

2017 No. 1107

OVERSEAS TERRITORIES

The Mali (Sanctions) (Overseas Territories) Order 2017

(Legal Notice 6 of 2018)

<i>Made</i>	- - - -	<i>15th November 2017</i>
<i>Laid before Parliament</i>		<i>22nd November 2017</i>
<i>Coming into force</i>	- -	<i>13th December 2017</i>

At the Court at Buckingham Palace, the 15th day of November 2017

Present,

The Queen's Most Excellent Majesty in Council

Under Article 41 of the Charter of the United Nations, the Security Council of the United Nations has, by a resolution adopted on 5th September 2017, called upon Her Majesty's Government in the United Kingdom to apply certain measures to give effect to decisions of that Council in relation to Mali:

Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946(a), section 112 of the Saint Helena Act 1833(b), the British Settlements Acts 1887 and 1945(c), and all of the other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Mali (Sanctions) (Overseas Territories) Order 2017 and it comes into force on 13th December 2017.

(2) This Order extends to the territories listed in Schedule 1.

Application of the Order

2.—(1) This Order applies to—

(a) any person in the Territory,

(b) any person elsewhere who is—

(i) 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

(a) 1946 c.45.
(b) 1833 c.85.
(c) 1887 c.54 and 1945 c.7.

- (ii) a body incorporated or constituted under the law of any part of the Territory, and
- (c) any person onboard a ship or aircraft that is registered in the Territory.

(2) Article 14 applies as set out in Schedule 2 to the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, the Falkland Islands, South Georgia and the South Sandwich Islands, and St Helena, Ascension and Tristan da Cunha.

(3) In the application of this Order to any territory listed in Schedule 1, the expression “the Territory” in this Order means that territory.

Interpretation

3.—(1) In this Order—

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

“the Council Regulation” means Council Regulation (EU) 2017/1770 adopted by the Council of the European Union on 28th September 2017^(a) concerning restrictive measures in view of the situation in Mali;

“designated person” means any person listed in Annex I to the Council Regulation;

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

“economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

“frozen account” means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person;

“funds” means financial assets and benefits of every kind, including—

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments,
- (b) deposits with relevant institutions or other entities, balances on accounts, debts and debt obligations,
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts,
- (d) interest, dividends or other income on or value accruing from or generated by assets,
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments,
- (f) letters of credit, bills of lading and bills of sale,
- (g) documents showing evidence of an interest in funds or financial resources, and
- (h) any other instrument of export financing;

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

“insurance” means an undertaking or commitment where a person is obliged, in return for a payment, to provide another person, in the event of materialisation of a risk, with an indemnity or a benefit as determined by the undertaking or commitment;

“officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate or any person who has purported to act in any such capacity;

“relevant institution” means—

- (a) any person who may lawfully accept deposits in or from within the Territory by way of business, or

(a) O.J.L.251 29.9.2017.

- (b) 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;

“the Territory” has the meaning given in article 2(3);

“transfer” in relation to funds means—

- (a) any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, regardless of whether the payer and the payee are the same person, or
- (b) any transaction by non-electronic means such as in cash, cheques or accountancy orders, with a view to making funds available to a payee regardless of whether the payer and payee are the same person.

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

- (a) the activity of accepting deposits has the meaning given by section 22 of the Financial Services and Markets Act 2000^(a), taken with Schedule 2 to that Act and any order under section 22 of that Act, and
- (b) a person is not regarded as accepting deposits by way of business if—
 - (i) the person does not hold himself or herself out as accepting deposits on a day to day basis, and
 - (ii) any deposits which the person 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) 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) An expression used both in this Order and in the Council Regulation has the meaning given in the Council Regulation.

(5) A reference in this Order to any enactment (including legislation of the European Union) or statutory instrument is to be construed as a reference to that enactment or instrument as amended from time to time.

PART 1

Freezing funds etc.

Dealing with funds and economic resources

4.—(1) It is an offence for a person (“P”), including the designated person, to deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) In paragraph (1), “deal with” means—

- (a) in relation to funds—
 - (i) use, alter, move, allow access to or transfer,
 - (ii) deal with the funds in any other way that would result in a change in volume, amount, location, ownership, possession, character or destination, or
 - (iii) make any other change that would enable use, including portfolio management, and
- (b) in relation to economic resources, use to obtain funds, goods or services in any way, including by selling, hiring or mortgaging the resources.

(a) 2000 c.8.

(3) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that—

- (a) P is making the funds or economic resources so available, and
- (b) in the case of economic resources, the designated person would be likely to exchange them, or use them in exchange, for funds, goods or services.

(4) It is an offence for a person (“P”) to make funds or economic resources available (directly or indirectly) to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or economic resources so available.

