

2016 No. 787

CUSTOMS

The Export Control (Libya Sanctions) Order 2016

Made - - - - *20th July 2016*

Laid before Parliament *21st July 2016*

Coming into force - - *12th August 2016*

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).

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments to be construed as references to those provisions as amended from time to time.

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

PART 1

Introductory

Citation and commencement

1. This Order may be cited as the Export Control (Libya Sanctions) Order 2016 and comes into force on 12th August 2016.

Revocation

2. The following Orders are revoked—

(a) the Export Control (Libya) Order 2011(e); and

(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) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by the European Union (Amendment) Act 2008, Schedule, Part 1.
(d) 2002 c.28.
(e) S.I. 2011/825.

- (b) the Export Control (Liberia) Order 2011(a).

Application

3. 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.

Interpretation

- 4.—(1) In this Order—

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

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

“the Libya Regulation” means Council Regulation (EU) 2016/44(c) concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011, and a reference to an Annex to that Regulation is a reference to that Annex as amended from time to time.

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

PART 2

Offences relating to prohibitions in the Libya Regulation

Offences related to equipment which might be used for internal repression as listed in Annex I

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

- (a) Article 2(1)(a) (prohibition on the sale, supply, etc. of equipment that might be used for internal repression as listed in Annex I to any person, entity or body in Libya or for use in Libya);
- (b) Article 2(2) (prohibition on the purchase, import or transport from Libya of equipment that might be used for internal repression as listed in Annex I);
- (c) Article 3(1)(b) (prohibition on the provision of technical assistance related to equipment which might be used for internal repression as listed in Annex I to any person, entity or body in Libya or for use in Libya).

Offences related to goods and technology listed in the Common Military List and financing or financial assistance related to goods listed in Annex I

6. Unless authorised by an EU authorisation, a person who is knowingly concerned in an activity prohibited by any of the following Articles of the Libya Regulation with intent to evade a prohibition in that Article commits an offence and may be arrested—

(a) S.I. 2011/145.
(b) 1979, c.2.
(c) OJ No L 12, 19.1.2016, p.1.

- (a) Article 3(1)(a) (prohibition on the provision of technical assistance related to the goods and technology listed in the Common Military List to any person, entity or body in Libya or for use in Libya);
- (b) Article 3(1)(c) (prohibition on the provision of financing or financial assistance related to the goods and technology listed in the Common Military List or in Annex I to any person, entity or body in Libya or for use in Libya);
- (c) Article 3(1)(d) (prohibition on the provision of technical assistance, financing or financial assistance related to the provision of armed mercenary personnel in Libya or for use in Libya).

PART 3

Supplementary offences

Circumvention of prohibitions in the Libya Regulation

7.—(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 any of the prohibitions in Articles 2(1)(a), 3(1)(a) and 3(1)(b) of the Libya Regulation; or
- (b) to enable or facilitate the contravention of any such 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 any of the prohibitions in Articles 2(2), 3(1)(c) and 3(1)(d) of the Libya Regulation; or
- (b) to enable or facilitate the contravention of any such prohibition.

Offences related to an EU authorisation

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

(2) An EU authorisation granted in the circumstances referred to in paragraph (1) 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

9.—(1) A person guilty of an offence under article 5(a), 5(c), 6(a) or 7(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 5(b), 6(b), 6(c), 7(2) or 8 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.

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

(5) In the case of an offence committed under the 1979 Act in connection with the prohibition of importation in Article 2(2) of the Libya Regulation, sections 50(4)(b)(d) and 170(3)(b) of that Act have effect as if for the words “7 years” there were substituted the words “10 years”.

Application of the 1979 Act

10.—(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 (provisions as to information powers)(e) applies to a person concerned in an activity which, if not authorised by an EU authorisation, would contravene Article 2 or 3 of the Libya Regulation and accordingly references in section 77A of the 1979 Act to importation or 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) Section 68(3)(b) was amended by the Finance Act 1988 (c.39), section 12(1)(a); by the Criminal Justice and Immigration Act 2008 (c.4), Schedule 17, Part 2, paragraph 8(4)(a); and by the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12), section 111(7)(a).

