

1993 No. 2812

UNITED NATIONS

The Libya (United Nations Sanctions) (Isle of Man) Order 1993

<i>Made</i>	<i>16th November 1993</i>
<i>Laid before Parliament</i>	<i>26th November 1993</i>
<i>Coming into force</i>	<i>1st December 1993</i>

At the Court at Buckingham Palace, the 16th day of November 1993

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 resolutions adopted on 31st March 1992 and 11th November 1993, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to a decision of that Council in relation to Libya;

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

Citation, commencement, operation and extent

1.—(1) This Order may be cited as the Libya (United Nations Sanctions) (Isle of Man) Order 1993 and shall come into force on 1st December 1993.

(2) If, after the making of this Order, the Security Council of the United Nations takes a decision which has the effect of cancelling or suspending the operation of the resolutions adopted by it on 31st March 1992 and 11th November 1993, this Order shall cease to have effect or its operation shall be suspended, as the case may be, in accordance with that decision; and particulars of that decision shall be published by the Secretary of State in a notice in the London, Edinburgh and Belfast Gazettes.

(3) This Order shall extend, as part of the law therein, to the Isle of Man only.

Interpretation

2.—(1) In this Order the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say:

"the 1992 Order" means the Libya (United Nations Sanctions) Order 1992^[2];

"enactment" includes an Act of Tynwald and any provision contained in such an Act;

"export" includes shipment as stores; and,

"exportation" in relation to any vessel, submersible vehicle or aircraft, includes the taking out of the Isle of Man of the vessel or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"Libyan aircraft" means—

- (a) any aircraft registered in Libya, and
- (b) any other aircraft for the time being chartered to a person connected with Libya;

"officer of Customs and Excise" means an officer authorised as such under the Customs and Excise Management Act 1986 (an Act of Tynwald);

"person connected with Libya" means—

- (a) the Government of Libya;
- (b) any other person in, or resident in, Libya;
- (c) any body incorporated or constituted under the law of Libya;
- (d) any body, wherever incorporated or constituted, which is controlled by any of the persons or bodies mentioned in subparagraphs (a) to (c) above; or
- (e) any person acting on behalf of any of the above-mentioned persons or bodies;

"shipment" (and cognate expressions) and "stores" shall have the meanings they bear in the Customs and Excise Management Act 1986 (an Act of Tynwald);

"the Treasury" means the Isle of Man Treasury, a department of the Government of the Isle of Man;

"vehicle" means land transport vehicle;

"vessel" has the meaning it bears in the Export of Goods (Control) Order 1992^[3].

(2) Any reference to a provision of an Act of Parliament shall, in the case of a provision which has been extended to the Isle of Man, be construed as a reference to that provision as it has effect there and, in any other case, be construed as a reference to that provision as it has effect in the United Kingdom.

Supply of certain goods to Libya

3.—(1) Except under the authority of a licence granted by the Treasury under this article or by the Secretary of State under the 1992 Order, no person mentioned in article 14 shall—

- (a) supply or deliver;
 - (b) agree to supply or deliver; or
 - (c) do any act calculated to promote the supply or delivery of,
- any goods specified in Schedule 1 to this Order to or to the order of a person connected with Libya.

(2) Nothing in paragraph (1)(b) or (c) above shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted under this article or article 4, or under the 1992 Order.

Exportation of certain goods to Libya

4. Except under the authority of a licence granted by the Treasury under this article or by the Secretary of State under the 1992 Order, the goods specified in Schedule 1 to this Order are prohibited to be exported from the Isle of Man to any destination in Libya or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person connected with Libya.

Licensing arrangements for arms and oil industry equipment

5. Except under the authority of a licence granted by the Treasury under this article or by the Secretary of State under the 1992 Order, no person mentioned in article 14 shall assign or transfer to any person connected with Libya, or enter into any licensing agreement or other arrangement for the use by any person connected with Libya, of—

- (a) any copyright;
- (b) any patent or application for a patent or any right in or under any patent;
- (c) any registered design, industrial design or utility model;
- (d) any design right or any document recording the design;
- (e) any trade mark or service mark; or
- (f) any technical information or know-how,

for or in connection with the manufacture or maintenance of any goods specified in Part A or Part D of Schedule 1 to this Order.

Supply of certain technical advice, assistance or training

6. Except under the authority of a licence granted by the Treasury under this article or by the Secretary of State under the 1992 Order, no person mentioned in article 14 shall provide—

- (a) to a person connected with Libya, any technical advice, assistance or training related to the supply, delivery, manufacture, maintenance or use of any goods specified in Part A of Schedule 1 to this Order;
- (b) to a Libyan national, any advice, assistance or training as an aircraft pilot, aircraft flight engineer or aircraft or ground maintenance engineer.

