 7(9)
section 9(4)(a)
section 9(5)(a)
section 14(4)
section 15(5)
section 17(4)(a)
section 17(5)(a)
section 19(3)(a)
section 20(5)(a)
section 21(2)(a)
section 21(3)(a)
section 22(3)(a)
section 22(4)(a)
section 23(4)(a)
section 23(5)(a)
section 25(4)(b)
section 25(6)
section 26(3)(a)
section 29(3)
section 32(4)(a)

2. In the application of sections 2(6)(b) and 26(1)(a) in the British Antarctic Territory and the British Indian Ocean Territory, the references therein to "a police officer" shall be omitted.

3. In the application of the following provisions in the British Antarctic Territory and the British Indian Ocean territory, the references therein to "conviction on indictment" shall be replaced by references to "conviction by the supreme court of the Territory":

section 2(8)
section 9(4)(b)
section 9(5)(b)
section 11(3)
section 17(4)(b)
section 17(5)(b)
section 19(3)(b)
section 20(6)(b)
section 21(2)(b)
section 21(3)(b)
section 22(3)(b)
section 22(4)(b)
section 23(4)(b)

section 23(5)(b)
section 26(3)(b)
section 32(4)(b)

4. In the application of section 31(1) in the British Antarctic Territory and the British Indian Ocean Territory, the reference therein to "the Attorney General" shall be replaced by a reference to "the Principal Legal Adviser of the Territory".

SCHEDULE 4A

Article 3

FURTHER MODIFICATION TO THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 IN RESPECT OF THE BRITISH ANTARCTIC TERRITORY AND THE BRITISH INDIAN OCEAN TERRITORY

In the application of section 50(5) in the British Antarctic Territory and the British Indian Ocean Territory, the reference therein to "conviction on indictment" shall be replaced by a reference to "conviction by the supreme court of the Territory".

SCHEDULE 5

Article 2

FURTHER ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF PITCAIRN, HENDERSON, DUCIE AND OENO ISLANDS

1. In the application of the following sections in Pitcairn, Henderson, Ducie and Oeno Islands, the references therein to "summary conviction" shall be replaced by references to "conviction by the subordinate court of the Territory", and references to "conviction on indictment" shall be replaced by references to "conviction by the supreme court of the Territory":

section 2(8)
section 9(4)
section 9(5)
section 11(3)
section 17(4)
section 17(5)
section 19(3)
section 20(6)
section 21(2)
section 21(3)
section 22(3)
section 22(4)
section 23(4)
section 23(5)
section 26(3)
section 32(4)

2. In the application of section 31(1) in Pitcairn, Henderson, Ducie and Oeno Islands, the reference therein to "the Attorney General" shall be replaced by a reference to "the Legal Adviser".

3. In the application of the following sections in Pitcairn, Henderson, Ducie and Oeno Islands, the references therein to "a fine" shall be replaced by references to "a fine not exceeding £10,000 or its equivalent":

section 9(4)(b)
section 9(5)(b)
section 17(4)(b)
section 17(5)(b)
section 19(3)(b)
section 20(6)(b)
section 21(2)(b)
section 21(3)(b)
section 22(3)(b)
section 22(4)(b)
section 23(4)(b)
section 23(5)(b)
section 26(3)(b)
section 32(4)(b)

SCHEDULE 5A

Article 3

FURTHER MODIFICATION TO THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 IN RESPECT OF PITCAIRN, HENDERSON, DUCIE AND OENO ISLANDS

In the application of section 50(5) in Pitcairn, Henderson, Ducie and Oeno Islands, the reference therein to "conviction on indictment" shall be replaced by a reference to "conviction by the supreme court of the Territory".

SCHEDULE 6

Article 2

FURTHER ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF BERMUDA

In the application of the following sections in Bermuda, the references therein to "a fine not exceeding £5,000 or its equivalent" shall be replaced by references to "a fine not exceeding \$8,500":

section 9(4)(a)
section 9(5)(a)
section 17(4)(a)
section 17(5)(a)
section 19(3)(a)
section 20(6)(a)
section 21(2)(a)
section 21(3)(a)
section 22(3)(a)

section 22(4)(a)
section 23(4)(a)
section 23(5)(a)
section 26(3)(a)
section 32(4)(a)

SCHEDULE 7

Article 2

FURTHER ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF THE TURKS AND CAICOS ISLANDS

