

2012 No. 3069

OVERSEAS TERRITORIES

**The Syria (Restrictive Measures) (Overseas Territories)
(Amendment) Order 2012**

(Legal Notice 75 of 2012)

Made - - - - 12th December 2012

Laid before Parliament 19th December 2012

Coming into force - - 9th January 2013

At the Court at Buckingham Palace, the 12th day of December 2012

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, 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 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, interpretation and extent

1.—(1) This Order may be cited as the Syria (Restrictive Measures) (Overseas Territories) (Amendment) Order 2012 and comes into force on 9th January 2013.

(2) In this Order, “the principal Order” means the Syria (Restrictive Measures) (Overseas Territories) Order 2012(c).

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

Amendments to the principal Order

2. The principal Order is amended as follows.

3. In article 2—

(a) in the definition of “the Council Regulation” delete “, and a reference to an Annex to that Regulation is to be construed as a reference to that Annex as amended from time to time”;

(b) in the definition of “frozen account” for “listed” substitute “designated”;

(c) delete the definition of “Gazette”;

(a) 1833 c.85.

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

(c) S.I. 2012/1755.

- (d) for the definition of “restricted goods” substitute—
““restricted goods” means—
- (a) the goods, software and technology specified in Schedule 2 to the Export Control Order 2008^(a), and
 - (b) so far as not covered by paragraph (a), the goods, software and technology specified in the Common Military List of the European Union^(b) as amended from time to time;”;
- (e) at the end, insert—
“(6) 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.”.

4. For article 3 substitute—

“3.—(1) The Governor must—

- (a) publish a list of designated persons and restricted goods, 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.”.

5. After article 8 insert—

“Purchase etc. of restricted goods from Syria

8A. A person to whom this Order applies (“P”) commits an offence if P knowingly—

- (a) purchases, imports or transports restricted goods from Syria or originating in Syria, or
- (b) provides (directly or indirectly) financing and financial assistance or brokering services related to insurance and reinsurance for any purchase, import or transport of restricted goods from Syria or originating in Syria.”.

6. For articles 21 to 23 substitute—

“Investigation of suspected ships, aircraft or vehicles

21.—(1) Where an authorised officer reasonably suspects that a ship, aircraft or vehicle has been, is being, or is about to be used in the commission of an offence under article 7(1), the officer may—

- (a) stop and enter it;
- (b) search it;
- (c) require the relevant person to provide such information relating to the ship, aircraft or vehicle and any goods it is carrying, and produce for inspection such documents and goods as the officer may specify;
- (d) in relation to a ship, require the relevant person to do anything mentioned in paragraph (2);
- (e) in relation to an aircraft or vehicle, require the relevant person to keep the aircraft or vehicle and any goods it is carrying in the Territory until notified by an authorised officer that it may depart.

(2) Further to paragraph (1)(d), the officer may require the relevant person to do any of the following—

(a) S.I. 2008/3231.
(b) O.J.C.85 22.3.2012, p.1.

- (a) stop the ship from proceeding with the voyage on which it is engaged, or about to engage, until notified by an authorised officer that it may proceed;
- (b) not land any part of the ship's cargo at any port specified by the officer, except with the officer's consent;
- (c) if the ship is in port in the Territory, cause it to remain there until notified by an authorised officer that it may depart;
- (d) if the ship is in any other place, take it to a port specified by the officer and keep it there until notified by an authorised officer that it may depart.

(3) The officer may take such steps as appear necessary to carry out a search under paragraph (1)(b), or secure compliance with a requirement under paragraph (1)(c), (d) or (e), including in particular—

- (a) entering any land,
- (b) using reasonable force, and
- (c) detaining the ship, aircraft or vehicle and any goods it is carrying.

(4) The officer may seize any restricted goods from the ship, aircraft or vehicle.

(5) Any restricted goods seized may be forfeited, disposed of or transferred as appropriate.

(6) It is an offence for a relevant person to—

- (a) fail without reasonable excuse to comply with a requirement under paragraph (1)(c), (d) or (e),
- (b) knowingly or recklessly provide information or a document which is false in a material particular in response to a requirement under paragraph (1)(c), or
- (c) otherwise intentionally obstruct an authorised officer, or a person acting under the officer's authority, in the exercise of any power conferred by this article.

(7) In this article—

“authorised officer” means—

- (a) a commissioned naval or military officer,
- (b) a police or customs officer, or
- (c) a person authorised by the Governor for the purpose of this article, whether generally or in a particular case;

“the relevant person” means a person falling within article 7(2).”.

7. In article 24—

- (a) for the heading substitute “Provisions supplementary to article 21”;
- (b) delete “,22 or 23” wherever it appears;
- (c) in paragraph (4), for “articles 21 to 23” substitute “article 21”.

8. In article 25(3) for “30” substitute “31”.

9. In article 31, after “Articles”, in each place, insert “25,”.

10. In article 33—

- (a) for paragraph (e) substitute—

“(e) satisfaction of—

- (i) an arbitral decision made prior to the date on which this Order comes into force, or
 - (ii) a judicial or administrative decision made at any time;
- provided that the decision is not for the benefit of a designated person.”;

- (b) delete the word “or” at the end of paragraph (f);

- (c) for the full stop at the end of paragraph (g) substitute a semi-colon;
- (d) at the end insert—
 - “(h) the transfer by or through a financial institution which is a designated person, where the transfer is related to a payment by a person who is not a designated person, in connection with the provision of financial support to Syrian nationals pursuing an education, professional training or engaged in academic research in the Territory, provided that the Governor has determined on a case-by-case basis that the payment will not directly or indirectly be received by a designated person; or
 - (i) acts or transactions carried out with regard to Syrian Arab Airlines, for the sole purpose of evacuating citizens of the Territory and their family members from Syria.”.

