

2017 No. 984

OVERSEAS TERRITORIES

The Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order 2017

(Legal Notice 5 of 2018)

Made - - - - - *11th October 2017*

Coming into force in accordance with article 1(2) and (3)

At the Court at Buckingham Palace, the 11th day of October 2017

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 156 of the Policing and Crime Act 2017(a), is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation and commencement

1.—(1) This Order may be cited as the Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order 2017.

(2) Articles 1 to 6 of this Order come into force on 2nd November 2017.

(3) Articles 7 to 14 of this Order come into force on the day that regulations made under section 152(1) first come into force.

Extent

2.—(1) This Order extends to the territories listed in the Schedule to this Order (“the territories”).

(2) In the application of this Order to any of the territories, the expression “the Territory” in this Order means that territory.

Interpretation

3.—(1) In this Order—

“the Act” means the Policing and Crime Act 2017;

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

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

(a) 2017 c.3.



“ship” includes every description of vessel used in navigation;
“Temporary Regulations” means any regulations made under section 152(1) which extend to the territories by virtue of Article 7;
“the territories” has the meaning given in article 2(1);
“the Territory” has the meaning given in article 2(2).

(2) In this Order, any reference to a numbered section is to that section of the Act.

Interpretation provisions of the Act

4. Section 143 (Interpretation) extends to the territories.

Linking of UN financial sanctions Resolutions with EU financial sanctions Regulations

5. The following extend to the territories—

- (a) the United Nations and European Union Financial Sanctions (Linking) Regulations 2017(a), as amended from time to time, and
- (b) any other regulations made under section 154, as those regulations are amended from time to time.

Implementation of UN financial sanctions Resolutions: temporary listing

6. Section 155 extends to the territories.

Implementation of UN financial sanctions Resolutions: temporary regulations

7. Any regulations made under section 152(1), as those regulations are amended from time to time, extend to the territories with the modifications set out in articles 8 to 14.

Temporary Regulations: application

8. In any Temporary Regulations, any provision about application is to be read as if the Temporary Regulations apply within the Territory and to any prohibited conduct committed wholly or partly outside the Territory by—

- (a) any person who is—
 - (i) ordinarily resident in the Territory and is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person, or
 - (ii) a body incorporated or constituted under the law of the Territory, and
- (b) any person onboard a ship or aircraft that is registered in the Territory.

Temporary Regulations: expiry

9.—(1) Subject to paragraph (3), in any Temporary Regulations, any provision about the expiry of those Regulations is to be read as if the Temporary Regulations cease to have effect in the Territory on the earlier of—

- (a) the day on which an Order in Council (other than this Order) implementing the relevant UN financial sanctions Resolution enters into force in the Territory, and
- (b) the day that falls 120 days after the day on which the relevant UN financial sanctions Resolution is adopted.

(a) S.I. 2017/478.

(2) For the purpose of paragraph (1), a reference to the relevant UN financial sanctions Resolution in relation to Temporary Regulations is a reference to the UN financial sanctions Resolution that is implemented by those Temporary Regulations.

(3) Where any Temporary Regulations implement more than one UN financial sanctions Resolution, and make provision for different dates or times for the expiry of different regulations within those Temporary Regulations, such provision is to be read as if each regulation of the Temporary Regulations ceases to have effect in the Territory on the earlier of—

- (a) the day on which an Order in Council implementing the UN financial sanctions Resolution to which that regulation relates enters into force in the Territory, and
- (b) the day that falls 120 days after the day on which the UN financial sanctions Resolution to which that regulation relates is adopted.

Temporary Regulations: general modifications

10.—(1) Any Temporary Regulations are to be read as if any reference contained in them to—

- (a) the Treasury is a reference to the Governor, except in relation to any notification to a Committee of the Security Council of the United Nations;
- (b) payments due under judicial, administrative or arbitral decisions rendered in the United Kingdom or enforceable in the United Kingdom is a reference to payments due under such decisions rendered in the Territory or enforceable in the Territory;
- (c) the High Court or, in Scotland, the Court of Session, or to an appropriate court in the United Kingdom, is in each case a reference to any appropriate court with jurisdiction in the Territory;
- (d) a relevant institution is a reference to—
 - (i) any person who may lawfully accept deposits in or from within the Territory by way of business,
 - (ii) 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, or
 - (iii) any undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers.

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

- (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(b) and any relevant order made under section 22 of that Act(c); and
- (b) a person is not regarded as accepting deposits by way of business if—
 - (i) the person does not hold themselves out as accepting deposits on a day to day basis, and
 - (ii) any deposits which they accept 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.