Servicing of aircraft

7. Except under the authority of a licence granted by the Treasury under this article or by the Secretary of State under the 1992 Order, no person mentioned in article 14 shall provide engineering or maintenance servicing for any Libyan aircraft or any other aircraft in Libya, or for any components of any such aircraft.

Insurance of Libyan aircraft

8.—(1) This article applies to any contract of insurance, other than a contract of reinsurance, upon any Libyan aircraft or upon the machinery, tackle, furniture or equipment of any such aircraft.

(2) Except under the authority of a licence granted by the Treasury under this article or by the Secretary of State under the 1992 Order, no person mentioned in article 14 shall—

- (a) make payment in full or partial settlement of any claim under a contract of insurance to which this article applies, unless the claim is in respect of an incident occurring before the coming into force of the 1992 Order;

(b) effect any new contract of insurance, or agree to any variation or extension of any existing contract of insurance, to which this article applies.

Libyan Arab Airlines

9.—(1) No person mentioned in article 14 shall carry on any business, or establish or maintain any place of business, under the name of "Libyan Arab Airlines".

(2) Except under the authority of a licence granted by the Treasury under this article or by the Secretary of State under the 1992 Order, no person—

(a) mentioned in article 14 shall establish or maintain any place of business in connection with the carriage of persons or goods by air (whether to or from the Isle of Man or elsewhere) by any person connected with Libya;

(b) connected with Libya and mentioned in article 14 shall carry on any business of carrying persons or goods by air (whether to or from the Isle of Man or elsewhere).

(3) Except under the authority of such a licence and without prejudice to the provisions of articles 8 and 12 of this Order, no person mentioned in article 14 shall—

(a) enter into any new agreement or other arrangement with Libyan Arab Airlines;

(b) agree to any variation or extension of any existing agreement or other arrangement with Libyan Arab Airlines;

(c) make to or receive from Libyan Arab Airlines any payment, or do any other act, under or pursuant to an agreement or other arrangement between that person and Libyan Arab Airlines.

Aviation services

10.—(1) Except under the authority of a licence granted by the Treasury under this article, no person mentioned in article 14 shall provide any engineering or other services to any person connected with Libya for the maintenance of any civil or military airfield in Libya, including any facilities and equipment on or associated with the airfield.

(2) The provisions of this article do not apply to services for the maintenance of emergency equipment or equipment directly related to civilian air traffic control.

Making available of aircraft to Libya

11. Except under the authority of a licence granted by the Treasury under this article, no person mentioned in article 14 shall enter into, agree to extend, or extend, any contract or other arrangement for the purpose of making available for operation in Libya any aircraft or aircraft components.

Assets of Libya

12.—(1) Except with permission granted by or on behalf of the Treasury, no person mentioned in article 14 shall—

(a) make any payment or part with any gold, securities or investments;
or

(b) make any change in the persons to whose credit any sum is to stand or to whose order any gold, securities or investments are to be held,

where any such action is action to which this article applies.

(2) Subject to paragraph (4) below, this article applies to any action which is likely to make available or otherwise to result in the remittance or transfer, to or for the benefit of any of the following persons—

- (a) the Government of Libya;
- (b) any persons or bodies exercising for the time being public functions in Libya; or
- (c) any Libyan undertaking,

any funds or other financial resources, whether by their removal from the Isle of Man or otherwise.

(3) Any permission granted by or on behalf of the Treasury under this article may be granted either absolutely or subject to conditions and may be varied or revoked at any time by, or on behalf of, the Treasury.

(4) The provisions of this article shall not apply to any funds or other financial resources which represent amounts derived from or are otherwise attributable to the sale of petroleum or petroleum products or agricultural products or commodities originating in Libya and exported therefrom after 30th November 1993:

Provided that any such funds (but not other financial resources) are held in an account with a relevant institution in the Isle of Man which is used exclusively for such funds and any interest derived from them.

(5) In this article—

(a) "gold", "payment" and "securities" shall have the meanings they bear in section 2 of the Emergency Laws (Re-enactments and Repeals) Act 1964^[4];

(b) "investments" means any asset, right, or interest falling within any paragraph of Part 1 of Schedule 1 to the Financial Services Act 1986^[5], which is not a security;

(c) "Libyan undertaking" means any entity, wherever incorporated or constituted, which is controlled by—

- (i) the Government of Libya;
- (ii) any person or body exercising for the time being public functions in Libya; or
- (iii) any person acting on behalf of any of the above mentioned persons;

"petroleum" means a naturally occurring mixture including hydrocarbons;

"petroleum products" means any products, other than chemicals, which may be obtained by primary distillation or secondary refining from petroleum and includes natural gas, petroleum ether, solvents, benzene, naphtha, motor spirits (including aviation spirit), kerosenes (including jet fuel), heavy oils, fuel oils, lubricating oils, greases, petroleum jelly, paraffin wax and asphaltic bitumen;

"relevant institution" means—

- (a) any banking institution licensed under the Banking Act 1975 (an Act of Tynwald) by the Financial Supervision Commission of the Isle of Man; and
- (b) any person exempted from any provision of that Act by virtue of regulations made under section 1(4) of that Act.

