

2021 No. 525

OVERSEAS TERRITORIES

SANCTIONS

**The Global Anti-Corruption Sanctions (Overseas Territories)
Order 2021**

Made - - - - *28th April 2021*

Coming into force - - *29th April 2021*

At the Court at Windsor Castle, the 28th day of April 2021

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 63(3)(c) and (4) of the Sanctions and Anti-Money Laundering Act 2018(a), is pleased, by and with the advice of Her Privy Council, to make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Global Anti-Corruption Sanctions (Overseas Territories) Order 2021 and comes into force on 29th April 2021.

(2) This Order extends to each British overseas territory listed in Schedule 1.

Extension of the Global Anti-Corruption (Sanctions) Regulations 2021

2. The Global Anti-Corruption Sanctions Regulations 2021(b) as amended from time to time extend to each British overseas territory listed in Schedule 1 with the modifications specified in Schedule 2.

Extension of the Sanctions and Anti-Money Laundering Act 2018

3. Subject to the modification set out in paragraph (c), the following provisions of the Sanctions and Anti-Money Laundering Act 2018 extend to each British overseas territory listed in Schedule 1 for the purposes of the Global Anti-Corruption (Sanctions) Regulations 2021 as modified and extended to the territories by this Order—

- (a) section 44 (protection for acts done for purposes of compliance);
- (b) section 52(3) (Crown application);

(a) 2018 c. 13.
(b) S.I. 2021/488.

- (c) section 53 (saving for prerogative powers), except that, in its application to a particular British overseas territory, the reference in subsection (1) of that section to the United Kingdom is to be read as a reference to that territory.

Revocation

4. The Misappropriation (Sanctions) (Overseas Territories) Order 2020^(a) is revoked.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 1(2)

British overseas territories

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

Modifications to be made in the extension of the Global Anti-Corruption Sanctions Regulations 2021 to each British overseas territory listed in Schedule 1

1. In regulation 1 (citation and commencement)—
 - (a) in the heading, omit “and commencement”;
 - (b) omit paragraph (2).
2. In regulation 2 (interpretation)—
 - (a) the existing text becomes paragraph (1);

^(a) S.I. 2020/1575.

- (b) in that paragraph—
 - (i) in the appropriate places, insert the following definitions—
 - ““authorised officer” means, in relation to the Territory—
 - (a) a member of Her Majesty’s forces in the Territory,
 - (b) a police or customs officer of the Territory,
 - (c) a person authorised by the Governor for the purposes of exercising, whether generally or in a particular case, any power conferred by—
 - (i) regulation 26 (finance: powers to request information),
 - (ii) regulation 27 (finance: production of documents),
 - (iii) regulation 29 (disclosure of information), or
 - (iv) regulation 30A (search warrants), or
 - (d) any person acting under the authority of a person falling within any of paragraphs (a) to (c);”;
 - ““financial sanctions licence” means, in relation to the Territory, a licence issued by the Governor under regulation 21(1);”;
 - ““the Governor” is to be read in accordance with regulation 4A;”;
 - ““Her Majesty’s forces” does not include a force of any country, other than the United Kingdom, that is a member of the Commonwealth.”;
 - (ii) omit the definitions of “Treasury licence” and “United Kingdom person”;
 - (c) after that paragraph insert—
 - “(2) In the application of these Regulations to a particular British overseas territory, the expression “the Territory” means that territory.”

3. In regulation 3 (application of prohibitions and requirements outside the United Kingdom)—

- (a) in the heading, for “United Kingdom” substitute “Territory”;
- (b) in paragraphs (1) and (4), for “United Kingdom person” substitute “Territory person”;
- (c) in paragraphs (1), (4) and (7), for “United Kingdom” substitute “Territory”;
- (d) in paragraphs (2) and (5), after “in the territorial sea” insert “of the Territory”;
- (e) in paragraphs (3) and (6), for “Treasury licence” substitute “financial sanctions licence”;
- (f) at the end, insert—
 - “(8) In this regulation—
 - “territorial sea of the Territory” means the territorial sea as defined in an enactment applicable in the Territory or, in the absence of such an enactment, the territorial sea adjacent to the Territory;
 - “Territory person” means, in relation to the Territory, a person who is—
 - (a) an individual ordinarily resident in the Territory who is—
 - (i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (ii) a person who under the British Nationality Act 1981(a) is a British subject, or
 - (iii) a British protected person within the meaning of that Act, or
 - (b) a body incorporated or constituted under the law of any part of the Territory.”

