

2013 No. 1964

CUSTOMS

The Export Control (Burma Sanctions) Order 2013

Made - - - - *31st July 2013*

Laid before Parliament *7th August 2013*

Coming into force - - *28th August 2013*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) 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(b).

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002(c), makes the following Order.

Citation, Commencement and Application

1.—(1) This Order may be cited as the Export Control (Burma Sanctions) Order 2013 and comes into force on 28th August 2013.

(2) An offence may be committed under this Order—

- (a) in the United Kingdom by any person;
- (b) elsewhere by any person who is a United Kingdom person within the meaning of section 11 of the Export Control Act 2002.

Revocations

2. The legislation specified in column 1 of the Schedule is revoked to the extent specified in column 3 of that Schedule.

Interpretation

3.—(1) In this Order—

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

“EU licence” means an authorisation granted under Article 4 of the Burma Regulation;

(a) 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).

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

(c) 2002 c.28.

(d) 1979 c.2.

“the Burma Regulation” means Council Regulation (EU) No 401/2013(a) concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No 194/2008(b).

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

Offences related to the sale, supply and transfer of equipment which might be used for internal repression listed in Annex I to the Burma Regulation

4. Unless authorised by an EU licence, a person who is knowingly concerned in an activity other than the export of goods, prohibited by Article 2(1) (prohibition on sale etc. of equipment listed in Annex I to any natural or legal person, entity or body in, or for use in Myanmar/Burma) of the Burma Regulation with intent to evade a prohibition in that Article commits an offence and may be arrested.

Offences related to technical and financial assistance in relation to military activities and equipment which might be used for internal repression listed in Annex I to the Burma Regulation

5. Unless authorised by an EU licence, a person who is knowingly concerned in an activity prohibited by any of the following Articles of the Burma Regulation with intent to evade a prohibition in those Articles commits an offence and may be arrested—

- (a) Article 3(1)(a) (prohibition on provision of technical assistance related to military activities etc. directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma);
- (b) Article 3(1)(b) (prohibition on provision of financing or financial assistance related to military activities etc. directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma);
- (c) Article 3(2)(a)(prohibition on provision of technical assistance related to the equipment listed in Annex I, directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma);
- (d) Article 3(2)(b)(prohibition of financing or financial assistance related to the equipment listed in Annex I, directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma).

Offences related to EU licences

6.—(1) A person commits an offence and may be arrested who, for the purpose of obtaining an EU licence—

- (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.

(2) An EU licence granted in connection with the application for which the false statement was made or the false document or information furnished is void from the time it was granted.

(3) A person who, having acted under the authority of an EU licence, fails to comply with a requirement or condition of the EU licence commits an offence and may be arrested, unless—

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

(a) OJ L 121, 3.5.2013, p1.
(b) OJ L 66, 10.3.2008, p1.

Circumvention of prohibitions

7. A person commits an offence and may be arrested who participates, knowingly and intentionally, in activities the object or effect of which is (whether directly or indirectly) to circumvent any of the prohibitions in the following Articles of the Burma Regulation, or to enable or facilitate the contravention of any such prohibition—

- (a) Article 2(1) of the Burma Regulation (prohibitions on sale, etc. of equipment which may be used for internal repression listed in Annex I to the Burma Regulation); or
- (b) Article 3(1) and (2) of the Burma Regulation (prohibitions on the provision of technical and financial assistance in relation to military activities and equipment which may be used for internal repression listed in Annex I to the Burma Regulation).

Penalties

8.—(1) A person guilty of an offence under article 4 or 7(a) of this Order is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding six 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;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine, or to both.

(2) In relation to an offence committed after the commencement of section 154(1) of the Criminal Justice Act 2003^(a) (general limit on magistrates' court's power to impose imprisonment), for "six months" in paragraph (1)(a)(i) substitute "twelve months".

(3) A person guilty of an offence under articles 5, 6 and 7(b) 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 under the 1979 Act in connection with the prohibition of exportation in Article 2(1) of the Burma Regulation, sections 68(3)(b) and 170(3)(b)(b) of the 1979 Act have the effect as if for the words "7 years" there were substituted the words "10 years".

Application of the 1979 Act

9.—(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 (information powers)^(c) shall apply to a person concerned in an activity which, if not authorised by an EU licence would contravene Articles 2 and 3 of the Burma 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) and (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 (provisions 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) 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.

(5) “The customs and excise Acts” and “assigned matter” have the same meanings as in section 1 of the 1979 Act.

Review

10.—(1) The Secretary of State must from time to time—

- (a) carry out a review of articles 3 to 9 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 Burma 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 Burma 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) The first report under this Order must be published before the end of the period of five years beginning with the day in which this article comes into force.

(5) Reports under this Order are afterwards to be published at intervals not exceeding five years.

Michael Fallon

Minister of State for Business and Enterprise
Department for Business, Innovation and Skills

31st July 2013

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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), section 111 and 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), section 50(6) and 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, section 50(6) and 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, section 50(6) and 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.

SCHEDULE

Article 2

REVOCATIONS

(1)	(2)	(3)
Orders revoked	Reference	Extent of revocation
Export Control (Burma) Order 2008	S.I. 2008/1098	The whole Order
The Export Control (Burma) (Amendment) Order 2010	S.I. 2010/1675	The whole Order
The Export Control (Syria and Burma Sanctions Amendment) and Miscellaneous Revocations Order 2012	S.I. 2012/2125	Article 4

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of the remaining trade sanctions against Myanmar/Burma specified in Council Regulation (EU) No 401/2013 (“the Burma Regulation”) (OJ L 121, 3.5.2013, p1) repealing Regulation (EC) No 194/2008 (OJ L 66, 10.3.2008, p1) concerning restrictive measures in respect of Myanmar/Burma, which included a range of restrictive measures many of which have now been lifted.

The trade sanctions which remain in force include prohibitions on the sale, supply or transfer of equipment which may be used for internal repression and prohibitions on the provision of technical and financial assistance in relation to military activities and equipment which may be used for internal repression.

Article 2 and the Schedule revoke the Export Control (Burma) Order 2008 (S.I. 2008/1098) and its subsequent amendments (S.I. 2010/1675 and article 4 of S.I. 2012/2125), which this Order replaces.

Articles 3 to 9 set out the enforcement of the trade restrictions of the Burma Regulation. Articles 4 to 7 create new offences in relation to those prohibitions and article 8 specifies the penalties. Article 9 provides for the ancillary provisions which apply to the enforcement of customs and excise legislation to apply also to the enforcement of this Order.

Article 10 requires the Secretary of State to review the operation and effect of articles 3 to 9 of the Order and publish a report within five years after this article 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 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. 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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