

## 2011 No. 146

### CUSTOMS

#### The Export Control (Somalia) Order 2011

*Made* - - - - 25th January 2011

*Laid before Parliament* 27th January 2011

*Coming into force* - - 17th February 2011

The Secretary of State is a Minister designated (a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to restrictive measures against persons or bodies listed by an international organisation.

This Order makes provision for a purpose mentioned in section 2(2) of that Act and it appears to the Secretary of State that it is expedient for references to Annex I of Council Regulation (EU) No 356/2010(c) to be construed as references to that Annex as amended from time to time.

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, by paragraph 1A of Schedule 2 to that Act(d) and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002(e), makes the following Order:

#### Citation, commencement and interpretation

1.—(1) This Order may be cited as the Export Control (Somalia) Order 2011 and shall come into force on 17th February 2011.

(2) In this Order—

“designated person” means person listed in Annex I to the Regulation;

“military goods and technology” means goods and technology included in the Common Military List of the European Union(f);

“the 1979 Act” means the Customs and Excise Management Act 1979(g);

“the customs and excise Acts” and “assigned matter” have the same meanings as in section 1 of the 1979 Act;

“the Regulation” means Council Regulation (EU) No 356/2010 and references to Annex I of that Regulation are to be construed as references to that Annex as amended from time to time.

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(a) S.I. 2010/1834.

(b) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), Schedule 1.

(c) OJ No L 105, 27.04.2010, p1.

(d) Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and amended by the European Union (Amendment) Act 2008, section 3(3) and Schedule, part 1.

(e) 2002 c. 28.

(f) OJ No C 69, 18.3.2010, p19.

(g) 1979 c. 2.

### **Offences related to military activities**

2.—(1) A person who contravenes any of the following provisions of the Regulation commits an offence—

- (a) Article 8(1)(a) (prohibition on provision to any designated person of technical assistance related to military activities or to the supply etc. of military goods and technology);
- (b) Article 8(1)(b) (prohibition on provision to any designated person of financing etc. related to military activities or to the supply etc. of military goods and technology); or
- (c) Article 8(1)(c) (prohibition on provision to any designated person of investment services related to military activities or to the supply etc. of military goods and technology).

(2) A person who contravenes Article 8(2) (prohibition on participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in Article 8(1)(a), (b) or (c)) of the Regulation commits an offence and may be arrested.

### **Overlap with other legislation**

3. In any case where a person would, apart from this paragraph, be guilty of—

- (a) an offence under this Order; and
- (b) a corresponding offence under the Somalia (United Nations Sanctions) Order 2002(a) (“the UN Order”) or under Part 2, 3 or 4 of the Export Control Order 2008(b),

that person shall be guilty only of the offence under the UN Order.

### **Penalties**

4.—(1) A person guilty of an offence under article 2(1) of this Order is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under article 2(2) of this Order is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or both; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.

### **Application of the 1979 Act**

5.—(1) Where the Commissioners for Her Majesty’s Revenue and Customs investigate or propose to investigate any matter with a view to determining—

- (a) whether there are grounds for believing that an offence under this Order has been committed; or
- (b) whether a person should be prosecuted for such an offence,

the matter shall be treated as an assigned matter.

(2) Section 77A of the 1979 Act (provision as to information powers)(c) shall apply to a person concerned in an activity which would contravene Article 8 of the Regulation and accordingly references in section 77A of the 1979 Act to exportation shall be read as including any such activity.

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(a) S.I. 2002/2628

(b) S.I. 2008/3231; relevant amending instruments are S.I. 2009/1305, 2009/1852, 2009/2151, 2009/2969.

(c) Section 77A was inserted by the Finance Act 1987 (c. 16), section 10 and amended by the Customs and Excise (Single Market etc.) Regulations 1992 (S.I. 1992/3095), Schedule 1, paragraph 7.

(3) Section 138 of the 1979 Act (provision as to arrest of persons)(a) shall apply to the arrest of a person for an offence under this Order as it applies to the arrest of a person for an offence under the customs and excise Acts.

(4) Sections 145(b), 146(c), 146A(d), 147(e), 148, 150(f), 151(g), 152(h), 154(i), and 155(j) of the 1979 Act (proceedings for offences, mitigation of penalties, proof and other matters) shall apply in relation to offences and penalties under this Order as they apply in relation to offences and penalties under the customs and excise Acts.

25th January 2011

*Mark Prisk*  
Minister of State for Business and Enterprise  
Department for Business, Innovation and Skills

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- (a) Section 138 was amended by the Police and Criminal Evidence Act 1984 (c. 60), sections 114(1) and 119, Schedule 6, paragraph 37 and Schedule 7, Part 1; by the Finance Act 1988 (c. 39), section 11; by the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341), article 90(1) and Schedule 6, paragraph 9; and by the Serious Organised Crime and Police Act 2005 (c. 15), Schedule 7, paragraph 54.
- (b) Section 145 was amended by the Police and Criminal Evidence Act 1984, section 114(1); and by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraphs 20 and 23.
- (c) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 22.
- (d) Section 146A was inserted by the Finance Act 1989 (c. 26), section 16(1) and amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 24.
- (e) Section 147 was amended by the Magistrates' Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 176; by the Criminal Justice Act 1982 (c. 48), sections 77 and 78, Schedule 14, paragraph 42 and Schedule 16; and by the Finance Act 1989, section 16(2).
- (f) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25.
- (g) Section 151 was amended by the Magistrates' Courts Act 1980, section 154 and Schedule 7, paragraph 177.
- (h) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 52, Schedule 4, paragraphs 20 and 26 and Schedule 5.
- (i) Section 154 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 23.
- (j) Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20, 21 and 27.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order creates offences in connection with provisions of Council Regulation (EU) No 356/2010 (“the Regulation”) that fall within the remit of the Department for Business, Innovation and Skills. The Regulation relates to Somalia and implements, so far as is possible within the framework of the Treaty on the Functioning of the European Union, additional restrictive measures imposed on listed persons and entities by the United Nations, in accordance with United Nations Security Council Resolution 1844 (2008). On 12 April 2010 the United Nations Sanctions Committee adopted a list of persons and entities subject to those measures; that list was adopted by Council Decision 2010/231/CFSP, and implemented into EU law by the Regulation.

Article 2 creates offences for contravention of the specified provisions of the Regulation. There are already offences in sections 68 and 170 of the Customs and Excise Management Act 1979 that relate to prohibited exportation of goods (from the United Kingdom).

Article 3 addresses a limited overlap with the Somalia (United Nations Sanctions) Order 2002 (“the UN Order”) and the Export Control Order 2008 (“the 2008 Order”). It provides that, if someone acts in a way that would breach both the Regulation – leading to an offence under this Order – and the UN Order or 2008 Order, an offence is committed only under the UN Order.

Article 4 sets out the penalties relating to the offences in the Order. The more serious penalties are reserved for knowing and intentional participation in activities designed to circumvent the prohibitions in the Regulation. Her Majesty’s Revenue and Customs will enforce the provisions of the Order. Article 5 ensures that the same ancillary provisions as apply to their enforcement of customs and excise legislation apply in this context.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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£4.00