(5) For the purposes of paragraph (4)—

- (a) funds or economic resources are made available for the benefit of a designated person only if that person obtains, or is able to obtain, a significant financial benefit from the funds or economic resources, and
- (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(6) No liability arises for any person concerned in the freezing of funds or economic resources in accordance with this article unless it is proved that the funds or economic resources were frozen or withheld as a result of negligence.

(7) This article is subject to articles 5, 7 and 8.

Credits to a frozen account

5.—(1) Nothing in article 4 prevents a person from crediting a frozen account with—

- (a) interest or other earnings due on the account, or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the designated person was so designated.

(2) Nothing in article 4 prevents a relevant institution from crediting a frozen account where it receives funds transferred to the account.

Information relating to funds etc.

6.—(1) The Governor must take such steps as the Governor considers appropriate to cooperate with any international investigation relating to the funds, economic resources or financial transactions of—

- (a) a designated person,
- (b) a person owned or controlled by a designated person, or
- (c) a person acting on behalf of, or at the direction of, a designated person.

(2) A relevant institution must inform the Governor as soon as practicable if it knows or suspects that a customer—

- (a) is a designated person, or
- (b) has committed an offence under article 4 or 7(10).

(3) When informing the Governor under paragraph (2), the relevant institution must state—

- (a) the information or other matter on which the knowledge or suspicion is based,
- (b) any information it holds about the customer by which the customer can be identified, and
- (c) if the customer is a designated person, the nature and amount or quantity of any funds or economic resources held by the relevant institution for the customer since the customer first became a designated person.

(4) A relevant institution must inform the Governor as soon as practicable if it credits a frozen account in accordance with article 5(1)(b) or (2).

(5) It is an offence for a relevant institution to fail to comply with a requirement of paragraph (2), (3) or (4).

(6) Anything done by a relevant institution in accordance with this article is not to be treated as a breach of any restriction imposed by statute or otherwise.

(7) For the purposes of this article, “customer”, in relation to a relevant institution, includes—

- (a) a person who is or has been, at any time since the coming into force of this Order, a customer of the institution, or
- (b) a person with whom the institution has had dealings in the course of its business since the coming into force of this Order.

PART 2

General

Licences granted by the Governor

7.—(1) The Governor may, with the consent of the Secretary of State, grant a licence authorising an activity that would otherwise be prohibited under article 4.

(2) A person is not guilty of an offence under article 4 in respect of anything done by the person under the authority of a licence granted by the Governor.

(3) A licence may, in particular, relate to—

- (a) payment of basic expenses of designated persons and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines, medical treatment, taxes, insurance premiums and public utility charges;
- (b) payment of reasonable professional fees and expenses associated with the provision of legal services;
- (c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
- (d) payment of necessary extraordinary expenses;
- (e) satisfaction of a judicial, administrative or arbitral lien or judgment established before the designated person was so designated and not for the benefit of a designated person;
- (f) payment due under contract or agreement concluded by, or an obligation that arose before, the date on which the designated person was so designated and not for the benefit of a designated person;
- (g) the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, to further the objectives of peace and national reconciliation in Mali and stability in the region.

(4) A licence must specify the acts authorised by it and may be—

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

(5) The Governor may, with the consent of the Secretary of State, vary or revoke a licence at any time.

(6) On the grant, variation or revocation of a licence, the Governor must—

- (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person, and
- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Governor considers appropriate to publicise the grant, variation or revocation of the licence.

(7) Any notice to be given to a person by the Governor under paragraph (6) may be given—

- (a) by posting it to the person's last known address, or
- (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office in the Territory of the body or partnership.

(8) Where the Governor does not have an address in the Territory for the person, the Governor must make arrangements for the notice to be given to the person at the first available opportunity.

(9) Failing to comply with any condition in the licence is acting in a way that is not authorised by the licence unless—

- (a) the licence was modified after the completion of the act authorised by the licence, and
- (b) the alleged failure to comply with a condition in the licence would not have been a failure if the licence had not been so modified.

(10) It is an offence for a person to knowingly or recklessly make any statement or give any document or information which is false in a material particular for the purpose of obtaining a licence.

(11) A licence granted in connection with the application for which the false statement was made or the false document or information given is void from the time it was granted.

Licences granted outside the Territory

8. A person is not guilty of an offence under article 4 in respect of anything done by the person—

- (a) outside the Territory, and
- (b) under the authority of a licence granted in accordance with any provisions of the law in force in the place where it is done corresponding with the provisions of this Order.

Claims for indemnity or under contract

9.—(1) No claim in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by this Order shall be enforced if it is made by:

- (a) a designated person, or
- (b) a person acting on behalf of a designated person.

(2) Paragraph (1) applies in particular to any claim for indemnity or any other claim of this type, such as a claim under guarantee (including a financial guarantee or indemnity).