(c) Section 170(3)(b) was amended by the Finance Act 1988, section 12(1)(a); by the Import of Seal Skins Regulations 1996/2686, regulation 4(2)(a); by the Criminal Justice and Immigration Act 2008, Schedule 17, Part 2, paragraph 8(5)(a); and by the Anti-Social Behaviour, Crime and Policing Act 2014, section 111(4)(a).

(d) Section 50(4)(b) was amended by the Finance Act 1988, section 12(1)(a); by the Import of Seal Skins Regulations 1996/2686, regulation 4(1)(a); by the Criminal Justice and Immigration Act 2008, Schedule 17, Part 2, paragraph 8(3)(a); and by the Anti-Social Behaviour, Crime and Policing Act 2014, section 111(3)(a).

(e) 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).

(3) Section 138 of the 1979 Act (provision as to arrest of persons)(a) 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(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) In this article, “the customs and excise Acts” and “assigned matter” have the same meanings as in section 1 of the 1979 Act.

PART 5

Miscellaneous

Amendment of the Export Control Order 2008

11. The Export Control Order 2008(k) is amended as follows—

- (a) in Part 3 of Schedule 4, omit “Liberia”; and
- (b) in Part 4 of Schedule 4, after “Krygyzstan”, insert “Liberia”.

PART 6

General

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.

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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); by the Commissioners for Revenue and Customs Act 2005 (c.11), sections 50(6), 52(2), Schedule 4, paragraphs 20 and 23; and by the Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order (S.I. 2014/834), Schedule 2, paragraph 2(a).
 - (c) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), 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), Schedule 4, paragraphs 20 and 24 and by the Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order, Schedule 2, paragraph 2(b).
 - (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; by the Finance Act 1989, section 16(2), (4), 187, Schedule 17, Part I; and by the Criminal Justice Act 2003 (c.44) Schedule 37(4), paragraph 1.
 - (f) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25 and by the Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order (S.I. 2014/834), Schedule 2, paragraph 2(a).
 - (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, sections 50(6) and 52(1) and (2), 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, sections 50(6), 52(2), Schedule 4, paragraphs 20, 21(j) and 27 and Schedule 5.
 - (k) S.I. 2008/3231, relevant amending instruments are S.I. 2009/1305, 2009/2969, 2010/615, 2010/2007, 2011/825, 2011/1304, 2011/2010, 2013/3182, 2014/2357, 2015/1546, 2015/1586 and 2016/503.

(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 Libya 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 Libya 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.

20th July 2016

Greg Hands
Parliamentary Under Secretary of State
Department for International Trade

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement of trade restrictions against Libya specified in Council Regulation (EU) No 2016/44 concerning restrictive measures against Libya (OJ No L 12, 19.1.2016, p.1) (the “Libya Regulation”). This Order revokes and replaces the Export Control (Libya) Order 2011 (S.I. 2011/825) and the Export Control (Liberia) Order 2011 (S.I. 2011/145).

Articles 5 and 6 create offences for contravention of the trade restrictions in the Libya Regulation.

Article 7 creates offences for the circumvention of the trade restrictions in the Libya Regulation.

Article 8 supplements the provisions of the Libya Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Article 8(1) makes it an offence knowingly and recklessly to provide false information for the purpose of obtaining an authorisation and Article 8(3) makes it an offence to fail to comply with authorisation requirements or conditions.

Article 9 sets out the penalties relating to the offences in the Order.

Article 10 provides for the ancillary provisions which apply to the enforcement of customs and excise legislation to apply to the enforcement of this Order.

Article 11 omits Liberia from the list in Part 3 of Schedule 4 to the Export Control Order 2008 (S.I. 2008/3231) and inserts Liberia into the list in Part 4 of Schedule 4 to that Order.

An 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, BIT, 1 Victoria Street, London SW1H 0ET and on the gov.uk website (www.gov.uk).

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