1. In the application of the following sections in the Turks and Caicos Islands, the references therein to "a fine not exceeding £5,000 or its equivalent" shall be replaced by references to "a fine not exceeding \$8,500":

section 9(4)(a)
section 9(5)(a)
section 17(4)(a)
section 17(5)(a)
section 19(3)(a)
section 20(6)(a)
section 21(2)(a)
section 21(3)(a)
section 22(3)(a)
section 22(4)(a)
section 23(4)(a)
section 23(5)(a)
section 26(3)(a)
section 32(4)(a)

2. In the application of the following sections in the Turks and Caicos Islands, the references therein to "a fine" shall be replaced by references to "a fine not exceeding \$50,000":

section 9(4)(b)
section 9(5)(b)
section 17(4)(b)
section 17(5)(b)
section 19(3)(b)
section 20(6)(b)
section 21(2)(b)
section 21(3)(b)
section 22(3)(b)
section 22(4)(b)
section 23(4)(b)
section 23(5)(b)
section 26(3)(b)
section 32(4)(b)

SCHEDULE 8

Article 2

FURTHER EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS TO THE CHEMICAL WEAPONS ACT 1996 IN RESPECT OF THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA

1. The following sections shall not extend to the Sovereign Base Areas of Akrotiri and Dhekelia:

section 9(4)(a)
section 9(5)(a)
section 17(4)(a)
section 17(5)(a)
section 19(3)(a)
section 20(5)(a)
section 21(2)(a)
section 21(3)(a)
section 22(3)(a)
section 22(4)(a)
section 23(4)(a)
section 23(5)(a)
section 26(3)(a)
section 32(4)(a)

2. In the application of the following sections in the Sovereign Base Areas of Akrotiri and Dhekelia the references therein to "conviction on indictment" shall be replaced by references to "conviction by the Judge's Court":

section 2(8)
section 9(4)(b)
section 9(5)(b)
section 11(3)
section 17(4)(b)
section 17(5)(b)
section 19(3)(b)
section 20(6)(b)
section 21(2)(b)
section 21(3)(b)
section 22(3)(b)
section 22(4)(b)
section 23(4)(b)
section 23(5)(b)
section 26(3)(b)
section 32(4)(b)

3. In the applications of sections 5(2), 7(7) and 29(1) in the Sovereign Base Areas of Akrotiri and Dhekelia, the references therein to "a justice of the peace" shall be replaced by references to "a judge".

SCHEDULE 8A

Article 3

FURTHER MODIFICATION TO THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 IN RESPECT OF THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA

In the application of section 50(5) in the Sovereign Base Areas of Akrotiri and Dhekelia the reference therein to "conviction on indictment" shall be replaced by a reference to "conviction by the Judge's Court".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Chemical Weapons Act 1996 and the Anti-terrorism, Crime and Security Act 2001, extends provisions of the two Acts, with exceptions, adaptations and modifications, to the territories listed in Schedule 3.



**THE
SOUTH GEORGIA
AND THE
SOUTH SANDWICH ISLANDS GAZETTE**

PUBLISHED BY AUTHORITY

No. 4

16th September 2005

The following are published in this Gazette -

Visitors (Amendment) Ordinance 2005, (No. 1 of 2005);

Visitors Ordinance 1992, Notification of Passenger Landing Fees.

ELIZABETH II



**The Territories of South Georgia
and the South Sandwich Islands**

HOWARD JOHN STREDDER PEARCE C.V.O.,
Commissioner.

Visitors (Amendment) Ordinance 2005

(No: 1 of 2005)

ARRANGEMENT OF PROVISIONS

Section

1. Short title
2. Amendment of Visitors Ordinance 1992
3. Repeal of Visitors (Landing Fees) Regulations 1998

ELIZABETH II



**The Territories of South Georgia
and the South Sandwich Islands**

HOWARD JOHN STREDDER PEARCE C.V.O.,
Commissioner.

VISITORS (AMENDMENT) ORDINANCE 2005

(No: 1 of 2005)

(assented to: 6 September 2005)
(published: 16 September 2005)
(commencement: on publication)

AN ORDINANCE

To provide for passenger landing fees to be prescribed by the Commissioner.

ENACTED by the Commissioner for South Georgia and the South Sandwich Islands as follows —

Short title

1. This Ordinance may be cited as the Visitors (Amendment) Ordinance 2005 and shall come into force upon publication in the Gazette.

Amendment of Visitors Ordinance 1992

2. Section 3 of the Visitors Ordinance 1992(a) is replaced by the following section —

“Passenger landing fees

3.—(1) There shall be paid in respect of every visitor to South Georgia a passenger landing fee in such sum as may be prescribed by notice signed by the Commissioner and published in the Gazette.

