

Island of



Alderney

Ordinance of the States

XIII
2004

Made 15th September 2004

Coming into force 15th September 2004

THE BURMA (SALE, SUPPLY, EXPORT, TECHNICAL ASSISTANCE, FINANCING AND FINANCIAL ASSISTANCE AND SHIPMENT OF EQUIPMENT) (PENALTIES AND LICENCES) (ALDERNEY) ORDINANCE, 2004

THE STATES OF ALDERNEY, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994(1), hereby orders:—

1. Any person who, except under the authority of a licence granted by the Council under this Ordinance, directly or indirectly infringes any of the following prohibitions in the EC Regulation: **Offences.**

- (a) Article 2(a), prohibiting the grant, sale, supply or transfer of technical assistance related to military activities, and to the provision, manufacture, maintenance and use of arms and related material of all types, to any person, entity or body in, or for use in Burma;
- (b) Article 2(b), prohibiting the provision of financing of financial assistance related to military activities for any sale, supply, transfer or export of arms and

(1) Order in Council No. III of 1994.

related material to any person, entity or body in, or for use in Burma;

- (c) Article 2(c), prohibiting the participation, knowingly and intentionally, in activities the object or effect of which is to promote the transactions referred to in Article 2(a) or 2(b);
- (d) Article 3(a), prohibiting the sale, supply, transfer or export of equipment which might be used for internal repression, as listed in Annex 1 to the EC Regulation, whether or not originating in the Community, knowingly and intentionally, to any person, entity or body in, or for use in Burma;
- (e) Article 3(b), prohibiting the grant, sale, supply or transfer of technical assistance, related to the equipment listed in Annex 1 to the EC Regulation, to any person, entity, or body in, or for use in Burma;
- (f) Article 3(c), prohibiting the provision of financing or financial assistance related to the equipment listed in Annex 1 to the EC Regulation, to any person, entity or body in, or for use in Burma;
- (g) Article 3(d), prohibiting the participation, knowingly and intentionally, in activities the object or effect of which is to promote the transactions referred to in Articles 3 (a), (b) or (c),

shall be guilty of an offence and may be arrested.

Licences.

2. (1) Authorisation for the transactions set out in section 1 as provided for in Article 4 of the EC Regulation, shall in Alderney be by way of a licence in writing granted by the Council.

- (2) If, for the purpose of obtaining a licence, any person,
 - (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or
 - (b) recklessly makes any statement or furnishes any document or information which is false in a material particular;

he shall be guilty of an offence; and any licence granted in connection with the application for which the false statement was made or the false document or information furnished shall be void as from the time it was granted.

(3) Any person who, having acted under the authority of a licence granted under this Section, fails to comply with any of the requirements or conditions to which the licence is subject shall be guilty of an offence unless -

(a) the licence had been previously modified by the Council without that person's consent; and

(b) the alleged failure to comply would not have been a failure had the licence not been so modified.

3. (1) A person guilty of an offence under section 1, 2(2) or (3) or paragraphs 2(b) or (c) of the Schedule shall be liable -

Penalties.

(a) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or to both; or

(b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both

4. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972(2) applies to the detention of a person for an offence under section 1 as it applies to the detention for an offence under the customs Laws or excise Laws.

Certain provisions of customs and excise Law applicable.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 shall apply in relation to offences, penalties and proceedings for offences under this Ordinance as they apply to offences, penalties and proceedings for offences under the customs Laws or excise Laws.

Information. 5. The schedule to this Ordinance has effect in order to facilitate the obtaining, by or on behalf of the Council, of information for the purpose of ensuring compliance with the EC Regulation.

Revocation 6. The Burma (Export of Goods & Freezing of Funds) (Alderney) Ordinance, 2000 is revoked.

Interpretation. 7. (1) In this Ordinance -

“**Council**” means the States of Guernsey Policy Council;

“**customs laws**” and “**excise Laws**” means those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, and any other enactment for the time being in force, relating to customs or, as the case may be, excise;

“**the EC Regulation**” means Council Regulation (EC) No. 798/2004 of 26th April 2004 concerning certain restrictive measures in respect of Burma⁽³⁾; and

“**Uniform Scale**” means the uniform scale of fines specified by the Uniform Scale of Fines (Alderney) Law 1989⁽⁴⁾.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation, Commencement. 8. (1) This Ordinance may be cited as the Burma (Sale, Supply, Export, Technical Assistance, Financing and Financial Assistance and Shipment of Equipment) (Penalties and Licences) (Alderney) Ordinance, 2004.

(2) This Ordinance shall come into force on the 15th September 2004.

(3) OJ L125, 28.4.2004.

(4) Ordres en Conseil Vol. XXXI, p.306.

SCHEDULE

Section 5

INFORMATION

1. (1) The Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Alderney to furnish or produce to it (or, as the case may be, to that authorised person) any information or document in his possession or control which the Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EC Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, 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.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extract from any document so produced and to request 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 such document.

2. A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time had been specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or

- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule 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 possession of that document in his own right,
- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of Alderney,
- (c) on the authority of the Council, to the European Commission or to any of the competent authorities listed in Annex III to the EC Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EC Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purpose of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph 91) is guilty of an offence.

D.V. JENKINS
Clerk of the States