
STATUTORY INSTRUMENTS

2020 No. 572

CUSTOMS

The Export Control (Somalia) (Amendment) Order 2020

<i>Made</i>	- - - -	<i>4th June 2020</i>
<i>Laid before Parliament</i>		<i>9th June 2020</i>
<i>Coming into force</i>	- -	<i>1st July 2020</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(1) 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(2).

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 EU instruments to be construed as references to those instruments as amended from time to time.

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

Citation and commencement

1. This Order may be cited as the Export Control (Somalia) (Amendment) Order 2020 and comes into force on 1st July 2020.

Amendment of the Export Control (Somalia) Order 2011

2. The Export Control (Somalia) Order 2011(5) is amended in accordance with articles 3 to 7.

Amendment of article 1 (citation, commencement, and interpretation)

3. In article 1(2),—

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- (1) 1972 c. 68; repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)); section 2(2) was amended by section 27(1)(a) 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) Paragraph 1A of Schedule 2 to the European Communities Act 1972 (c. 68) was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and amended by S.I. 2007/1388 and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
- (4) 2002 c. 28; relevant amending instruments are S.I. 2011/1043 and S.I. 2012/1809.
- (5) S.I. 2011/146; to which there is an amendment not in force and not relevant to this Order.

- (a) after the definition of “the 1979 Act”, insert—
- ““the 2003 Regulation” means Council Regulation (EC) No 147/2003 of 27 January 2003 concerning certain restrictive measures in respect of Somalia(6), as amended from time to time;”;
- (b) for the definition of “the Regulation” substitute—
- ““the 2010 Regulation” means Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia(7), as amended from time to time;”.

Amendment of article 2 (offences related to military activities)

4.—(1) In the heading to article 2, for “related to military activities” substitute “relating to prohibitions under Article 8 of the 2010 Regulation”.

(2) In article 2, in each place it occurs, for “the Regulation” substitute “the 2010 Regulation”.

Insertion of articles 2A to 2C

5. After article 2, insert—

“Offence relating to prohibition under Article 3c of the 2003 Regulation

2A.—(1) A person who contravenes Article 3c(1) of the 2003 Regulation (prohibition on sale, export, supply, or transfer, directly or indirectly, of improvised explosive devices components as listed in Annex III to the 2003 Regulation to Somalia) commits an offence.

(2) An offence under this article may be committed by a United Kingdom person(8) in relation to acts done by that person outside the United Kingdom.

Offences relating to authorisation under Article 3c of the 2003 Regulation

2B.—(1) A person commits an offence if, for the purpose of obtaining authorisation, the person knowingly or recklessly makes a statement or furnishes a document or information which is false in a material particular.

(2) A person commits an offence if the person—

- (a) purports to act under authorisation; and
- (b) fails to comply with any requirement or condition of that authorisation.

(3) Authorisation granted in the circumstances referred to in paragraph (1) is void from the time it was granted.

(4) An offence under this article may be committed by a United Kingdom person in relation to acts done by that person outside the United Kingdom.

(6) OJ No. L 24, 19.1.2003, p. 2; to which amendments relevant to this Order were made by Council Regulation (EU) 2020/169 (OJ No. L 36, 7.2.2020, p. 1).

(7) OJ No. L 105, 27.4.2010, p. 1; to which amendments relevant to this Order were made by Council Implementing Regulation (EU) No 956/2011 (OJ No. L 249, 27.9.2011, p. 1); Council Implementing Regulation (EU) No 1104/2014 (OJ No. L 301, 21.10.2014, p. 5); Council Implementing Regulation (EU) 2015/325 (OJ No. L 58, 3.3.2015, p. 41); Council Implementing Regulation (EU) 2015/2044 (OJ No. L 300, 17.11.2015, p. 3); Council Implementing Regulation (EU) 2017/395 (OJ No. L 60 8.3.2017, p. 1), and Council Implementing Regulation (EU) 2018/413 (OJ No. L 75, 19.3.2018, p. 1).

