

2015 No. 1546

CUSTOMS

The Export Control (Democratic Republic of Congo Sanctions and Miscellaneous Amendments and Revocations) Order 2015

<i>Made</i> - - - -	<i>15th July 2015</i>
<i>Laid before Parliament</i>	<i>20th July 2015</i>
<i>Coming into force</i> - -	<i>11th August 2015</i>

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 3, 4, 5 and 7 of the Export Control Act 2002(c), makes the following Order.

PART 1

Introductory

Citation, commencement and application

1.—(1) This Order may be cited as the Export Control (Democratic Republic of Congo Sanctions and Miscellaneous Amendments and Revocations) Order 2015 and comes into force on 11th August 2015.

(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(d).

Revocations

2. The Orders specified in the Schedule to this Order are revoked.

(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) 2002 c. 28.

Interpretation

3.—(1) In this Order—

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

“EU authorisation” means an authorisation granted under Article 1b of the Democratic Republic of Congo Regulation;

“the Democratic Republic of Congo Regulation” means Council Regulation (EC) No 1183/2005^(b) as amended by Council Regulation (EU) 2015/613^(c).

(2) An expression used both in this Order and the Democratic Republic of Congo Regulation has the meaning given in the Democratic Republic of Congo Regulation.

PART 2

Offences in relation to prohibitions in the Democratic Republic of Congo Regulation

Offences in relation to prohibitions in the Democratic Republic of Congo Regulation

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

- (a) Article 1a(1)(a) (prohibition on provision of technical assistance or brokering services related to the goods and technology listed in the Common Military List or related to the provision, manufacture, maintenance and use of goods included in that list, to any non-governmental entity or person operating in the territory of the Democratic Republic of Congo);
- (b) Article 1a(1)(b) (prohibition on provision of financing or financial assistance related to the sale, supply, etc. of goods and technology listed in the Common Military List to any non-governmental entity or person operating in the territory of the Democratic Republic of Congo).

PART 3

Supplementary provisions as to offences

Circumvention of prohibitions

5.—(1) A person commits an offence and may be arrested where that person participates, knowingly and intentionally, in activities the object or effect of which is (whether directly or indirectly)—

- (a) to circumvent the prohibition in Article 1a(1)(a) of the Democratic Republic of Congo Regulation, or
- (b) to enable or facilitate the contravention of that prohibition.

(2) A person commits an offence and may be arrested where that person participates, knowingly and intentionally, in activities the object or effect of which is (whether directly or indirectly)—

- (a) to circumvent the prohibition in Article 1a(1)(b) of the Democratic Republic of Congo Regulation, or
- (b) to enable or facilitate the contravention of that prohibition.

(a) 1979 c. 2.

(b) OJ No L 193, 23.7.2005, p1.

(c) OJ No L 102, 21.4.2015, p3.

Offences related to EU authorisation

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

- (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 authorisation 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 authorisation, fails to comply with a requirement or condition to which the EU authorisation is subject commits an offence and may be arrested, 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.

PART 4

Enforcement and penalties

Penalties

7.—(1) A person guilty of an offence under article 4(a) or 5(1) 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, 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), for “six months” in paragraph (1)(a)(i) substitute “twelve months”.

(3) A person guilty of an offence under article 4(b), 5(2) or 6 of this Order is liable—

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

Application of the 1979 Act

8.—(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.

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

(2) Section 77A of the 1979 Act (provision as to information powers)(a) applies to a person concerned in an activity which, if not authorised by an EU authorisation, would contravene Article 1a(1)(a) or 1a(1)(b) of the Democratic Republic of Congo 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)(b) applies 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(c), 146(d), 146A(e), 147(f), 148, 150(g), 151(h), 152(i), 154(j), and 155(k) 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.

PART 5

General

Amendment to the Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014

9. The Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014(I) are amended as follows—

- (a) in article 3(1), for the definition of “the South Sudan Regulation”, substitute—

“the South Sudan Regulation” means Council Regulation (EU) 2015/735(m) concerning restrictive measures in respect of the situation in South Sudan and repealing Regulation (EU) No 748/2014;”;
- (b) in article 5—
 - (i) in paragraph (a), for “Article 2(a)”, substitute “Article 2(1)”;
 - (ii) in paragraph (b), for “Article 2(b)”, substitute “Article 2(2)”.

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- (a) Section 77A was inserted by the Finance Act 1987 (c. 16), section 10 and amended by Schedule 1, paragraph 7 of the Customs and Excise (Single Market etc.) Regulations 1992 (S.I. 1992/3095).
 - (b) 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.
 - (c) 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), sections 50(6), 52(2), Schedule 4, paragraphs 20 and 23.
 - (d) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 22.
 - (e) 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), Schedule 4, paragraphs 20 and 24.
 - (f) 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), (4), 187, Schedule 17, Part I.
 - (g) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25.
 - (h) Section 151 was amended by the Magistrates’ Courts Act 1980, section 154 and Schedule 7, paragraph 177.
 - (i) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, sections 50(6) and 52(1) and (2), Schedule 4, paragraphs 20 and 26 and Schedule 5.
 - (j) Section 154 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 23.
 - (k) Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, sections 50(6), 52(2), Schedule 4, paragraphs 20, 21(j) and 27 and Schedule 5.
 - (l) S.I. 2014/3258.
 - (m) OJ No L 117, 8.5.2015, p13.