(a) No 2 of 1992

(2) Payment of landing fees in the equivalent to the relevant sum in another currency approved for the purpose shall be accepted.

(3) For the purposes of this section, the currencies of the United Kingdom and of the Falkland Islands shall always be approved currencies but any other currency may be revocably approved in a notice signed by the Commissioner and published in the Gazette.”

Repeal of Visitors (Landing Fees) Regulations

3. The Visitors (Landing Fees) Regulations 1998**(b)** are hereby repealed.

Made this sixth day of September 2005

H J S Pearce C.V.O.,
Commissioner

(b) SR&O No 2 of 1998

VISITORS ORDINANCE 1992

Notification of Passenger Landing Fees

In accordance with the section 3 of the Visitors Ordinance 1992 I hereby give notice that the Passenger Landing Fee shall be increased to £75 per person with effect from 1 October 2005 and shall be further increased to £100 with effect from 1 October 2006.

Dated this ninth day of September 2005

H J S Pearce C.V.O.,
Commissioner



**THE
SOUTH GEORGIA
AND THE
SOUTH SANDWICH ISLANDS GAZETTE**
PUBLISHED BY AUTHORITY

No. 5

15th December 2005

The following are published in this Gazette -

Interpretation and General Clauses (Amendment) Ordinance 2005, (No: 2 of 2005);

Post Office (Amendment) Order 2005, (S. R. & O. No: 1 of 2005);

The Air Navigation (Overseas Territories) (Amendment) Order 2005, (2005 No. 2763).

ELIZABETH II



**The Territories of South Georgia
and the South Sandwich Islands**

HOWARD JOHN STREDDER PEARCE C.V.O.,
Commissioner.

Interpretation and General Clauses (Amendment) Ordinance 2005

(No: 2 of 2005)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement
2. Amendment of principal Ordinance

ELIZABETH II



**The Territories of South Georgia
and the South Sandwich Islands**

HOWARD JOHN STREDDER PEARCE C.V.O.,
Commissioner.

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) ORDINANCE 2005

(No: 2 of 2005)

(assented to: 1 December 2005)

(commencement: on publication)

(published: 15 December 2005)

AN ORDINANCE

To amend the Interpretation and General Clauses Ordinance 1977.

ENACTED by the Commissioner of South Georgia and the South Sandwich Islands —

Short title and commencement

1. This Ordinance may be cited as the Interpretation and General Clauses (Amendment) Ordinance 2005 and shall come into force upon publication.

Interpretation

2. In this Ordinance “the principal Ordinance” means the Interpretation and General Clauses Ordinance 1977.

Amendment of the principal Ordinance

3. The principal Ordinance is amended by replacing section 12 with the following new section 12 —

“Publication and commencement of Laws

12.—(1) If so expressed therein, a law may have effect retrospective from the date of its publication in the Gazette, but —

(a) no act or omission which did not constitute an offence at the time it was done or made shall retrospectively become an offence; and

(b) no law shall render any offence committed before that law came into operation punishable more severely than it would have been if that law had not been made.

(2) For the sake of avoidance of doubt, it is declared that this section applies to subsidiary legislation as well as to Ordinances.”

Assented to in Her Majesty’s name and on Her Majesty’s
behalf this first day of December 2005

H. J. S. PEARCE C.V.O.,
Commissioner.

SUBSIDIARY LEGISLATION

SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS

POST OFFICE

Post Office (Amendment) Order 2005

S. R. & O. No: 1 of 2005

Made: 1 December 2005

Published: 15 December 2005

Commencing: as provided in article 1

IN EXERCISE of my powers under sections 3 and 4 of the Post Office Ordinance(a), I make the following Order —

Citation and commencement

1.—(1) This Order may be cited as the Post Office (Amendment) Order 2005.

(2) Article 2(1) of this Order shall be deemed to have come into effect on 1 November 2004.

(3) Article 2(2) of this Order shall come into effect on publication in the *Gazette*.

Amendment of the Post Office Order 2002

2.—(1) The Post Office Order 2002 is amended by replacing the First, Second and Third Schedules with those appearing in the Schedule to this Order.

(2) The Post Office Order 2002 is further amended by replacing the numbers “42” with the numbers “45” where they appear after the word “Postcard” in the Second Schedule to that Order.