(3) In any proceedings for the enforcement of such a claim, the burden of proof that the claim is not prohibited is on the person seeking to enforce that claim.

Requirement to publish list of designated persons

10.—(1) The Governor must—

- (a) publish a list of designated persons, and
- (b) keep the list up to date.

(2) The Governor may publish a list under paragraph (1) in any form the Governor considers appropriate, including by means of a website.

Evidence and information

11. Schedule 3 contains further provision about obtaining evidence and information.

Functions of the Governor

12.—(1) The Governor may, to such extent and subject to such restrictions and conditions as the Governor thinks proper, delegate or authorise the delegation of any of the Governor’s functions under this Order to any person, or class or description of persons.

(2) References in this Order to “the Governor” are to be construed accordingly.

(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 this Order.

Circumvention and contravention of prohibitions

13. It is an offence for a person to intentionally participate in an activity, knowing that the object or effect of the activity is (directly or indirectly)—

- (a) to circumvent any of the prohibitions in article 4, or
- (b) to enable or facilitate the contravention of any such prohibition.

Penalties

14.—(1) A person guilty of an offence under article 4 or 13 is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) A person guilty of an offence under article 6 or 7(10), or paragraph 3(b), (c) or (d) of Schedule 3 is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) A person guilty of an offence under paragraph 3(a) or 5 of Schedule 3 is 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.

(4) If an offence under this Order committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
- (b) to be attributable to any neglect on the part of an officer of the body corporate,

the officer as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly.

Proceedings

15.—(1) Proceedings against a person for an offence may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(2) Summary proceedings for an offence alleged to have been committed outside the Territory may be instituted within the period of 12 months beginning with the date on which the person charged first enters the Territory after committing the offence.

(3) Proceedings for an offence must not be instituted in the Territory except with the consent of the principal public officer of the Territory responsible for criminal prosecutions.

(4) Nothing in paragraph (3) prevents—

- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of an offence, or

- (b) the remand in custody or on bail of any person charged with an offence.
- (5) A reference in this article to an offence is to an offence under this Order.

Ceri King
Deputy Clerk of the Privy Council

SCHEDULE 1

Article 1(2)

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, Ascension and Tristan da Cunha
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 2

Application of Article 14 to particular Territories

Application of article 14

1.—(1) Article 14 applies as follows to the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, the Falkland Islands, South Georgia and the South Sandwich Islands, and St Helena, Ascension and Tristan da Cunha.

(2) A person guilty of an offence under article 4 or 13 is liable on conviction to imprisonment for a term not exceeding seven years or to a fine or to both.

(3) A person guilty of an offence under article 6 or 7(10), or paragraph 3(b), (c) or (d) of Schedule 3, is liable on conviction to imprisonment for a term not exceeding two years or to a fine or to both.

(4) A person guilty of an offence under paragraph 3(a) or 5 of Schedule 3 is 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) If an offence under this Order committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on the part of an officer of the body corporate,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

SCHEDULE 3

Article 11

Evidence and information

Power to require information or documents

1. —(1) An authorised officer may request a person in or resident in the Territory to provide any information or produce any document in the person's possession or control which the officer may require for the purpose of—

- (a) securing compliance with, or detecting evasion of, this Order;
- (b) obtaining evidence of the commission of an offence under this Order;
- (c) establishing the nature and amount or quantity of any funds or economic resources owned, held or controlled by a designated person;
- (d) establishing the nature of any financial transactions entered into by a designated person; or
- (e) cooperating with any international investigation in accordance with article 6(1).

(2) When exercising the power in sub-paragraph (1), an authorised officer may—

- (a) take copies of or extracts from any document so produced;
- (b) request a person producing a document to give an explanation of it; and
- (c) where that person is a body corporate, request a person who is a present or past officer or employee of the body corporate to give such an explanation.

(3) A person to whom a request is made must comply with it within such time and in such manner as may be specified in the request.

(4) Any power under this Schedule to require information, or produce for inspection a document, includes a power to specify the form in which the information or document should be given, and the period within which the information or document should be provided or produced for inspection.

(5) Nothing in this paragraph is to be taken to require a person who has acted as counsel or solicitor for a person to disclose any privileged information or document in the person's possession in that capacity.

Search warrants

2.—(1) A justice of the peace may grant a search warrant if satisfied by information on oath that—

- (a) there are reasonable grounds for suspecting that—
 - (i) an offence under this Order has been, is being, or is about to be committed, or
 - (ii) any information or document requested by an authorised officer under paragraph 1 has or have not been provided or produced; and
- (b) evidence in relation to the offence, or the information or document so requested, is or are to be found in a vehicle or on a premises specified in the information.

