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STATUTORY INSTRUMENTS

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**2011 No. 1296**

**CUSTOMS**

**The Export Control (Eritrea and  
Miscellaneous Amendments) Order 2011**

<i>Made</i>	- - - -	<i>18th May 2011</i>
<i>Laid before Parliament</i>		<i>23rd May 2011</i>
<i>Coming into force</i>	- -	<i>13th June 2011</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to measures relating to the interruption or reduction, in part or completely, of economic relations with one or more countries which are not Member States<sup>(2)</sup> and in relation to restrictive measures against persons or bodies listed by an international organisation<sup>(3)</sup>.

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 667/2010<sup>(4)</sup> 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<sup>(5)</sup> and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002<sup>(6)</sup>, makes the following Order.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Export Control (Eritrea and Miscellaneous Amendments) Order 2011 and comes into force on 13th June 2011.

(2) In this Order—

“the 1979 Act” means the Customs and Excise Management Act 1979<sup>(7)</sup>;

“the 2008 Order” means the Export Control Order 2008<sup>(8)</sup>;

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- (1) 1972 c. 68; section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
- (2) S.I. 1994/757, to which there are amendments not relevant to this Order.
- (3) S.I. 2010/1834.
- (4) OJ No L 195, 27.7.2010, p16.
- (5) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
- (6) 2002 c.28.
- (7) 1979 c.2.
- (8) S.I.2008/3231; relevant amending instruments are S.I. 2009/1305, S.I. 2009/1852, S.I. 2009/2151, S.I. 2009/2969, S.I. 2010/2007.

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

“military goods and technology” means arms and related materiel of all types included in the Common Military List of the European Union<sup>(9)</sup>;

“the Regulation” means Council Regulation (EU) No 667/2010 concerning certain restrictive measures in respect of Eritrea, and references to Annex I of that Regulation are to be construed as references to that Annex as amended from time to time.

(3) An expression used both in this Order and in the Regulation has the meaning that it bears in the Regulation.

### **Offences in relation to Eritrea**

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

- (a) Article 2(1)(a) (prohibition on provision of technical assistance related to military activities or to the provision etc. of military goods and technology to any natural or legal person, entity or body in, or for use in, Eritrea);
- (b) Article 2(1)(b) (prohibition on provision on financing or financial assistance related to military goods and technology to any natural or legal person, entity or body in, or for use in, Eritrea);
- (c) Article 2(1)(c) (prohibition on obtaining technical assistance related to military activities or to the provision etc. of military goods and technology from any natural or legal person, entity or body in Eritrea);
- (d) Article 2(1)(d) (prohibition on obtaining financing or financial assistance related to military activities or for the provision of technical assistance and brokering services from any natural or legal person, entity or body in Eritrea).

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

### **Offences in relation to designated persons**

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

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

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

### **Overlap with the 2008 Order**

4. A person is not guilty of an offence under the 2008 Order who would, apart from this paragraph, be guilty of—

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

- (a) an offence under this Order; and
- (b) a corresponding offence under the 2008 Order.

### Penalties

5.—(1) A person guilty of an offence under article 2(1) or article 3(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 any other offence under 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 to both;
  - (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

6.—(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)(10) shall apply to a person concerned in an activity which, if not authorised by an EU authorisation, would contravene Articles 2 or 8 of the Regulation and accordingly references in section 77A of the 1979 Act to exportation shall be read as including any such activity.

(3) Section 138 of the 1979 Act (provision as to arrest of persons)(11) 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(12), 146(13), 146A(14), 147(15), 148, 150(16), 151(17), 152(18), 154(19), and 155(20) 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.

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(10) 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.

(11) 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.

(12) 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.

(13) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 22.

(14) 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.

(15) 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).

(16) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25.

(17) Section 151 was amended by the Magistrates' Courts Act 1980, section 154 and Schedule 7, paragraph 177.