(a) of the Falkland Islands in its application to South Georgia and the South Sandwich Islands

(b) SR&O 1 of 2002

SCHEDULE

“FIRST SCHEDULE

Airmail Rates to all Countries

AIRMAIL RATES

Letters	First 20gm each additional 10gm	50p 25p
Small Packets & Printed Papers	First 70gm each additional 10gm	£1.00 14p
Printed Papers (Registered with Post Office)	First 70gm each additional 10gm	97p 14p
Postcard		42p
Aerogramme		40p
“ (illustrated)		52p
Christmas Card		45p

SECOND SCHEDULE

Surface Mail Rates

SURFACE RATES

Postcards		26p
Letters	First 20gm up to 100gm each additional 50gm	36p 81p 35p
Small Packets & Printed Papers	First 100gm each additional 50 gm	70p 25p
Christmas Card		32p
Parcels to United Kingdom	First kg each additional kg Maximum weight 30 kg	£8 £4

(Rates to other countries, as notified from time to time)

THIRD SCHEDULE

Inland Rates

INLAND RATES

Letters	First 20gm	24p
	each additional 50gm	15p
Small Packets & Printed Papers	First 70gm	20p
	each additional 50gm	7p
Postcard		16p
Christmas Card		18p

Literature for the blind shall not attract postage.

Made this first day of December 2005

H. J. S. Pearce C.V.O.,
Commissioner

EXPLANATORY NOTE

This Order amends the Post Office Order 2002 in relation to postal rates.

2005 No. 2763

CIVIL AVIATION

**The Air Navigation (Overseas Territories) (Amendment) Order
2005**

Made - - - - *12th October 2005*

Laid before Parliament *24th October 2005*

Coming into force - - *14th November 2005*

At the Court at Buckingham Palace, the 12th day of October 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by Sections 8, 41, 57, 58, 59 and 61 of the Civil Aviation Act 1949(a), as extended to certain territories by the Civil Aviation Act 1949 (Overseas Territories) Order 1969(b), as amended by the Civil Aviation Act 1982 (Overseas Territories) Order 2001(c), of the powers conferred on Her by Section 61 of the Civil Aviation Act 1982(d), as extended to certain territories by the Civil Aviation Act 1982 (Overseas Territories) Order 2001 and all other powers enabling her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and Commencement

1. This Order may be cited as the Air Navigation (Overseas Territories) (Amendment) Order 2005 and shall come into force on 14th November 2005.

Amendment of the Air Navigation (Overseas Territories) Order 2001

2. The Air Navigation (Overseas Territories) Order 2001(e) shall be amended as follows.
3. After article 8 there shall be inserted:

“Type Acceptance Certificate

8A.—(1) A certificate of airworthiness for an aircraft registered in the Territory shall not be issued in accordance with article 9 of this Order unless there is in force a Type Acceptance Certificate issued by the Governor for the aircraft type.

(a) 1949 c. 67.

(b) S.I. 1969/592.

(c) S.I. 2001/1452.

(d) 1982 c. 16.

(e) S.I. 2001/2128, amended by S.I. 2003/433 and S.I. 2004/2038.

(2) Any person who intends to operate an aircraft to be registered in the Territory of a type for which a Type Acceptance Certificate has not been issued shall apply to the Governor for the issue of a Type Acceptance Certificate for that aircraft in accordance with this article and the requirements of the Governor.

(3) A Type Acceptance Certificate with respect to an aircraft, engine or propeller means a document issued by the Governor on the basis of a Type Certificate issued by a Contracting State acceptable to the Governor.

(4) For the purposes of this article a "Type Certificate" means a document issued by a Contracting State to define the design of an aircraft type and to certify that this design meets the appropriate airworthiness requirements of that State."

4. For article 9(4) there shall be substituted:

"(4) The flight manual or equivalent document shall specify the operational limitations within which the aircraft shall be operated for the purposes of the requirements referred to in article 36(1) of this Order."

5. In article 12(1) after the words "is in force" there shall be inserted "or would be in force if it had not ceased to be in force by virtue of sub-paragraphs (b) and (c) of article 9(7)".

6. In article 13(8) for "drink or a drug to such an extent as to impair his capacity to exercise such privileges" there shall be substituted "alcohol, any drug or any psychoactive substance, including prescribed or proprietary medication, so as to render that person unable safely and properly to exercise such privileges or so as to create a risk to the licence holder or any other person".

7. After article 13 there shall be inserted:

"Approval of maintenance organisations

13A.—(1) No person intending to engage in any stage of the maintenance of aircraft, aircraft components or aircraft materials, or the manufacture of components for the purpose of maintenance, or in associated training activities shall do so without first obtaining from the Governor a certificate of approval in respect of those activities.

(2) The Governor shall issue an approval to an organisation which complies with his requirements.

