

2011 No. 825

CUSTOMS

The Export Control (Libya) Order 2011

Made - - - - *16th March 2011*

Laid before Parliament *17th March 2011*

Coming into force - - *18th March 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 measures relating to the interruption or reduction, in part or completely, of economic relations with one or more countries which are not Member States.

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 any reference to Annex I to Council Regulation (EU) No 204/2011(c) to be construed as a reference 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 (Libya) Order 2011 and shall come into force on 18th March 2011.

(2) In this Order—

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

“Annex I items” means equipment listed in Annex I to the Regulation;

“CML items” means goods or technology listed in the Common Military List of the European Union(g);

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

“EU authorisation” means an authorisation granted under Article 2(4) or 3(3) of the Regulation;

(a) S.I. 1994/757, to which there are amendments not relevant to this Order.

(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), section 3(3) and Schedule, Part 1.

(c) OJ No L 58, 3.3.2011, 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 (c.7), section 3(3) and Schedule, Part 1.

(e) 2002 c. 28.

(f) 1979 c. 2.

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

“the 2008 Order” means the Export Control Order 2008(a);

“the Regulation” means Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation of Libya, and any reference to Annex I to that Regulation is to be construed as a reference to that Annex as amended from time to time;

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

Offences supplementing the Regulation

2. A person who contravenes any of the following provisions of the Regulation, except by exporting goods, commits an offence—

- (a) Article 2(1)(a) (prohibition on sale etc. to any person, entity or body in Libya or for use in Libya of Annex I equipment),
- (b) Article 3(1)(a) (prohibition on provision to any person, entity or body in Libya or for use in Libya of technical assistance related to CML items),
- (c) Article 3(1)(b)(prohibition on provision to any person, entity or body in Libya or for use in Libya of technical assistance or brokering services related to Annex I equipment),
- (d) Article 3(1)(c)(prohibition on provision to any person, entity or body in Libya or for use in Libya of financing or financial assistance related to CML items or Annex I equipment).

Offences related to EU authorisations

3.—(1) If, for the purpose of obtaining an EU authorisation, a person—

- (a) makes any statement or furnishes any document or information which to that person’s 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,

that person commits an offence; and any EU authorisation granted in connection with the application for which the false statement was made or the false document or information furnished shall be void from the time it was granted.

(2) A person who, having acted under the authority of an EU authorisation, fails to comply with any of the requirements or conditions to which the EU authorisation is subject commits an offence, unless—

- (a) the EU authorisation was modified after the completion of the act authorised; and
- (b) the alleged failure to comply would not have been a failure had the EU authorisation not been so modified.

Overlap with the 2008 Order

4. 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 2008 Order,

that person shall not be guilty of the offence under the 2008 Order.

Supplementary provisions as to Offences

5.—(1) A person who participates, knowingly and intentionally, in activities the object or effect of which is—

(a) 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.

- (a) to circumvent the prohibitions specified in Article 2(1)(a) of the Regulation, or
- (b) to enable or facilitate the contravention of any such prohibition

commits an offence and may be arrested

(2) A person who participates, knowingly and intentionally, in activities the object or effect of which is —

- (a) to circumvent the prohibitions specified in Article 3(1)(a) to (c) of the Regulation, or
- (b) to enable or facilitate the contravention of any such prohibition

commits an offence and may be arrested.

Penalties

6.—(1) Subject to paragraph (2), a person guilty of any offence under article 2(a) or 5(1) of this Order is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine, or to both.
- (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

(2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003(a), for “twelve months” in paragraph (1)(b)(i) substitute “six months”.

(3) A person guilty of an offence under article 2(b) to (d), 3 or 5(2) of this Order is liable—

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

(4) In the case of an offence committed in connection with a prohibition or restriction in Article 2(1)(a) of the Regulation, sections 68(3)(b) and 170(3)(b)(b) of the 1979 Act shall have the effect as if for the words “7 years” there were substituted the words “10 years”.

Application of the 1979 Act

7.—(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, if not authorised by an EU authorisation, would contravene Article 2 or 3 of the Regulation and accordingly references in section 77A of the 1979 Act to exportation shall be read as including any such activity.

(a) 2003 c.44; at the date of this Order, section 154(1) had not been commenced.

(b) Sections 68(3)(b) and 170(3)(b) were amended by the Finance Act 1988 (c. 39), section 12(1), (6).

(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.

Amendments to the 2008 Order related to Libya arms embargo

8. In Schedule 4 to the 2008 Order—

- (a) in Part 2, at the appropriate place insert “Libya”;
- (b) in Part 4, omit “Libya”.

16th March 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 makes provision relating to the enforcement of the elements falling within the remit of the Department for Business, Innovation and Skills (“BIS”) of Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya (“the Libya Regulation”).

The Libya Regulation implements, so far as is possible within the framework of the Treaty on the Functioning of the European Union, the sanctions imposed by Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya (OJ L 58, 3.3.2011, p. 53).

The measures include prohibitions on trade, technical assistance, financing, financial assistance or brokering in equipment which may be used for internal repression and restrictions on the provision of technical assistance, financing or financial assistance related to the goods and technology listed in the Common Military List of the European Union.

Article 2 creates offences for contravention of the provisions of the Libya Regulation referred to there. There are already offences relating to prohibited importation and exportation of goods in sections 50, 68 and 170 of the Customs and Excise Management Act 1979 (“the 1979 Act”) (1979 c. 2).

Article 3 supplements the provisions of the Libya Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Article 3(1) makes it an offence knowingly and recklessly to provide false information for the purpose of obtaining an authorisation. Authorisations may be subject to requirements or conditions which continue even after the activity authorised has been carried out. Article 3(2) makes it an offence to fail to comply with such continuing requirements or conditions unless they were imposed after the activity was carried out or amended after that time in such a way as to give rise to non-compliance.

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, they only commit an offence under this Order.

Article 5 contains supplementary provisions about offences. Article 5(1) and (2) provide that circumvention of the prohibitions specified in Articles 2 and 3 of the Regulation is an offence.

Article 6 sets out the penalties relating to the offences in the Order, and makes some consequential modifications to the 1979 Act to ensure that the offences covered by that Act are subject to the same penalties as those in the Order.

Her Majesty’s Revenue and Customs will enforce the provisions of the Order. Article 7 ensures that the same ancillary provisions as apply to their enforcement of customs and excise legislation apply in this context.

In the United Kingdom, under the 2008 Order, a licence was already required to export military goods to Libya and for a range of trading activities involving military goods to Libya. Article 8 increases the level of control by making Libya an “embargoed destination” for the purposes of the trade controls in the 2008 Order so that stricter controls apply, including restrictions on the activities of United Kingdom persons overseas (see article 20 of the 2008 Order). It also has the effect that a number of exceptions in the 2008 Order can no longer be used in relation to exports of military goods to Libya: the exceptions for aircraft and vessels (articles 13 and 14), the exception for holders of a firearm or shot gun certificate or permit (article 16), and the transit or transshipment exception (article 17).

A regulatory impact assessment has not been prepared for this instrument as it has no or minimal impact on business, charities or voluntary bodies. Further information is available from the Export Control Organisation, BIS, 1 Victoria Street, London SW1H 0ET and on BIS website (www.bis.gov.uk).

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STATUTORY INSTRUMENTS

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