(2) A search warrant issued under this paragraph is a warrant empowering an authorised officer to enter and search the vehicle or premises specified in the information, at any time within one month from the date of the warrant.

(3) An authorised officer who enters and searches a vehicle or premises under a warrant issued under this paragraph may—

- (a) take such other persons and such equipment in to the vehicle or on to the premises as appear to the officer to be necessary;
 - (b) take such steps as appear to the officer to be necessary, including in particular any steps mentioned in sub-paragraph (4);
 - (c) inspect and seize anything found in the course of a search if the officer reasonably suspects that—
 - (i) it is evidence in relation to an offence under this Order,
 - (ii) it is information or a document requested (but not provided or produced) under paragraph 1, or
 - (iii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed;
 - (d) take copies of any document.
- (4) The steps mentioned in sub-paragraph (3)(b) include—
- (a) entering any land,
 - (b) using reasonable force, and
 - (c) stopping a vehicle for the purposes of entering and searching it.
- (5) An authorised officer who enters a vehicle or premises under a warrant issued under this paragraph may—
- (a) search any person found in the vehicle or on the premises whom the officer has reasonable cause to believe to be in possession of anything which may be required as evidence for the purposes of proceedings in respect of an offence under this Order; and
 - (b) seize anything found in such a search.
- (6) Anything seized under sub-paragraph (3)(c) or (5)(b) may be—
- (a) retained for so long as is necessary in all the circumstances, and
 - (b) forfeited, disposed of or transferred as appropriate.
- (7) A search of a person under sub-paragraph (5) must be carried out by a person of the same sex.

Offences

3. It is an offence for a person to—

- (a) without reasonable excuse, refuse or fail 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;
- (b) knowingly or recklessly give any information, or produce any document, which is false in a material particular in response to such a request,
- (c) destroy, mutilate, deface, conceal or remove any document with intent to evade the provisions of this Schedule; or
- (d) otherwise intentionally obstruct a person in the exercise of that person's powers under this Schedule.

4. Where a person is convicted of an offence under paragraph 3(a), the court may make an order requiring the person, within such period as may be specified in the order, to give the requested information or produce the requested document.

5.—(1) It is an offence for a person to disclose information or a document obtained in accordance with this Order (including a copy or extract made of such a document) except—

- (a) to a person who would have been authorised to request the information or document under this Order;
- (b) to a person holding or acting in any office under or in the service of—

- (i) the Crown in right 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) for the purpose of giving assistance or cooperation, with the authority of the Governor, to—
- (i) any organ of the United Nations, or
 - (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the government of any State or territory;
- (d) with a view to instituting, or otherwise for the purposes of, any proceedings—
- (i) in the Territory, for an offence under this Order, or
 - (ii) in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory (other than the Territory), for an offence under a similar provision in any such jurisdiction;
- (e) to the Financial Conduct Authority of the United Kingdom or to the relevant authority with responsibility in any other State or territory for regulating and supervising financial services business; or
- (f) to any third party, with the consent of a person who, in the person’s own right, is entitled to the information or to possession of the document, copy or extract.
- (2) In sub-paragraph (1)(f) “in the person’s own right” means not merely in the person’s capacity as a servant or agent of another person.

Exercise of powers: general

6.—(1) Any power exercisable by an authorised officer under this Schedule may be exercised by a person acting under the officer’s authority.

(2) An authorised officer, or a person acting under the officer’s authority, must, if requested to do so, produce evidence of his or her authority before exercising any power conferred by this Schedule.

(3) An authorised officer may exercise any power under paragraph 2 in relation to a vehicle in the Territory.

(4) Anything done in accordance with this Schedule is not to be treated as a breach of any restriction imposed by statute or otherwise.

(5) This Schedule is without prejudice to any other provision of law conferring powers, imposing restrictions or enabling restrictions to be imposed in respect of vehicles.

Interpretation

7. In this Schedule—

“authorised officer” means—

- (a) a commissioned officer of the armed forces of the Territory,
- (b) a police or customs officer of the Territory, or
- (c) a person authorised by the Governor for the purposes of this Schedule, whether generally or in a particular case;

“justice of the peace” includes other competent judicial authorities within the Territory responsible for granting search warrants.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect in specified Overseas Territories to the sanctions regime created by the United Nations Security Council in resolution 2374 (2017) adopted on 5 September 2017. This Order also reflects the implementation of these sanctions by the European Union in Council Decision 2017/1775 and Council Regulation (EU) 2017/1770, which were adopted on 28th September 2017.

The sanctions imposed include an asset freeze on persons and entities designated by the relevant United Nations Sanctions Committee as persons responsible for or complicit in, or having engaged in, directly or indirectly, actions or policies that threaten the peace, security, or stability of Mali. The Order makes provision for the Governor to license certain activities in line with exemptions under the sanctions regime.

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