(3) A certificate of approval shall be in such form, be subject to such conditions and limitations and contain such particulars as may be determined by the Governor.

(4) Subject to the provisions of this article and article 81 of this Order, a certificate of approval shall remain in force for such period as may be specified therein, and may be renewed from time to time by the Governor for such further period as he thinks fit.

(5) For the purposes of this order "Maintenance" means any one or combination of overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component, with the exception of pre-flight inspection."

8. In article 16(2)(b) for "the particulars specified at sub-paragraph (xvii) of Part A of Schedule 10 to this Order" there shall be substituted "such particulars of any permission granted to the operator under this article as may be necessary to enable the commander of the aircraft to determine whether he can comply with article 43(b)(ii) of this Order".

9.—(1) For article 20(2) there shall be substituted:

"(2)(a) An aircraft registered in the Territory shall carry a flight crew adequate in number and description to ensure the safety of the aircraft.

(b)(i) In the case of an aircraft in respect of which there is a flight manual, the flight crew shall be of at least a number and description specified in the flight manual.

(ii) In the case of an aircraft in respect of which there is not a flight manual, the flight crew shall be of at least a number and description specified by the Governor in the Certificate of Airworthiness or Permit to Fly."

(2) For article 20(7)(a) there shall be substituted:

“(a) This paragraph applies to any flight for the purpose of public transport by an aircraft registered in the Territory which has a maximum approved seating configuration of more than 19.”

10. For article 22(1)(a) there shall be substituted:

“(a) Subject to sub-paragraph (d), the Governor shall grant licences, subject to such conditions as he thinks fit, of any of the classes specified in Part A of Schedule 8 to this Order authorising the holder to act as a member of the flight crew of an aircraft registered in the Territory upon his being satisfied that the applicant complies with his requirements.”

11. For article 40 there shall be substituted:

“40.—(1) This article shall apply to any aircraft that is not a public transport aircraft.

(2) An aircraft to which this article applies shall not:

- (a) conduct a Category II, Category IIIA or Category IIIB approach and landing; or
- (b) take off when the relevant runway visual range is less than 150 metres;

otherwise than under and in accordance with the terms of an approval so to do granted in accordance with the law of the country in which it is registered.

(3) In the case of an aircraft registered in the Territory, an approval referred to in paragraph (2) shall be issued by the Governor.

(4) Without prejudice to the provisions of paragraph (2) an aircraft to which this article applies, when making a descent at an aerodrome to a runway in respect of which there is a notified instrument approach procedure, shall not descend from a height of 1000 ft or more above the aerodrome to a height less than 1000 ft above the aerodrome if the relevant runway visual range for that runway is at the time less than the specified minimum for landing.

(5) Without prejudice to the provisions of paragraph (2) an aircraft to which this article applies when making a descent to a runway in respect of which there is a notified instrument approach procedure shall not:

- (a) continue an approach to landing at such a runway by flying below the relevant specified decision height;
- (b) descend below the relevant specified minimum descent height;

unless in either case from such height the specified visual reference for landing is established and is maintained.

(6) If, according to the information available, an aircraft would as regards any flight be required by the Rules of the Air to be flown in accordance with the Instrument Flight Rules at the aerodrome of intended landing, the commander of the aircraft shall select prior to take-off an alternate aerodrome unless no aerodrome suitable for that purpose is available.

(7) A flight to be conducted in accordance with the Instrument Flight Rules to an aerodrome when no alternate aerodrome is available shall not be commenced unless:

- (a) a designated standard instrument approach procedure is available for the aerodrome of intended landing; and
- (b) available current meteorological information indicates that visual meteorological conditions will exist at the aerodrome of intended landing from two hours before to two hours after the estimated time of arrival.

(8) A flight shall not be continued towards the aerodrome of intended landing unless the latest available information indicates that conditions at that aerodrome, or at least one alternate aerodrome, will, at the estimated time of arrival, be at or above the specified aerodrome operating minima.

(9) In this article “specified” in relation to aerodrome operating minima means such particulars of aerodrome operating minima as have been notified in respect of the aerodrome or if the relevant minima have not been notified such minima as are ascertainable by reference to the notified method for calculating aerodrome operating minima.

(10) In this article “Category II, Category IIIA and Category IIIB approach and landing” have the same meaning as in article 39(8).”

12. After article 41(1)(c) there shall be inserted:

“(d) An operator shall not permit a helicopter rotor to be turned under power for the purpose of making a flight unless there is a person at the controls qualified to act as pilot-in-command of the helicopter in accordance with the provisions of article 21 of this Order.”