(8) The term “United Kingdom person” is defined in section 11 of the Export Control Act 2002 (c. 28).

(5) In this article, “authorisation” means authorisation granted under Article 3c of the 2003 Regulation⁽⁹⁾.

Offences under the 1979 Act in connection with the 2003 Regulation

2C.—(1) If a person is guilty of an offence under section 68(2) of the 1979 Act in connection with the attempted exportation of goods with intent to evade the prohibition, the reference to 7 years in section 68(3)(b) of the 1979 Act is to be read as a reference to 10 years.

(2) If a person is guilty of an offence under section 170(2) of the 1979 Act in connection with an attempt at evasion of the prohibition, the reference to 7 years in section 170(3)(b) of the 1979 Act is to be read as a reference to 10 years.

(3) This Order is to be treated as if it were the instrument imposing the prohibition for the purpose of section 68(6) and 170(5) of the 1979 Act.

(4) In this article, “prohibition” means the prohibition imposed by Article 3c(1) of the 2003 Regulation insofar as it prohibits the exportation of goods listed in Annex III of that Regulation.”.

Amendment of article 4 (penalties)

6. In article 4, after paragraph (2), insert—

“(3) A person guilty of an offence under article 2A is liable,—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine (or both).

(4) A person guilty of an offence under article 2B is liable,—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(5) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003⁽¹⁰⁾ comes into force, the reference in paragraph 3(a) or 4(a) to “12 months” is to be read as “6 months”.”.

⁽⁹⁾ Authorisation may be obtained in the United Kingdom by application to the Export Control Joint Unit (a part of the Department for International Trade) using the SPIRE online export licensing system.

⁽¹⁰⁾ 2003 c.44; to which there are amendments not relevant to this Order.

Amendment of article 5 (application of the 1979 Act)

7. In article 5,—

(a) for paragraph (2) substitute—

“(2) Section 77A of the 1979 Act (information powers) applies to a person who is concerned in a relevant activity as to a person who is concerned (in whatever capacity) in the importation or exportation of goods for which for that purpose an entry is required by regulation 5 of the Customs Controls on Importation of Goods Regulations 1991⁽¹¹⁾ or an entry or specification is required by or under the 1979 Act but as if, in subsection (1),—

(a) in the words before sub-paragraph (a), the reference to the importation or exportation of goods for which for that purpose an entry is required by regulation 5 of the Customs Controls on Importation of Goods Regulations 1991 or an entry or specification is required by or under the 1979 Act were to a relevant activity;

(b) in sub-paragraphs (a) and (b),—

(i) the reference to the goods were to the goods, technology, services, or funds to which the relevant activity relates;

(ii) the reference to the importation or exportation were to a relevant activity.”;

(b) after paragraph (4), insert—

“(5) In paragraph (2), “relevant activity” means an activity which would contravene—

(a) Article 3c(1) of the 2003 Regulation (if not done in accordance with authorisation granted under that Article);

(b) Article 8(1) or (2) of the 2010 Regulation.”.

Signed by authority of the Secretary of State for International Trade

4th June 2020

Ranil Jayawardena
Parliamentary Under Secretary of State
Department for International Trade

(11) S.I. 1991/2724, amended by S.I. 1992/3095, S.I. 1993/3014, and S.I. 2011/1043; to be revoked by S.I. 2018/1247 on such day as the Treasury may appoint.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on 1st July 2020, amends the Export Control (Somalia) Order 2011 (S.I. 2011/146) (“the 2011 Order”).

The Order implements the obligation of the United Kingdom under Article 7(1) of Council Regulation (EC) No 147/2003 of 27 January 2003 concerning certain restrictive measures in respect of Somalia (OJ No. L 24, 19.1.2003) (“the 2003 Regulation”) in relation to Article 3c of that Regulation.

Article 7(1) of the 2003 Regulation requires the United Kingdom to determine effective, proportionate, and dissuasive sanctions to be imposed for infringements of the 2003 Regulation.

