

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3249 of 18 October, 2001

LEGAL NOTICE NO. 122 OF 2001

The following was published as United Kingdom Statutory Instrument 2001 No. 3366 and came into force in Gibraltar on 10th October 2001—

“UNITED NATIONS

The Terrorism (United Nations Measures) (Overseas Territories) Order 2001

Made..... 9th October 2001

Laid before Parliament..... 9th October 2001

Coming into force..... 10th October 2001

At the Court at Buckingham Palace, the 9th day of October 2001

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 28th September 2001, 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 combating terrorist activities:

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

Citation, commencement, operation, extent and amendment.

1.(1) This Order may be cited as the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 and shall come into force on 10th October 2001.

(2) If the Security Council of the United Nations takes any decision which has the effect of cancelling or postponing or suspending the operation of the

resolution adopted by it on 28th September 2001, in whole or in part, this Order shall cease to have effect or its operation shall be postponed or suspended, in whole or in part, as the case may be, in accordance with that decision.

(3) Particulars of the decisions referred to in paragraph (2) above shall be published by the Governor in a notice in the official gazette of the Territory.

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

(b) Article 11 of this Order shall apply to the UK 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.

(5) An offence may be committed under Article 3, 4, 5, 6, 7, 9 or 10 by, and a direction may be given under Article 5 or 9 to, any person within the Territory or any person elsewhere who:

(a) is a British citizen, a British Dependent 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) is a body incorporated or constituted under the law of any part of the Territory.

Interpretation.

2. In this Order the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to the, 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” means financial assets and economic benefits 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 share, 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;

“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 in the course of carrying on a deposit-taking business, and for this purpose “deposit” has the meaning given to that term in section 5 of the Banking Act 1987 and “deposit-taking business” has the meaning given to that term in section 6 of that Act;
- (c) a European authorised institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992 which has lawfully established a branch in Gibraltar for the purpose of accepting deposits or other repayable funds from the public; and
- (d) 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;

“terrorism” mean the use or threat of action where–

- (a)
 - (i) the action falls within sub-paragraph (b),

- (ii) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
 - (iii) the use or threat is made for the purpose of advancing a political, religious or ideological cause;
- (b) action falls within this sub-paragraph, if it–
 - (i) involves serious violence against a person,
 - (ii) involves serious damage to property,
 - (iii) endangers a person’s life, other than that of the person committing the action,
 - (iv) creates a serious risk to the health or safety of the public or a section of the public, or
 - (v) is designed seriously to interfere with or seriously to disrupt an electronic system;
- (c) the use or threat of action falling within sub-paragraph (b) which involves the use of firearms or explosives is terrorism whether or not sub-paragraph (a)(ii) is satisfied;
- (d) in sub-paragraphs (a), (b) and (c)–
 - (i) “action” includes action outside the Territory,
 - (ii) a reference to any person or to property is a reference to any person, or to property, wherever situated,
 - (iii) a reference to the public includes a reference to the public of a territory or country other than that of the Territory,
 - (iv) “the government” means the government of the Territory, of a part of the Territory or of a territory or country other than the Territory;

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

Collection of Funds.

3.(1) Any person who invites another to provide funds, and intends that they should be used, or knows that they may be used, for the purposes of terrorism, is guilty of an offence under this Order.

(2) Any person who receives funds, and intends that they should be used, or knows that they may be used, for the purposes of terrorism, is guilty of an offence under this Order.

(3) Any person who provides funds, and intends that they should be used, or knows that they may be used, for the purposes of terrorism, is guilty of an offence under this Order.

(4) In this section a reference to the provision of funds is a reference to them being given, lent or otherwise made available, whether or not for consideration.

Making Funds Available.

4. Any person who, except under the authority of a licence granted by the Governor under this article, makes any funds or financial (or related) services available directly or indirectly to or for the benefit of—

- (a) a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism,
- (b) a person controlled or owned directly or indirectly by a person in (a), or
- (c) a person acting on behalf, or at the direction, of a person in (a),

is guilty of an offence under this Order.