11. In article 41—

- (a) for the heading substitute “**Information relating to funds etc.**”;
- (b) for “listed”, wherever it appears, substitute “designated”; and
- (c) at the end insert—
 - “(7) 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.”.

12. In article 43—

- (a) in paragraph (2)—
 - (i) between “article” and “9” insert “8A,”;
 - (ii) for “21(5)(c), 23(4)(b)” substitute “21(6)(b) or (c)”;
 - (iii) for “paragraph 4(b) or (d) of Schedule 5” substitute “paragraph 3(b),(c) or (d) of Schedule 5”;
- (b) in paragraph (3) delete “22(4)(b),”;
- (c) in paragraph (4) for “article 21(5)(a), (b) or (d), 22(4)(a) or (c), 23(4)(a) or (c) or 24” substitute “article 21(6)(a) or 24 or paragraph 3(a) or paragraph 5 of Schedule 5”.

13. In Schedule 2—

- (a) in paragraph 2—
 - (i) between “article” and “9” insert “8A,”;
 - (ii) for “21(5)(c), 22(4)(b), 23(4)(b)” substitute “21(6)(b) or (c)”;
 - (iii) for “paragraph 4(b) or (d) of Schedule 5” substitute “paragraph 3(b), (c) or (d) of Schedule 5”;
- (b) in paragraph 3 for “article 21(5)(a), (b) or (d), 22(4)(a) or (c), 23(4)(a) or (c) or 24” substitute “article 21(6)(a) or 24 or paragraph 3(a) or paragraph 5 of Schedule 5”.

14. In Schedule 4—

- (a) in paragraph (2)—
 - (i) between “article” and “9” insert “8A,”;
 - (ii) for “21(5)(c), 22(4)(b), 23(4)(b)” substitute “21(6)(b) or (c)”;
 - (iii) for “paragraph 4(b) or (d) of Schedule 5” substitute “paragraph 3(b), (c) or (d) of Schedule 5”;

- (b) in paragraph (3) for “article 21(5)(a), (b) or (d), 22(4)(a) or (c), 23(4)(a) or (c) or 24” substitute “21(6)(a) or 24 or paragraph 3(a) or paragraph 5 of Schedule 5”.

15. For Schedule 5 substitute—

“SCHEDULE 5

Article 42

Evidence and Information

Power to require information or documents

1.—(1) An authorised officer may request any 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 41(7).

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

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

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

Powers of search and entry to obtain evidence or information

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 or is being committed, or
 - (ii) information or a document requested by an authorised officer under paragraph 1 has not been provided or produced; and
- (b) evidence of the commission of the offence, or the information or document so requested, is to be found on a ship, aircraft, vehicle or 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 ship, aircraft, 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 ship, aircraft, vehicle or premises under a warrant issued under this paragraph may—

- (a) take such other persons and such equipment on to the ship, aircraft, vehicle or premises as appear to the officer to be necessary;

- (b) 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;
 - (c) take copies of any document;
 - (d) require information which is stored in an electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible (or from which it can readily be produced in a visible and legible form).
- (4) An authorised officer may, if necessary, use reasonable force in the exercise of the powers conferred by this paragraph.
- (5) Anything seized under sub-paragraph (3) may be retained for so long as is necessary in all the circumstances.
- (6) An authorised officer who enters a ship, aircraft, vehicle or premises under a warrant issued under this paragraph, or by virtue of sub-paragraph (3)(a), may—
- (a) search any person found on the ship, aircraft, vehicle or 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.
- (7) A search of a person under sub-paragraph (6) must be carried out by a person of the same sex.
- (8) The powers in this paragraph are without prejudice to the powers in article 21.

Offences relating to information etc.

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 any 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 Services 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.
6. An authorised officer must, if requested to do so, produce evidence of his or her authority before exercising any power conferred by this Schedule.
7. In this Schedule “authorised officer” means—
- (a) a police or customs officer, or
 - (b) a person authorised by the Governor for the purposes of this Schedule, whether generally or in a particular case.
8. Anything done in accordance with this Schedule is not to be treated as a breach of any restriction imposed by statute or otherwise.”.

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Syria (Restrictive Measures) (Overseas Territories) Order 2012 (“the principal Order”). The principal Order gives effect in specified Overseas Territories to sanctions in respect of Syria adopted by the European Union in Council Decision 2011/782/CFSP adopted on 1st December 2011 (“the Council Decision”) and EU Council Regulation No 36/2012 adopted on 18th January 2012 (“the Council Regulation”), as amended.

This Order amends the principal Order to give effect to changes to the sanctions measures adopted by the European Union in Council Decision 2012/420/CFSP adopted on 23rd July 2012 and in Council Decision 2012/634/CFSP adopted on 15th October 2012. The changes to which this Order gives effect are a seizure and disposal measure in relation to items which might be used for internal repression or for the manufacture and maintenance of products which could be used for internal repression as listed in Annexes I and Ia to the Council Regulation, new exemptions to the asset freeze and a prohibition on the purchase, import and transport of arms from, or originating

in, Syria. The opportunity has also been taken to update, and make minor corrections to, the drafting of the principal Order.