13.—(1) After article 45 there shall be inserted:

“Non-public transport flights – additional duties of commander

45A.—(1) This article shall apply to an aircraft flying for any purpose other than public transport.

(2) In relation to every flight to which this article shall apply the commander of the aircraft shall ensure that breathing oxygen is available to crew members and passengers in sufficient quantities for all flights at such altitudes where lack of oxygen might result in impairment of the faculties of crew members or harmfully affect passengers and made available for use by such crew members and passengers in accordance with paragraphs (2)(e) and (f) of article 45 of this Order.”

(2) In Schedule 4 Paragraph 4 (Table) sub-paragraphs (2)(a) and (15)(a), in the column headed “Circumstances of flight”, there shall be added “(iv) when flying at a height of 10 000 ft or more above mean sea level” and adjacent thereto, in the column headed “Scale of equipment required”, there shall be added “L1 or L2”.

14. For articles 50 and 51 there shall be substituted:

“Area navigation and required navigation performance capabilities – aircraft registered in the Territory

50.—(1) Subject to paragraph (4) an aircraft registered in the Territory shall not fly in designated required navigation performance airspace unless it is equipped with area navigation systems which enable the aircraft to maintain the navigation performance capability specified in respect of that airspace.

(2) Subject to paragraph (4) while the aircraft is flying in the said airspace the equipment required by paragraph (1) shall be operated in accordance with procedures approved by the Governor.

(3) The equipment required by paragraph (1) shall be approved by the Governor and installed and maintained in a manner approved by the Governor.

(4) An aircraft need not comply with the requirements of paragraphs (1) and (2) where the flight has been authorised by the appropriate air traffic control unit notwithstanding the lack of compliance and provided that the aircraft complies with any instructions the air traffic control unit may give in the particular case.

(5) An approval granted by the Governor for the purposes of this article shall be in writing and subject to such conditions as the Governor thinks fit.

Area navigation and required navigation performance capabilities – aircraft not registered in the Territory

51.—(1) An aircraft registered elsewhere than in the Territory shall not fly in designated required navigation performance airspace in the Territory unless it is equipped with area navigation systems so as to comply with the law of the country in which the aircraft is registered insofar as that law requires it to be so equipped when flying within designated required navigation performance airspace.

(2) Subject to paragraph (3) the said navigation equipment shall be capable of being operated so as to enable the aircraft to maintain the navigation performance capability notified in respect of the airspace in which the aircraft is flying, and it is so operated.

(3) An aircraft need not comply with the requirements of paragraph (2) where the flight has been authorised by the appropriate air traffic control unit notwithstanding the lack of compliance and provided that the aircraft complies with any instructions the air traffic control unit may give in the particular case.”

15. For article 54(1) there shall be substituted:

“54.—(1) An aircraft in flight shall not tow a glider unless there is a certificate of airworthiness issued or rendered valid in respect of the towing aircraft under the law of the country in which the aircraft is registered and that certificate of airworthiness or the flight manual for the aircraft includes an express provision that it may be used for that purpose.”

16. For article 55(1) there shall be substituted:

“55.—(1) Subject to the provisions of this article, an aircraft in flight shall not, by means external to the aircraft, tow any article, other than a glider, or pick up or raise any person, animal or article, unless there is a certificate of airworthiness issued or rendered valid in respect of that aircraft under the law of the country in which the aircraft is registered and that certificate of airworthiness or the flight manual for the aircraft includes an express provision that it may be used for that purpose.”

17. In article 65(2) for “drink or drug to such an extent as to impair his capacity so to act” there shall be substituted “alcohol, any drug or any psychoactive substance, including prescribed or proprietary medication, so as to render that person unable safely and properly so to act or so as to create a risk to that person or any other person”.

18. For article 67 there shall be substituted:

“67.—(1) Every person in an aircraft shall obey all lawful commands which the commander or a member of the crew of that aircraft may give for the purpose of securing the safety of the aircraft and of the persons or property carried therein, or the safety, efficiency or regularity of air navigation.

(2) No person may operate on any aircraft any cellphone, computer or other electronic device that is designed to transmit or capable of transmitting electromagnetic energy otherwise than in accordance with the permission of the commander of that aircraft.

(3) Paragraph (2) of this article shall not apply to—

- (a) hearing aids; or
- (b) heart pacemakers; or
- (c) portable voice recorders; or
- (d) electric shavers; or
- (e) electronic watches; and
- (f) any other portable electronic device if the operator or commander of the aircraft has determined that the said portable electronic device to be used will not cause interference with any aircraft system or equipment of the aircraft on which it is used.”