Amendment to the Export Control Order 2008

10. The Export Control Order 2008^(a) is amended as follows—

- (a) in Part 2 of Schedule 4, omit “Guinea”;
- (b) in Part 3 of Schedule 4, omit “Sierra Leone”;
- (c) in Part 4 of Schedule 4—
 - (i) after “Ghana”, insert “Guinea”;
 - (ii) after “Serbia”, insert “Sierra Leone”.

Amendment to the Export Control (Syria Sanctions) Order 2013

11. In article 3(1) of the Export Control (Syria Sanctions) Order 2013, in the definition of “the Syria Regulation”, for the words “as last amended by Council Regulation (EU) No 1323/2014”, substitute “as last amended by Council Regulation (EU) No 827/2015^(b)”.

Review

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

- (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 Democratic Republic of Congo 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 Democratic Republic of Congo 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 on which this Order comes into force.

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

15th July 2015

Anna Soubry
Minister of State for Small Business, Industry and Enterprise
Department for Business, Innovation and Skills

(a) S.I. 2008/3231, to which there are amendments not relevant to these Regulations.

(b) OJ No L 132, 29.5.2015, p1.

SCHEDULE

Article 2

Revocations

<i>(1)</i>	<i>(2)</i>
<i>Orders revoked</i>	<i>References</i>
The Export Control (Democratic Republic of Congo) Order 2005	S.I. 2005/1677
The Export Control (Democratic Republic of Congo) (Amendment) Order 2008	S.I. 2008/131
The Export Control (Amendment) (No. 4) Order 2009	S.I. 2009/2969
The Export Control (Guinea) Order 2010	S.I. 2010/364
The Export Control (Democratic Republic of Congo) (Amendment) (No. 2) Order 2008	S.I. 2008/1964

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the enforcement of certain trade restrictions against the Democratic Republic of Congo specified in Council Regulation (EC) No 1183/2005 (OJ No L 193, 23.7.2005, p.1), as amended by Council Regulation (EU) 2015/613 (OJ No L 102, 21.4.2015, p.3) (“the Democratic Republic of Congo Regulation”). The Order sets out offences in relation to these prohibitions and those offences can be committed by any person in the United Kingdom and, around the world, by any United Kingdom person, as defined in section 11 of the Export Control Act 2002 (c. 28).

The trade restrictions against the Democratic Republic of Congo are a prohibition on the provision of technical assistance or brokering services related to the goods and technology listed in the Common Military List to any non-governmental entity or person operating in the territory of the Democratic Republic of Congo and a prohibition on the provision of financing or financial assistance related to the sale, supply etc. of goods and technology listed in the Common Military List to any non-governmental entity or person operating in the territory of the Democratic Republic of Congo.

Article 2 revokes the Orders listed in the Schedule to this Order. This includes the Export Control (Democratic Republic of Congo) Order 2005 (S.I. 2005/1677) and amending instruments. The Export Control (Guinea) Order 2010 and the Export Control (Amendment) (No. 4) Order 2009, which makes Guinea an embargoed destination for the purpose of the trade controls of the Export Control Order 2008 (S.I. 2008/3231), are also revoked.

Article 4 creates offences for contravention of the trade restrictions in Article 1a of the Democratic Republic of Congo Regulation. Article 5 creates offences for the circumvention of the prohibitions in the Democratic Republic of Congo Regulation.

Article 6 supplements the provisions of the Democratic Republic of Congo Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Article 6(1) makes it an offence knowingly and recklessly to provide false information for the purpose of obtaining an authorisation and Article 6(3) makes it an offence to fail to comply with authorisation requirements or conditions.

Article 7 sets out the penalties relating to the offences in the Order.

Article 8 provides for the ancillary provisions which apply to the enforcement of customs and excise legislation to also apply to the enforcement of this Order.

Article 9 amends the Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014 (S.I. 2014/3258), which make provision for the enforcement of certain trade restrictions against South Sudan specified in Council Regulation (EU) No 748/2014 (OJ No L 203, 11.7.2014, p13). This Regulation is repealed and replaced by Council Regulation (EU) 2015/735 (OJ No L 117, 8.5.2015, p13). Article 9 substitutes for the reference to Council Regulation (EU) No 748/2014, a reference to Council Regulation (EU) 2015/735 and makes consequential amendments.

By Council Decision 2014/213/CFSP, the European Union lifted the arms embargo, and the embargo on equipment which might be used for internal repression, against Guinea. Article 10 removes Guinea from the list of “embargoed destinations” in Part 2 of Schedule 4 to the Export Control Order 2008 and inserts Guinea into the list of destinations subject to transit control for category B goods in Part 4 of that Schedule. Article 10 also removes Sierra Leone from the list of countries subject to transit control for military goods in Part 3 of Schedule 4 and inserts Sierra Leone into the list of destinations in Part 4 of that Schedule.

Article 11 amends the definition of “the Syria Regulation” in the Export Control (Syria Sanctions) Order 2013.

Article 12 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 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 the gov.uk website (www.gov.uk).

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