(a) 2000 c.8. Section 22 was amended by the Financial Services Act 2012 (c.21), section 7(1).

(b) Schedule 2 was amended by: the Dormant Bank and Building Society Accounts Act 2008 (c.31), section 15, Schedule 2, paragraph 1; the Regulation of Financial Services (Land Transactions) Act 2005 (c.24), section 1; the Financial Services Act 2012, section 7(2) to (5) and section 8; and by S.I. 2013/1881.

(c) S.I. 2001/544 as amended, most recently by S.I. 2017/500.

Temporary Regulations: functions of the Governor

11. Where by virtue of article 10(1)(a) any provision of Temporary Regulations confers a power on the Governor, in relation to any function of granting, varying or revoking a licence to do something that would otherwise be prohibited by the Temporary Regulations, the Governor may not exercise that function without the consent of the Secretary of State in each case.

Temporary Regulations: offences and proceedings

12.—(1) Any Temporary Regulations are to be read as if any reference contained in them to—

- (a) an offence is a reference to an offence under the law of the Territory;
- (b) an offence committed wholly or partly outside the United Kingdom is a reference to an offence committed wholly or partly outside the Territory.

(2) Where Temporary Regulations apply to a person only by virtue of this Order, that person is not guilty of an offence under those Temporary Regulations 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 the Temporary Regulations.

(3) Any provision in Temporary Regulations as to the period in which proceedings may be tried, commenced or instituted is to be read as if 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 alleged offence.

Temporary Regulations: penalties

13.—(1) In any of the territories other than those listed in paragraph (2), any provision in Temporary Regulations as to the maximum penalty on summary conviction is to be read as if a person guilty of an offence under any Temporary Regulations is liable on summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent, or both.

(2) Any provision in Temporary Regulations as to the penalty for conviction in relation to an offence under those Regulations 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 de Cunha—

- (a) in relation to any offence for which a penalty on conviction on indictment is specified in the Temporary Regulations, the maximum penalty is imprisonment for a term not exceeding 7 years, or a fine, or both;
- (b) in relation to any offence for which only a penalty on summary conviction is specified in the Temporary Regulations, the maximum penalty is imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent, or both.

Temporary Regulations: monetary penalties

14.—(1) Where by virtue of article 10(1)(a) any provision of Temporary Regulations confers on the Governor a power to impose a monetary penalty, the following applies—

- (a) the person on whom the penalty is imposed is not entitled to seek a review by a Minister of the Crown or to appeal to the Upper Tribunal,
- (b) the person may appeal (on any ground) to an appropriate court in the Territory, and
- (c) on such an appeal the appropriate court may—
 - (i) quash the Governor's decision to impose the penalty;

- (ii) uphold the Governor’s decision but substitute a different amount for the amount determined by the Governor; or
- (iii) uphold the Governor’s decision to impose the penalty and its amount.

(2) Where by virtue of article 10(1)(a) the Governor receives a monetary penalty, it is to be paid into the Consolidated Fund for the Territory or, where no such fund exists, into an equivalent public fund.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

Article 2(1)

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, 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

EXPLANATORY NOTE

(This note is not part of the Order)

Under section 152(1) of the Policing and Crime Act 2017 (“the Act”), the Treasury has the power, by regulations, to create a temporary financial sanctions regime to implement a financial sanctions regime imposed by a new United Nations (“UN”) Security Council Resolution. Any such regulations must cease to have effect either when the EU implements the UN financial sanctions, or after the end of a default period.

Under section 154 of the Act, the Treasury may make regulations linking UN financial sanctions Resolutions to EU financial sanctions Regulations (each as defined in section 143 of the Act), in order that the deeming provisions in section 155 can apply. This means that when a UN Security Council Resolution is passed that designates a person or entity as being subject to financial sanctions, that designation can take effect automatically in the UK.

Section 156 of the Act enables these temporary regime measures and temporary deemed designations to be extended to the British overseas territories. This Order provides for them to be

extended to the British overseas territories specified in the Schedule to the Order (the “territories”), with certain modifications.

Article 1 provides that *articles 7 to 14* of the Order come into force only from the first occasion when regulations made under section 152(1) come into force. The rest of the Order comes into force on 2nd November 2017. *Article 4* extends the relevant interpretation provisions of the Act to the territories. *Article 5* extends to the territories regulations made under section 154 of the Act, and *article 6* does the same in respect of section 155 of the Act.

Article 7 extends to the territories regulations made under section 152(1) of the Act, and *articles 8 to 14* set out the modifications which apply to such regulations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors in the United Kingdom is foreseen.

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