Bonds and indemnities

13.—(1) Except under the authority of a licence granted by the Treasury under this article or by the Secretary of State under the 1992 Order no person mentioned in article 14 shall—

- (a) make any payment to or to the order of any person to whom this article applies under or in respect of a bond to which this article applies;
- (b) do any act for the purpose of obtaining payment, or make any payment, in respect of any right to indemnity in respect of any bond to which this article applies, where payment under the bond is, or if payment were to be made by a person referred to in article 14(1) would be, unlawful by virtue of sub-paragraph (a) above.

(2) This article applies to the following persons—

- (a) the Government of Libya;
- (b) any persons or bodies exercising for the time being public functions in Libya;
- (c) any entity, wherever incorporated or constituted, which is controlled by—
 - (i) the Government of Libya; or
 - (ii) any person or body exercising for the time being public functions in Libya;
- (d) any Libyan national; and
- (e) any person acting on behalf of any of the persons mentioned in sub-paragraphs (a) to (d) above.

(3) This article applies to any bond given in respect of a contract the performance of which is unlawful, wholly or in part, by virtue of this Order.

(4) In this article—

- (a) "bond" means an agreement under which a person ("the obligor") agrees that, if called upon to do so, or if a third party fails to fulfil contractual obligations owed to another, the obligor will make payment to or to the order of the other party to the agreement; and
- (b) "make any payment" means make payment by any method, including but not restricted to the grant, or any agreement to the exercise, of any right to set off, accord and satisfaction and adjustment of any account, or any similar means.

Application of articles 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13

14.—(1) The provisions of articles 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13 shall apply to any person within the Isle of Man and to any person elsewhere who—

(a) is a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject or a British protected person and is ordinarily resident in the Isle of Man, or
(b) is a body incorporated or constituted under the law of the Isle of Man.

(2) Subject to the provisions of paragraphs (3) to (14) below, any person specified in paragraph (1) above who contravenes the provisions of article 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 shall be guilty of an offence.

(3) In the case of proceedings for an offence in contravention of article 3 it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to or to the order of a person connected with Libya.

(4) In the case of proceedings for an offence in contravention of article 5 it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the transaction in question was for the transfer to, or the use of the right in question by a person connected with Libya or that the right in question was to be transferred to, or used for or in connection with the manufacture or maintenance of goods specified in Part A or Part D, as the case may be, of Schedule 1 to this Order.

(5) In the case of proceedings for an offence in contravention of article 6(a) it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the advice, assistance or training was being provided to a person connected with Libya or that it related to the supply, delivery, manufacture, maintenance or use of any goods specified in Part A of Schedule 1 to this Order.

(6) In the case of proceedings for an offence in contravention of article 6(b) it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the advice, assistance or training was being provided to a Libyan national.

(7) In the case of proceedings for an offence in contravention of article 7 in relation to a Libyan aircraft or component thereof it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the aircraft was a Libyan aircraft or that the component was part of such an aircraft.

(8) In the case of proceedings for an offence in contravention of article 8 it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the aircraft was a Libyan aircraft or that the machinery, tackle, furniture or equipment was part of such an aircraft.

(9) In the case of proceedings for an offence in contravention of article 9(2)(a) it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the carriage of persons or goods was by a person connected with Libya.

(10) In the case of proceedings for an offence in contravention of article 9(3) it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that he had made any payment to or received any payment from Libyan Arab Airlines.

(11) In the case of proceedings for an offence in contravention of article 10 it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the services were for the maintenance of an airfield in Libya or facilities and equipment on or associated with the airfield or that they were not for the maintenance of emergency equipment or equipment directly related to civilian air traffic control.

(12) In the case of proceedings for an offence in contravention of article 11 it shall be a defence for the accused person to prove that he did not know and had no reason to suppose that the purpose was to make available the aircraft or com

- (b)
 - (i) he did not know and had no reason to suppose that the bond was given in respect of a contract the performance of which was unlawful by virtue of this Order; and
 - (ii) he made all reasonable enquiries to ascertain whether the bond was given in respect of such a contract.

(14) In the case of proceedings for an offence in contravention of article 13(1)(b), it shall be a defence for the accused person to prove that—

(a) he did not know and had no reason to suppose that payment under the bond was or would be to or to the order of a person connected with Libya; or

- (b)
 - (i) he did not know and had no reason to suppose that the bond was given in respect of a contract the performance of which was unlawful by virtue of this Order; and
 - (ii) he made all reasonable enquiries to ascertain whether the bond was given in respect of such a contract:

Provided that sub-paragraph (b) shall not apply where the accused person is a party to the contract in respect of which the bond was given.