4. At the end of Part 1 (General), insert—

(a) 1981 c. 61. Part 4 has been amended by the British Overseas Territories Act 2002 (c. 8), section 1(1)(b); and the Nationality, Immigration and Asylum Act 2002 (c. 41), Schedule 2, paragraph 1(i).

“Functions of the Governor

4A.—(1) In these Regulations, “the Governor” means, in relation to the Territory, the person holding or acting in the office of Governor of the Territory, or, if there is no such office, the officer for the time being administering the Territory.

(2) 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 powers under these Regulations to any person, or class or description of persons, and any references in these Regulations to the Governor are to be construed accordingly.

(3) In the exercise of any power conferred on the Governor by these Regulations, the Governor is to act in their discretion.”

5. Omit regulation 5 (power to designate persons) (including the heading).

6. Omit regulation 6 (designation criteria) (including the heading).

7. For regulation 8 (notification and publicity where designation power used), substitute—

“Requirement to publish a list of designated persons

8.—(1) Subject to paragraph (2), the Governor must—

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

(2) Where, in accordance with regulation 8 (notification and publicity where designation power used) (as it has effect in the United Kingdom) the Secretary of State is not required to publicise generally a designation, variation or revocation, the Governor must not include in the list under paragraph (1) any details of that designation, variation or revocation.

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

(4) For the purpose of this regulation, “designated person” means any person for the time being designated by the Secretary of State under regulation 5 (power to designate persons) (as it has effect in the United Kingdom).”

8. In regulation 9 (confidential information in certain cases where designation power used)—

- (a) in the heading, omit “where designation power used”;
- (b) omit paragraph (1);
- (c) in paragraph (2)(a), for “that is to be treated as confidential in accordance with paragraph (1)” substitute “which the Secretary of State has specified is to be treated as confidential under regulation 9(1) (as it has effect in the United Kingdom)”;
- (d) in paragraph (7)—
 - (i) for “High Court (in Scotland, the Court of Session)” substitute “Supreme Court of the Territory”;
 - (ii) omit “(in Scotland, an interdict)”;
- (e) at the end, insert—

“(9) In this regulation, “Supreme Court of the Territory” means—

- (a) in relation to Anguilla, Montserrat and the Virgin Islands, the High Court of the Eastern Caribbean Supreme Court;
- (b) in relation to the Cayman Islands, the Grand Court of the Cayman Islands;
- (c) in relation to the British Antarctic Territory, the British Indian Ocean Territory, the Falkland Islands, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands and the Turks and Caicos Islands, the Supreme Court of that territory;

“Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands.

“the Sovereign Base Areas” means the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus.”

11. In regulation 18 (finance: exceptions from prohibitions)—

- (a) omit paragraph (6);
- (b) in paragraph (7), for the definition of “relevant institution” substitute—

““relevant institution”, in relation to the Territory, means a person domiciled in the Territory who would satisfy the threshold conditions for permission under Part 4A of the Financial Services and Markets Act 2000^(a) if it had its registered office (or if it does not have one, its head office) in the United Kingdom.”;
- (c) omit paragraph (8).

12. For regulation 19 (finance: exception for authorised conduct in a relevant country) substitute—

“Finance: exceptions for authorised conduct outside the Territory

19.—(1) Where a person’s conduct outside the Territory would, in the absence of this paragraph, contravene a prohibition in any of regulations 11 to 15 (asset-freeze etc.), the prohibition is not contravened if the conduct is authorised by a licence issued under regulation 21 (Treasury licences) (as it has effect in the United Kingdom).

(2) Where a person’s conduct in a relevant country would, in the absence of this paragraph, contravene a prohibition in any of regulations 11 to 15 (“the relevant prohibition”), the relevant prohibition is not contravened if the conduct is authorised by a licence or other authorisation which is issued—

- (a) under the law of the relevant country, and
 - (b) for the purpose of disapplying a prohibition in that jurisdiction which corresponds to the relevant prohibition.
- (3) In this regulation, “relevant country” means—
- (a) any of the Channel Islands;
 - (b) the Isle of Man;
 - (c) any British overseas territory other than the Territory.”