Freezing of Funds.

5.(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) a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism,

- (b) a person controlled or owned directly or indirectly by a person in (a), or
- (c) a person acting on behalf of, or at the direction of, a person in (a),

the Governor may by notice direct that those funds are not to be made available to any person, except under the authority of a licence granted by the Governor under this article.

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

- (a) the period for which the direction 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 4 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 for 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 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 given 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 articles 3, 4 and 5(9).

6. Any person who intentionally engages in any activities knowing that the object or effect of those activities to enable or facilitate the commission (by that person or another) of an offence under article 3, 4 or 5(9) is guilty of an offence under this Order.

Offences in connection with licences.

7.(1) Any person who, for the purposes of obtaining a licence under article 4 or 5, knowingly or recklessly makes any statement or furnishes any document or information which is false in a material particular is 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.

Failure to disclose knowledge or suspicion of offences.

8.(1) A relevant institution is guilty of an offence under this Order 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 is—

- (i) a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism,
 - (ii) a person controlled or owned directly or indirectly by a person in (i),
 - (iii) a person acting on behalf, or at the direction of, a person in (i), or
 - (iv) a person who has committed an offence under article 3, 4, 5(9) or 7; 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 person covered by paragraph (1)(a)(i), (ii), (iii) or (iv) above or a person who has committed an offence under article 3, 4, 5(9) or 7, 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.

Obtaining of information.

9.(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may direct any person 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 or 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, Isle of Man or any territory to which this Order extends; and any person to whom such a direction is made shall comply with it within such time and in such manner as may be specified in the direction.

(2) Nothing in 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 directed to do so under this article 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 article to direct any person to produce documents shall include power to take copies of or extracts from any document so produced and to direct 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 article shall not be treated as a breach of any restriction imposed by statute or otherwise.

(6) 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 direction made under this article 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 in response to such a direction; or
- (c) otherwise wilfully obstructs any person in the exercise of his powers under this article; or
- (d) with intent to evade the provisions of this article, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

Disclosure of information.

10.(1) No information furnished or document produced (including any copy of, or extract made from, any document produced) by a person in pursuance of a direction made under this Order 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 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; or
- (b) to any person empowered under this Order to request that it be furnished or produced or 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 Governor, to any organ of the United Nations or to any person in the service of the United Nations or to 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 terrorism 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 Territory, for an offence under this Order; or

- (ii) for any offence under 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, the Isle of Man or any territory listed in the Schedule to this Order.

(2) Any person who, without reasonable excuse, discloses information or a document in contravention of paragraph (1) is guilty of an offence.

Penalties and proceedings.

11.(1) Any person guilty of an offence under article 3, 4, 5(9), 6 or 7(2) shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years 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 7(1), 9(6)(b) or (d) or 10(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;
- (b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(3) Any person guilty of an offence under article 5(10), 8 or 9(6)(a) or (c) 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.

(4) 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.

(5) 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.

(6) 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.

(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:

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.

Functions of the Governor.

12. 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.

Licences.

13.(1) A licence under this Order shall be in writing and may be either general or special, may be subject to or without conditions, and may be limited so as to expire on a specified date unless renewed.

(2) A special licence may be varied or revoked at any time by written notice given by the Governor to each recipient of the licence.

(3) The Governor shall publish a general licence in such manner as he thinks fit. A general licence may be varied or revoked at any time by written notice which shall be published by the Governor in the same manner as the licence.

(4) 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.

A K Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(4)(a)

Territories to which this Order Extends

Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Gibraltar
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St Helena and Dependencies
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia
Virgin Islands

SCHEDULE 2

[applies only to the Sovereign Base Areas in Cyprus]”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, applies to each of the territories listed in Schedule 1. The Order prohibits fundraising for terrorism purposes and restricts the making available of funds and financial services to terrorists, and provides powers to freeze accounts of suspected terrorists, pursuant to a decision of the Security Council of the United Nations in its resolution 1373 of 28th September 2001.