Powers to demand evidence of destination which goods reach

15. Any exporter or any shipper of goods which have been exported from the Isle of Man shall, if so required by the Treasury, furnish within such time as it may allow proof to its satisfaction that the goods have reached either—

- (a) a destination to which they were authorised to be exported by a licence granted under this Order or the 1992 Order; or
- (b) a destination to which their exportation was not prohibited by this Order or the 1992 Order,

and if he fails to do so, he shall be guilty of an offence, unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

Offences in connection with applications for licences, conditions attaching to licences etc.

16.—(1) If for the purpose of obtaining any licence or permission under this Order any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular or recklessly makes any statement or furnishes any document or information which is false in a material particular he shall be guilty of an offence.

(2) Any person who has done any act under the authority of a licence or permission granted by the Treasury under this Order or the Secretary of State under the 1992 Order and who fails to comply with any condition attaching to that licence or permission shall be guilty of an offence:

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 Treasury or the Secretary of State after the doing of the act authorised by the licence or permission.

Declaration as to goods: powers of search

17.—(1) Any person who is about to leave the Isle of Man shall if he is required to do so by an officer of Customs and Excise—

(a) declare whether or not he has with him any goods specified in Schedule 1 to this Order which are destined for Libya or for delivery, directly or indirectly, to or to the order of a person connected with Libya; and

(b) produce any such goods as aforesaid which he has with him, and such officer, and any person acting under his directions, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(2) Any person who without reasonable excuse refuses to make a declaration, fails to produce any goods or refuses to allow himself to be searched in accordance with the foregoing provisions of this article shall be guilty of an offence.

(3) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular or recklessly makes any declaration which is false in a material particular shall be guilty of an offence.

Obtaining of evidence and information

18. The provisions of Schedule 2 to this Order shall have effect in order to facilitate the obtaining of evidence and information for the purpose of securing compliance with or detecting evasion of this Order and in order to facilitate the obtaining of evidence of the commission of an offence under this Order or,

with respect to any of the matters regulated by this Order, of an offence under any enactment relating to customs.

Penalties and proceedings

19.—(1) Any person guilty of an offence under article 14(2) shall be liable—

(a) on conviction on information to imprisonment for a term not exceeding seven years or a fine or to both;

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(2) Any person guilty of an offence under paragraph 5(b) or (d) of Schedule 2 to this Order shall be liable—

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

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(3) Any person guilty of an offence under article 16(1) or (2) or article 17(3) shall be liable—

(a) on conviction on information 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 the statutory maximum.

(4) Any person guilty of an offence under paragraph 5(a) or (c) of Schedule 2 to this Order shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(5) Any person guilty of an offence under article 15 or 17(2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) 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.

(7) Notwithstanding anything in section 75(1) of the Summary Jurisdiction Act 1989 (an Act of Tynwald), a complaint relating to an offence under this Order which is triable by a court of summary jurisdiction may be heard if it is made at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge.

(8) For the purpose of this article—

- (a) a certificate signed by or on behalf of the prosecutor as to the date on which such evidence is referred to in paragraph (7) above came to his knowledge shall be conclusive evidence of that fact; and
- (b) a certificate purporting to be so signed shall be presumed to be so signed unless the contrary is proved.

(9) Proceedings against any person for an offence under this Order may be taken before the appropriate court having jurisdiction in the Isle of Man.

(10) No proceedings for an offence under this Order other than a summary offence shall be instituted except by the Treasury or by, or with the consent of, the Attorney General for the Isle of Man:

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.

Exercise of powers

20.—(1) The Treasury may, to such extent and subject to such restrictions and conditions as it may think proper, delegate or authorise the delegation of any of its powers under this Order (other than the power to give authority under Schedule 2 to this Order to apply for a search warrant) to any person, or class or description of persons, approved by it, and references in this Order to the Treasury shall be construed accordingly.

(2) Any licences granted under this Order may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

Miscellaneous

21.—(1) Any provision of this Order which prohibits the doing of a thing except under the authority of any licence or with any permission shall not have effect in relation to any such thing done anywhere other than in the Isle of Man, provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) above if it is done under the authority of a licence or with permission granted, in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order), by the authority competent in that behalf under that law.

22. The 1992 Order, insofar as it extends to the Isle of Man, is revoked.

R. P. Bulling

Clerk of the Privy Council

Notes:

[1] 1946 c. 45.

[2] S.I. 1992/975, which extended to the United Kingdom and the Isle of Man.

[3] S.I. 1992/3092, to which there are amendments not relevant to this Order.

[4] 1964 c. 60.

[5] 1986 c. 60.