13. For regulation 20 (exception for acts done for purposes of national security or prevention of serious crime), substitute—

“20.—(1) Where an act would, in the absence of this paragraph, be prohibited by the prohibition in regulation 9(2) (confidentiality) or any prohibition in Part 3 (Finance), that prohibition does not apply to the act if the act is one which—

- (a) a responsible officer has determined would be in the interests of—
 - (i) national security, or
 - (ii) the prevention or detection of serious crime in the United Kingdom or elsewhere, or
- (b) the Governor, with the consent of the Secretary of State, has determined would be in the interests of the prevention or detection of serious crime in the Territory.

(2) Where, in the absence of this paragraph, a thing would be required to be done under or by virtue of a provision of Part 6 (Information and records), that requirement does not apply if—

(a) 2000 c. 8. Part 4A was inserted by the Financial Services Act 2012 (c. 21), section 11(2) and most recently amended by S.I. 2019/632.

20. In regulation 27 (finance: production of documents)—

- (a) in paragraph (2), for “the Treasury request that documents be produced, the Treasury” substitute “an authorised officer requests that documents be produced, the authorised officer”;
- (b) for paragraph (3), substitute—

“(3) Where an authorised officer requests a designated person or a person acting under a financial sanctions licence to produce documents, that person must—

 - (a) take reasonable steps to obtain the documents (if they are not already in the person’s possession or control);
 - (b) keep the documents under the person’s possession or control (except for the purpose of providing them to the authorised officer or as the authorised officer may otherwise permit).”

21. In regulation 28 (finance: information offences), in paragraph (1)(d), for “the Treasury” substitute “an authorised officer”.

22. In regulation 29 (disclosure of information)—

- (a) in paragraph (1), for “Secretary of State or the Treasury” substitute “Governor or an authorised officer”;
- (b) in paragraph (2)—
 - (i) after sub-paragraph (c) insert—

“(ca) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in the Territory for an offence under any provisions of these Regulations;”;
 - (ii) in sub-paragraph (d)(i), after “Regulations” insert “(as they have effect in the United Kingdom)”;
 - (iii) in sub-paragraph (e), after “any British overseas territory” insert “other than the Territory”;
 - (iv) in sub-paragraph (g), for “United Kingdom” substitute “Territory”;
- (c) in paragraph (3)—
 - (i) in sub-paragraph (f), for “United Kingdom” substitute “Territory”;
 - (ii) in sub-paragraph (j), for “Secretary of State or the Treasury (as the case may be) consider” substitute “Governor considers”.

23. In regulation 30 (Part 6: supplementary)—

- (a) for paragraph (2) substitute—

“(2) But nothing in that regulation authorises a disclosure that would contravene the data protection legislation if that legislation were applicable to the Territory.”;
- (b) in paragraph (5), for “Treasury licence” substitute “financial sanctions licence”;
- (c) after paragraph (5) insert—

“(5A) An authorised officer must, if requested to do so, produce evidence of their authority before exercising any power conferred by this Part.”;
- (d) in paragraph (6), in the definition of “privileged information”, omit “(in Scotland, to confidentiality of communications)”.

24. In Part 7 (Enforcement), at the beginning insert—

“Search warrants

30A.—(1) A magistrate or justice of the peace may issue a search warrant if satisfied by information on oath that—

- (b) the offence may for all incidental purposes be treated as having been committed at any such place.”

27. After regulation 33 (jurisdiction to try offences), insert—

“Consent to prosecutions

33A.—(1) Proceedings for an offence under these Regulations must not be instituted in the Territory except with the consent of the principal public officer of the Territory responsible for criminal prosecutions.

(2) Nothing in paragraph (1) prevents—

- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of an offence under these Regulations, or
- (b) the remand in custody or on bail of any person charged with such an offence.”

28. For regulation 34 (procedure for offences by unincorporated bodies) substitute—

“34. Any provision in an enactment which applies in the Territory in relation to criminal proceedings brought against a body corporate, applies also for the purposes of proceedings in the Territory for an offence under these Regulations brought against an unincorporated body.”

29. In regulation 35 (time limit for proceedings for summary offences), omit paragraph (4).

30. Omit regulation 36 (application of Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005(a)) (including the heading).

