
STATUTORY INSTRUMENTS

2008 No. 1098

CUSTOMS

The Export Control (Burma) Order 2008

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| <i>Made</i> | - - - - | <i>21st April 2008</i> |
| <i>Laid before Parliament</i> | | <i>22nd April 2008</i> |
| <i>Coming into force</i> | - - | <i>23rd April 2008</i> |

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

It appears to the Secretary of State that it is expedient for the references to Council Regulation (EC) No 194/2008⁽³⁾ to be construed as references to that instrument as amended from time to time in accordance with the procedure set out in Article 18 of the Regulation.

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⁽⁴⁾ and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002⁽⁵⁾, makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Export Control (Burma) Order 2008 and shall come into force on 23rd April 2008.

(2) In this Order—

“the 1979 Act” means the Customs and Excise Management Act 1979⁽⁶⁾;

“Annex I items” means goods listed in Annex I to the Regulation (round logs, timber and timber products; coal and certain metals; precious and semi-precious stones);

“Annex II items” means goods or technology listed in Annex II to the Regulation (equipment which might be used for internal repression);

“Annex III items” means goods or technology listed in Annex III to the Regulation (equipment and technology used in logging and timber processing and certain mining operations);

(1) S.I. 1994/757.

(2) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1).

(3) OJ No L 66, 10.3.2008, p1.

(4) Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28.

(5) 2002 c. 28.

(6) 1979 c. 2.

“a Community authorisation” means an authorisation granted under Article 5(3), 8(2) or 9 of the Regulation;

“the customs and excise Acts” and “assigned matter” have the same meanings as in section 1 of the 1979 Act⁽⁷⁾;

“the Regulation” means Council Regulation (EC) No 194/2008.

(3) References in this Order to the Regulation are references to the Regulation as amended from time to time in accordance with the procedure set out in Article 18 of the Regulation.

Offences related to import, purchase and transport prohibitions

2.—(1) A person who contravenes any of the following provisions of the Regulation commits an offence—

- (a) Article 2(2)(a) (prohibition on import of Annex I items originating in or exported from Burma);
- (b) Article 2(2)(b) (prohibition on purchase of Annex I items located in Burma);
- (c) Article 2(2)(c) (prohibition on transporting Annex I items originating in or exported from Burma and going to a European Community destination).

(2) A person who is knowingly concerned in an activity, other than the importation of goods to the United Kingdom, prohibited by Article 2(2)(a), (b) or (c) of the Regulation with intent to evade the prohibition in that Article commits an offence and may be arrested.

(3) A person who contravenes Article 2(2)(d) (prohibition on participation, knowingly and intentionally, in activities whose object or effect is, directly or indirectly, to circumvent the prohibition in Article 2(2)(a), (b) or (c)) of the Regulation commits an offence and may be arrested.

Offences related to sale, supply, transfer and export prohibitions

3.—(1) A person who contravenes Article 4 (prohibition on sale etc. to Burma of Annex II items) of the Regulation, except by exporting goods from the United Kingdom, commits an offence.

(2) A person who is knowingly concerned in an activity, other than the exportation of goods from the United Kingdom, prohibited by Article 4 of the Regulation with intent to evade the prohibition in that Article commits an offence and may be arrested.

Offences related to export authorisation requirement

4.—(1) A person who—

- (a) does an act for which an authorisation is required by Article 5(3) (authorisation required for export to Burma of Annex III items) of the Regulation, and
- (b) does not have the required authorisation

commits an offence.

(2) A person who—

- (a) is concerned in an activity for which an authorisation is required by Article 5(3) of the Regulation,
- (b) does not have the required authorisation, and
- (c) is knowingly concerned in that activity with intent to evade the restriction in that Article

commits an offence and may be arrested.

(7) The definition of “assigned matter” in section 1 of the 1979 Act was amended by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraphs 20 and 22.

Offences related to technical assistance prohibitions

5.—(1) A person who contravenes any of the following provisions of the Regulation commits an offence—

- (a) Article 7(1)(a) (prohibition on provision to Burma of technical assistance related to military activities etc.);
- (b) Article 7(2)(a) (prohibition on provision to Burma of technical assistance related to Annex II items).

(2) A person who is knowingly concerned in an activity prohibited by Article 7(1)(a) or (2)(a) of the Regulation with intent to evade the prohibition in that Article commits an offence and may be arrested.

Offences related to financial assistance prohibitions

6.—(1) A person who contravenes—

- (a) Article 7(1)(b) (prohibition on provision to Burma of financial assistance related to military activities etc.);
- (b) Article 7(2)(b) (prohibition on provision to Burma of financial assistance related to Annex II items); or
- (c) Article 7(3) (prohibition on provision to certain entities in Burma of financial assistance related to Annex III items)

of the Regulation commits an offence unless Article 7(6) (defence that person did not know of and had no reasonable cause to suspect infringement) of the Regulation applies.

(2) A person who is knowingly concerned in an activity prohibited by Article 7(1)(b), (2)(b) or (3) of the Regulation with intent to evade the prohibition in that Article commits an offence and may be arrested.

Offence related to technical and financial assistance anti-avoidance provision

7. A person who contravenes Article 7(5) (prohibition on participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in Article 7(1), (2) or (3)) of the Regulation commits an offence and may be arrested.

Offences related to technical assistance authorisation requirement

8.—(1) A person who—

- (a) does an act for which an authorisation is required by Article 8(2) (authorisation required for provision to Burma of technical assistance related to Annex III items) of the Regulation, and
- (b) does not have the required authorisation

commits an offence.