Article 3c of the 2003 Regulation prohibits the unauthorised sale, export, supply, or transfer, directly or indirectly, to Somalia of improvised explosive devices components listed in Annex III of the 2003 Regulation.

Article 3c of, and Annex III to, the 2003 Regulation were inserted into the 2003 Regulation on 8th February 2020 by Article 1(4) and (5) of Council Regulation (EU) 2020/169 of 6 February 2020 amending Regulation (EC) No 147/2003 concerning restrictive measures in respect of Somalia (OJ No. L 36, 7.2.2020, p. 1).

The Order also makes amendments to the 2011 Order in relation to Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia (OJ No. L 105, 27.4.2010, p.1) (“the 2010 Regulation”).

Article 3 amends article 1(2) of the 2011 Order (which relates to interpretation) to:

- insert a definition of “the 2003 Regulation”, which references the 2003 Regulation as amended from time to time;
- replace the definition of “the Regulation” with a definition of “the 2010 Regulation”, which references the 2010 Regulation as amended from time to time.

Amendments to the 2003 Regulation and the 2010 Regulation are indexed by the National Archives. The indexes may be found online at:

- <http://www.legislation.gov.uk/changes/affected/eur/2003/147> (the 2003 Regulation);
- <http://www.legislation.gov.uk/changes/affected/eur/2010/356> (the 2010 Regulation).

Article 4 amends article 2 of the 2011 Order (which relates to the 2010 Regulation) to revise the heading of, and to update the cross-references in, the article.

Article 5, in part, inserts articles 2A and 2B into the 2011 Order and creates the following offences:

- An offence for a person, without prior authorisation, to sell, export, supply or transfer, directly or indirectly, to Somalia improvised explosive devices components listed in Annex III of the 2003 Regulation;
- An offence for a person, for the purpose of obtaining authorisation, to knowingly or recklessly make a statement or furnish a document or information which is false in a material particular;
- An offence for a person to purport to act under authorisation but fail to comply with any requirement or condition of that authorisation.

Status: This is the original version (as it was originally made).

An offence under article 2A or 2B may be committed by a United Kingdom person (as defined in section 11 of the Export Control Act 2002 (c. 28)) in relation to acts done by that person outside the United Kingdom.

Authorisation for the purposes of articles 2A and 2B is authorisation granted under Article 3c(1) of the 2003 Regulation to sell, export, supply or transfer, directly or indirectly, to Somalia an improvised explosive devices component listed in Annex III to the 2003 Regulation.

Authorisation may be obtained in the United Kingdom by application to the Export Control Joint Unit (a part of the Department for International Trade) using the SPIRE online licensing system. Further information may be found online at:

- <https://www.gov.uk/government/organisations/export-control-organisation> (the Export Control Joint Unit);
- <https://www.spire.trade.gov.uk/> (the SPIRE online licensing system).

Article 5 also inserts article 2C into the 2011 Order and modifies the application to the prohibition imposed by Article 3c(1) of the 2003 Regulation of relevant offence provisions in the Customs and Excise Management Act 1979 (c. 2). The modifications align the penalty for offences relating to attempted exportation and attempt at evasion with the penalty in the 2011 Order for contravening Article 3c(1) of the 2003 Regulation and resolve corresponding offences relating to exportation and fraudulent evasion in favour of the 2011 Order.

Article 6 amends article 4 of the 2011 Order to set out the penalties for a person found guilty of an offence under article 2A or 2B. The penalties are within the limitation set out in section 7(1)(g) of the Export Control Act 2002 (c. 28).

Article 7 amends article 5 of the 2011 Order to revise the application to the Order of the information powers under section 77A of the Customs and Excise Management Act 1979 (c. 2; section 77A was inserted by section 10 of the Finance Act 1987 (c. 16) and amended by S.I. 1992/3095).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary, or public sector is foreseen.

A copy of the Explanatory Memorandum is published alongside this instrument on <http://www.legislation.gov.uk/>.