31. In regulation 37 (notices)—

- (a) in paragraph (1), for “regulation 21 (Treasury licences: written notice)” substitute “regulation 21(6) (financial sanctions licences: written notice)”;
- (b) in paragraph (5)(b), for “United Kingdom”, in both places it occurs, substitute “Territory”;
- (c) in paragraph (6), in the definition of “registered company”, for “United Kingdom” substitute “Territory”.

32. Omit regulation 38 (revocations) (including the heading).

33. In Schedule 2 (Treasury licences: purposes)—

- (a) in the heading, for “Treasury licences” substitute “Financial sanctions licences”;
- (b) in the shoulder note, for “Regulation 21(3)” substitute “Regulation 21”;
- (c) in the definition of “frozen funds or economic resources” in paragraph 1, for “the designation of that person for the purpose of that regulation” substitute “that person being a designated person for the purposes of Part 3 (Finance) as defined in regulation 10 (meaning of “designated person” in Part 3)”;
- (d) in paragraph 6(b)(ii) (pre-existing judicial decisions etc.), for “United Kingdom” substitute “Territory”.

(a) 2005 c. 15. Chapter 1 of Part 2 has been amended by the Terrorism Act 2006 (c. 11), section 33(2) to (4); the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), sections 26(2) and 30(2) and Schedules 3 and 5; the Bribery Act 2010 (c. 23), section 17(2) and Schedule 1; the Criminal Justice and Licensing (Scotland) Act 2010 (asp. 13), section 203 and Schedule 7, paragraph 77; the Crime and Courts Act 2013 (c. 22), section 15 and Schedule 8, paragraphs 157 and 159; the Criminal Finances Act 2017 (c. 22), section 51(1); the Sanctions and Anti-Money Laundering Act 2018, section 59(4) and Schedule 3, paragraph 4; S.I. 2006/1629; and S.I. 2014/834.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends with modifications the Global Anti-Corruption (Sanctions) Regulations 2021 (S.I. 2021/488) (“the Global Anti-Corruption Regulations”) as amended from time to time to all British overseas territories except Bermuda and Gibraltar (which implement sanctions under their own legislative arrangements).

Section 63(3)(c) of the Sanctions and Anti-Money Laundering Act 2018 (c. 13) (“the Sanctions Act”) provides that Her Majesty may by Order in Council provide for any provision of Part 1 of that Act, or any regulations under Part 1 of that Act, to extend with or without modifications to any of the British overseas territories. Section 63(4) provides that this includes the power to extend any regulations as amended from time to time.

The Global Anti-Corruption Regulations were made under Part 1 of the Sanctions Act to establish a sanctions regime for the purpose of preventing and combatting serious corruption.

The Global Anti-Corruption Regulations, as modified and extended to the British overseas territories listed in Schedule 1 by this Order (“the modified Regulations”), provide that a person designated by the Secretary of State for being, or having been, involved in such activities, is a designated person for the purposes of the modified Regulations. Designated persons may be excluded from the territory and may be made subject to financial sanctions, including having their funds or economic resources frozen.

The modified Regulations provide for certain exceptions to this sanctions regime (for example to allow for frozen accounts to be credited with interest or other earnings and to allow acts done for the purpose of national security or the prevention of serious crime). The Governor may, with the consent of the Secretary of State, issue a licence in respect of activities that would otherwise be prohibited under the modified Regulations. Schedule 2 sets out the purposes pursuant to which the Governor may issue such licences. The modified Regulations also require the Governor of the relevant territory to publish an up-to-date list of designated persons.

The modified Regulations prescribe powers for the provision and sharing of information to enable the effective implementation and enforcement of the sanctions regime. The modified Regulations make it a criminal offence to contravene, or circumvent, any of the prohibitions in the modified Regulations and prescribe the penalties that apply to such offences.

This Order also extends to the territories for the purposes of the modified Regulations specific provisions of Part 1 of the Sanctions Act, namely provisions relating to protection for acts done for purposes of compliance, Crown application and saving for prerogative powers.

An impact assessment has not been prepared for this instrument: the territorial extent of the instrument and the modified Regulations is the British overseas territories listed in Schedule 1, and no, or no significant, impact is foreseen on the private, voluntary or public sectors in the United Kingdom.

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