19. After article 105 there shall be inserted:

“Instrument Approach Procedures

105A.—(1) No person may establish or use an instrument approach procedure at an aerodrome in the Territory otherwise than under and in accordance with an approval granted by the Governor to the aerodrome licence holder or to the person having the management and control of a government aerodrome.

(2) An approval shall be granted pursuant to paragraph (1) upon the Governor being satisfied:

- (a) as to the intended purpose of the procedure; and
- (b) that the person applying for approval is competent to operate the procedure and that any equipment associated with such procedure is fit for its intended purpose.

(3) An approval pursuant to paragraph (1) shall be granted on such conditions as the Governor shall think fit and he shall cause such procedure to be notified as a procedure available for the landing of aircraft at an aerodrome within the Territory.

(4) No person may use an instrument approach procedure otherwise than in accordance with the published conditions for such use.

(5) For the purposes of this article an “instrument approach procedure” means a series of pre-determined manoeuvres by reference to flight instruments with specified protection from obstacles from the initial approach fix or, where applicable, from the beginning of a defined arrival route, to a point from which a landing can be completed and thereafter if a landing is not completed, to a position at which holding or en-route obstacle clearance criteria apply.

(6) Nothing in paragraph (1) shall apply to any aerodrome in the Territory that is in the occupation of Her Majesty’s naval, military or air force or of any visiting force.”

20. In article 118(2) for “and any authorised person” there shall be substituted “or any authorised person”.

21. In article 130(1):

(1) After the definition of “Declared distances” there shall be inserted:

““Designated required navigation performance airspace” means airspace that has been notified, prescribed or otherwise designated by the competent authority for the airspace as requiring specified navigation performance capabilities to be met by aircraft flying within it;”

(2) After the definition of “Flight level” there shall be inserted:

““Flight manual” means a manual, associated with the certificate of airworthiness, containing limitations within which the aircraft may be considered airworthy, and instructions and information necessary to the flight crew for the safe operation of the aircraft;”

(3) After the definition of “Logbook” there shall be inserted:

““Maintenance” means any one or combination of overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component, with the exception of pre-flight inspection;”

(4) After the definition of “Replacement” there shall be inserted:

““Requirements” means requirements published by the Governor pursuant to the provisions of article 135 of this Order;”

(5) After the definition of “Special VFR flight” there shall be inserted:

““Standard instrument approach procedure” means an instrument approach procedure designed in accordance with International Civil Aviation Organisation Procedures for Air Navigation Services (PANS-OPS);”

22. After article 137 there shall be inserted:

“Arrangements for giving effect to the Convention

138.—(1) The Governor shall within the Territory publish such requirements or make such arrangements as are necessary, requisite or expedient for carrying out the Chicago Convention and any Annex thereto relating to international standards and recommended practices and any amendment to the Convention or to any such Annex or generally for regulating and securing the safety of international air navigation.

(2) Pursuant to the provisions of paragraph (1) the Governor shall in particular:

- (a) Provide or secure the provision of a meteorological service to meet the needs of international air navigation and with due regard to regional air navigation agreements and shall designate the appropriate authority to provide or arrange for the provision of such meteorological service;
- (b) Ensure the availability in the Territory of aeronautical charts;
- (c) Arrange for the establishment and provision of search and rescue services within the Territory, and in such portions of the high seas that are the responsibility of the Territory pursuant to regional air navigation agreements;
- (d) Provide an aeronautical information service or agree with one or more other Contracting States for the provision of a joint service, or delegate the authority for the provision of the service to a non-governmental agency.

(3) The Governor shall arrange for the details of the services and arrangements provided in accordance with paragraph (2) to be included in the Aeronautical Information Publication relating to the Territory.”

23. In Schedule 4, paragraph 4 (Table), sub-paragraphs (11)(a) and (11)(b), in the column headed “Circumstances of flight” for “the purpose of public transport” there shall be substituted “purposes other than public transport”.

A.K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order further amends the Air Navigation (Overseas Territories) Order 2001 (referred to below as “the Order”). The following changes are made:

(1) **Type certification.** The adoption of this article enables a Governor to accept onto a Territory register an aircraft that has a Type Certificate issued by a Contracting State in accordance with the Chicago Convention Annex 8 Part II Chapter 1 and to facilitate the issue by the Governor of a Certificate of Airworthiness in accordance with Annex 8 Part II Chapter 3 and the provisions of article 9(1)(a) of the Order (article 3).