(18) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 52, Schedule 4, paragraphs 20 and 26 and Schedule 5.

(19) Section 154 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 23.

(20) Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20, 21 and 27.

(5) For the purposes of this article, “the customs and excise Acts” and “assigned matter” have the same meanings as in section 1 of the 1979 Act.

#### **Amendment to the Export Control (North Korea) Order 2007**

7. In the definition of “the Regulation” in article 1(2) of the Export Control (North Korea) Order 2007(21), following “Council Regulation (EC) No 329/2007(22)” delete “as amended by Commission Regulation (EC) No 117/2008(23) and Council Regulation (EU) No 1283/2009(24)” and substitute “as last amended by Council Regulation (EU) No 567/2010(25)”.

#### **Amendment to the 2008 Order**

8. In Schedule 2 to the 2008 Order, in entry ML9a.1. following “and components therefor specially designed” insert “or modified”.

#### **Review**

9.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of this Order,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to the rules on penalties applicable to infringements of the provisions of the Regulation and the measures taken to implement them in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the rules on penalties applicable to infringements of the provisions of the Regulation established by this Order and the measures taken to implement them,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which this Order comes into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this Order is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

18th May 2011

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

(21) S.I. 2007/1334, amended by S.I. 2008/3231 and S.I. 2010/132.

(22) OJ No L 88, 29.3.2007, p1.

(23) OJ No L 35, 9.2.2008, p57.

(24) OJ No L 346, 23.12.2009, p1.

(25) OJ No L 163, 30.6.2010, p15.

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## EXPLANATORY NOTE

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

This Order makes provision relating to the enforcement of certain measures against Eritrea set out in Council Regulation (EU) No 667/2010**(26)** (“the Regulation”).

The Regulation implements the sanctions imposed by Council Decision 2010/127/CFSP**(27)** as amended by Council Decision 2010/414/CFSP**(28)** which in turn implement the restrictive measures contained in the United Nations Security Council Resolution UNSCR 1907 (2009) of 23 December 2009.

Articles 2 and 3 create offences for contravention of the provisions of the Regulation referred to there. There are already offences in sections 68 and 170 of the Customs and Excise Management Act 1979**(29)** that relate to prohibited exportation of goods (from the United Kingdom).

Article 4 addresses a limited overlap with 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 2008 Order, that person only commits an offence under this Order.

Article 5 sets out the penalties relating to the offences in the Order. The most serious penalties are reserved for knowing and intentionally participating in activities designed to circumvent the prohibitions in the Regulation.

Her Majesty’s Revenue and Customs will enforce the provisions of the Order. Article 6 ensures that the same ancillary provisions as apply to their enforcement of customs and excise legislation apply in this context.

Article 7 makes a technical amendment to the Export Control (North Korea) Order 2007**(30)** in order to implement the further amendment to Council Regulation (EC) No 329/2007**(31)** made by Council Regulation (EU) No 567/2010**(32)**.

Article 9 requires the Secretary of State to review the operation and effect of this Order and publish a report within five years after it comes into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Order should remain as it is, or be revoked or be amended. A further instrument would be needed to revoke the Order or to amend it.

A regulatory impact assessment has not been produced for this instrument as it has no or minimal impact on business, charities or voluntary bodies. A copy of the Explanatory Memorandum is published alongside the Order on [www.legislation.gov.uk](http://www.legislation.gov.uk). Further information is available from the Export Control Organisation, BIS, 1 Victoria Street, London SW1H 0ET and on BIS website ([www.bis.gov.uk](http://www.bis.gov.uk)).

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**(26)** OJ No L 195, 27.7.2010, p16.

**(27)** OJ No L 51, 23.2.2010, p19.

**(28)** OJ No L 195, 27.7.2010, p74.

**(29)** 1979 c.2.

**(30)** S.I. 2007/1334.

**(31)** OJ No L 88, 29.3.2007, p1.

**(32)** OJ No L 163, 30.6.2010, p15.