(2) A person who—

- (a) is concerned in an activity for which an authorisation is required by Article 8(2) of the Regulation,
- (b) does not have the required authorisation, and
- (c) is knowingly concerned in that activity with intent to evade the restriction in that Article

commits an offence and may be arrested.

Offences related to Community authorisations

9.—(1) If, for the purpose of obtaining a Community 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 Community 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 a Community authorisation, fails to comply with any of the requirements or conditions to which the Community authorisation is subject commits an offence, unless—

- (a) the Community 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 Community authorisation not been so modified.

Penalties

10.—(1) A person guilty of an offence under article 2(1), 3(1), 4(1), 5(1), 6(1) or 8(1) of this Order is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under article 2(2) or (3), 4(2), 5(2), 6(2), 7, 8(2) or 9 of this Order is liable—

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

(3) Subject to paragraphs (4) and (5), a person guilty of an offence under article 3(2) of this Order is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine (or 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 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 both).

(4) In relation to an offence that is not committed in the United Kingdom or by a United Kingdom person—

- (a) for “ten years” in paragraph (3)(a) substitute “two years”; and
- (b) for paragraph (3)(b) substitute—

“(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum (or both).”

(5) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003⁽⁸⁾, for “twelve months” in paragraph (3)(b)(i) substitute “six months”.

⁽⁸⁾ 2003 c. 44; at the date of this Order, section 154(1) had not been commenced.

(6) In the case of an offence committed in connection with a prohibition or restriction in Article 4 of the Regulation, sections 68(3)(b) and 170(3)(b)(9) of the 1979 Act shall have effect as if for the words “7 years” there were substituted the words “10 years”.

Application of the 1979 Act

11.—(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)(10) shall apply to a person concerned in an activity which, if not authorised by a Community authorisation, would contravene Article 2, 4, 5, 7 or 8 of the 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)(11) 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(12), 146(13), 146A(14), 147(15), 148, 150(16), 151(17), 152(18), 154(19), and 155(20) 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.

Revocation of secondary legislation relating to restrictive measures against Burma

12. The Burma (Sale, Supply, Export, Technical Assistance, Financing and Financial Assistance) (Penalties and Licences) Regulations 2006(21) are revoked.

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

(10) 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.

(11) 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.

(12) 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, Schedule 4, paragraphs 20 and 23.

(13) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 22.

(14) 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.

(15) 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).

(16) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25.

(17) Section 151 was amended by the Magistrates’ Courts Act 1980, section 154 and Schedule 7, paragraph 177.

(18) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 52, Schedule 4, paragraphs 20 and 26 and Schedule 5.

(19) Section 154 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 23.

(20) Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20, 21 and 27.

(21) S.I. 2006/2682.

21st April 2008

Malcolm Wicks
Minister of State for Energy
Department for Business, Enterprise and
Regulatory Reform

EXPLANATORY NOTE

(This note is not part of the Order)

This Order creates offences relating to the provisions of Council Regulation (EC) No 194/2008⁽²²⁾ (“the Regulation”) that fall within the remit of the Department for Business, Enterprise and Regulatory Reform. The Regulation itself implements at European Community level the provisions of Common Position 2007/750/CFSP⁽²³⁾ (amending Common Position 2006/318/CFSP⁽²⁴⁾) which strengthens the existing European Union sanctions and embargoes relating to Burma. It replaces Council Regulation (EC) No 817/2006⁽²⁵⁾ (“the previous Regulation”).

Article 1(3) ensures that if the Commission amends an Annex to the Regulation, using the procedure in Article 18 of the Regulation, the Order works by reference to the amended Annex. However, the lists of goods, equipment and technology in Annexes I, II and III to the Regulation cannot be amended in this manner. Consequently, the main purpose of Article 1(3) is to allow the Order to keep pace with changes to those designated as caught by the financial assistance restrictions in Article 7(3) of the Regulation (i.e. those listed in Annex V).

Articles 2 to 8 create offences for contravention of the provisions of the Regulation referred to there. There are already offences in sections 50, 68 and 170 of the Customs and Excise Management Act 1979 that relate to prohibited importation of goods (to the United Kingdom) and prohibited exportation of goods (from the United Kingdom).

Article 9 supplements the provisions of the Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Article 9(1) makes it an offence knowingly or recklessly to provide false information for the purpose of obtaining an authorisation. Authorisations may be subject to requirements or conditions that continue even after the activity authorised has been carried out. Article 9(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 10 sets out the penalties relating to the offences in the Order. The most serious penalties are reserved for sale, supply, transfer or export of equipment that could be used for internal repression. Exportation from the United Kingdom being dealt with in sections 68 and 170 of the Customs and Excise Management Act 1979, Article 10(6) modifies the maximum penalty under those sections for contravening an export prohibition in the Regulation relating to such equipment.

Her Majesty’s Revenue and Customs will enforce the provisions of the Order. Article 11 ensures that the same ancillary provisions as apply to their enforcement of customs and excise legislation apply in this context.

Article 12 revokes the secondary legislation that created offences relating to the previous Regulation.

A full regulatory impact assessment has not been produced for this instrument as no or minimal impact on the private or voluntary sectors is foreseen.

⁽²²⁾ OJ No L 66, 10.3.2008, p1.

⁽²³⁾ OJ No L 308, 24.11.2007, p1.

⁽²⁴⁾ OJ No L 116, 29.4.2006, p77.

⁽²⁵⁾ OJ No L 148, 2.6.2006, p1.