(2) **Certification of airworthiness.** This amendment paves the way for the elimination of the various categories of certificate of airworthiness as detailed in Schedule 3 Part B. This is in order to enable an aircraft to be certified according to what it is rather than what it does on the basis of the operating and performance limitations prescribed in the approved flight manual and in conformity with its Type Certificate (article 4).

(3) **Certificate of release to service.** This amendment clarifies an area of uncertainty regarding the reinstatement of a certificate of airworthiness and the associated issue of a certificate of release of an aircraft to service upon completion of maintenance, inspection, repair or other similar activity (article 5).

(4) **Licensing of maintenance engineers.** The amendment expands the scope of restrictions on performing functions whilst under the influence of drink or drugs and brings the provisions more closely into alignment with the requirements of the Chicago Convention Annex 1 Chapter 1 paragraph 1.2.7 (article 6).

(5) **Approval of maintenance organisations.** This article has been added to provide a basis for the grant by the Governor of an approval to a maintenance organisation to undertake maintenance on Territory registered aircraft (article 7).

(6) **Equipment of aircraft.** This amendment facilitates the longer-term objective of removing as many as possible of the schedules to the Order and their replacement by the Requirements specified by the Governor under article 135 of the Order (article 8).

(7) **Flight crew.** The amendments reflect the fact that the number of flight crew will not normally in the future be specified in the Certificate of Airworthiness (article 9).

(8) **Flight crew licences.** The objective of this amendment is to relocate some of the flight crew licensing provisions from Schedules 8 and 10 of the Order to the Requirements published by the Governor under article 135 (article 10).

(9) **Aerodrome operating minima.** This article establishes aerodrome operating minima applicable to non-public transport flights (article 11).

(10) **Commander of an aircraft.** Addition of a new sub-paragraph to article 41(1) to meet the requirements of the Chicago Convention Annex 6 Part III Section III Chapter 2 paragraph 2.17 (article 12).

(11) **Commander’s additional duties.** Requirements applied to international general aviation, in the same way as for public transport flights in article 45, to comply with the Chicago Convention Annex 6 Part II paragraph 4.10 and Annex 6 Part III paragraph 2.10. Consequential amendment to Schedule 4, Paragraph 4 (Table) (article 13).

(12) **Navigation performance capability.** This amendment reflects current international practice in relation to area navigation, required navigation performance and operational approval (article 14).

(13) **Towing of gliders.** This amendment reflects the changes made in respect of certificates of airworthiness and the performance characteristics of aircraft (article 15).

(14) **Towing, picking up and raising of persons and articles.** This amendment reflects the changes made in respect of certificates of airworthiness and the performance characteristics of aircraft (article 16).

(15) **Drunkenness of aircrew.** This amendment expands the scope of restrictions on performing functions whilst under the influence of drink or drugs and brings the provisions more closely into alignment with the requirements of the Chicago Convention Annex 1 Chapter 1 paragraph 1.2.7 (article 17).

(16) **Commander and crew authority.** These amendments impose an obligation to comply with the instructions of a crew member as well as the commander and add specific obligations to comply with instructions concerning mobile phones and similar equipment and to reinforce the authority of the commander in this respect (article 18).

(17) **Approval of instrument approach procedures.** The Order is presently silent with regard to the requirement for approval for the establishment and use of an instrument approach procedure at a Territory aerodrome. The article is designed to require that such a procedure shall be approved before it may be established or used (article 19).

(18) **Power to prevent aircraft flying.** The amendment removes any doubt as to the Governor's power to appoint more than one authorised person and for any such authorised person to inspect an aircraft without the necessity for the presence of the Governor (article 20).

(19) **Interpretation.** Additional definitions inserted as required by other amendments (article 21).

(20) **Arrangements for giving effect to the Convention.** This article empowers and enables Governors to ensure that arrangements are put in place to secure compliance with certain Annexes to the Chicago Convention dealing with meteorology, aeronautical charts, search and rescue and aeronautical information services that are not currently covered in the order (article 22).

(21) **Aircraft equipment.** This amendment achieves compliance with the Chicago Convention Annex 6 Part II paragraph 6.9.7 with regard to the requirement for Terrain Awareness Warning System Class A or B on aircraft used for international general aviation (article 23).

Annexes to the Chicago Convention can be purchased from:

ICAO Document Sales Unit,

999 University Street,

Montreal,

Quebec HC 5H7,

Canada,

Tel: +1 (514) 954-8022; Fax: +1 (514) 954-6769

E-mail: sales@ico.int.