

## 2010 No. 364

### CUSTOMS

#### The Export Control (Guinea) Order 2010

*Made* - - - - *18th February 2010*

*Laid before Parliament* *19th February 2010*

*Coming into force* - - *20th February 2010*

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

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 interpretation**

1.—(1) This Order may be cited as the Export Control (Guinea) Order 2010 and shall come into force on 20th February 2010.

(2) In this Order—

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

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

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

“the Regulation” means Council Regulation (EU) No 1284/2009(e).

#### **Offences related to equipment which might be used for internal repression**

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

(a) Article 2(a) (prohibition on sale etc. to Guinea of items which might be used for internal repression);

(b) Article 2(b) (prohibition on provision to Guinea of technical assistance or brokering services related to items which might be used for internal repression);

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

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

(c) 2002 c. 28.

(d) 1979 c. 2.

(e) OJ No L 346, 23.12.2009, p26.

(c) Article 2(c) (prohibition on provision to Guinea of financing or financial assistance related to items which might be used for internal repression).

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

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

(4) Nothing in this article creates offences related to prohibitions on the exportation of goods from the United Kingdom (as to which see the 1979 Act).

### **Offences related to military items**

3.—(1) A person who contravenes Article 3(a) (prohibition on provision to Guinea of technical assistance or brokering services related to military items) or (b) (prohibition on provision to Guinea of financing or financial assistance related to military items) of the Regulation commits an offence.

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

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

### **Offences related to EU authorisations**

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

### **Overlap with Export Control Order 2008**

5.—(1) Nothing in Part 2, 3 or 4 of the Export Control Order 2008(a) prohibits an activity that is carried out under the authority of an EU authorisation.

(2) In any case where a person would, apart from this paragraph, be guilty of—

- (a) an offence under this Order; and
- (b) a corresponding offence under the Export Control Order 2008,

that person shall not be guilty of the offence under the Export Control Order 2008.

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(a) S.I. 2008/3231; relevant amending instruments are S.I. 2009/1305, 2009/1852, 2009/2151, 2009/2969.

## Penalties

6.—(1) A person guilty of an offence under article 2(1) or 3(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 any other offence under this Order except one to which paragraph (3) applies is liable—

- (a) on summary conviction—
  - (i) in England and Wales or Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both;
  - (ii) in Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.

(3) This paragraph applies to an offence under article 2(3) or 3(3) of this Order that—

- (a) is committed in the United Kingdom or by a United Kingdom person; and
- (b) relates to—
  - (i) the sale, supply or exportation of goods within Annex I to the Regulation;
  - (ii) the transfer of technology within Annex I to the Regulation; or
  - (iii) the provision of brokering services, as defined by Article 1(c) of the Regulation, related to goods within either Annex I to the Regulation or the Common Military List of the European Union (OJ No C 65, 19.3.2009, p1).

(4) A person guilty of an offence to which paragraph (3) applies is liable—

- (a) on summary conviction—
  - (i) in England and Wales or Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both;
  - (ii) in Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding ten years, or to both.

(5) In paragraph (4)(a)(i) as it applies to England and Wales, in the case of an offence committed before section 154(1) of the Criminal Justice Act 2003<sup>(a)</sup> comes into force, for “twelve months” substitute “six months”.

(6) In the case of an offence committed in connection with a prohibition or restriction in Article 2(a) of the Regulation, sections 68(3)(b) and 170(3)(b)(b) 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

7.—(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.

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(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), (6).

(2) Section 77A of the 1979 Act (provision as to information powers)(a) shall apply to a person concerned in an activity which, if not authorised by an EU authorisation, would contravene Article 2 or 3 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)(b) 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(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) 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.

*Lord Young of Norwood Green*  
Minister for Postal Affairs and Employment Relations  
Department for Business, Innovation and Skills

18th February 2010

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- (a) 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.
  - (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), 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, 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).
  - (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, section 52, 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, Schedule 4, paragraphs 20, 21 and 27.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order creates offences relating to provisions of Council Regulation (EU) No 1284/2009(a) (“the Regulation”) that fall within the remit of the Department for Business, Innovation and Skills. The Regulation relates to Guinea (also known as the Republic of Guinea) and implements, so far as is possible within the framework of the Treaty on the Functioning of the European Union, the sanctions imposed by Council Common Position 2009/788/CFSP(b) as amended by Council Decision 2009/1003/CFSP(c).

Articles 2 and 3 create offences for contravention of the provisions of the Regulation referred to there. There are already offences in sections 68 and 170 of the Customs and Excise Management Act 1979 that relate to prohibited exportation of goods (from the United Kingdom).

Article 4 supplements the provisions of the Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Article 4(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 4(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 5 addresses a limited overlap with the Export Control Order 2008 (“the 2008 Order”). It provides that if someone acts within the terms of an authorisation issued under the Regulation, they cannot breach the 2008 Order. Equally, if someone acts in a way that would breach both the Regulation – leading to an offence under this Order – and the 2008 Order, they only commit an offence under this Order.

Article 6 sets out the penalties relating to the offences in the Order. The most serious penalties are reserved for the sale, supply, transfer or exportation of goods or technology that could be used for internal repression, related brokering services (but just those related to goods), and brokering services related to goods on the Common Military List of the European Union(d). Exportation from the United Kingdom being dealt with in sections 68 and 170 of the Customs and Excise Management Act 1979, Article 6(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 7 ensures that the same ancillary provisions as apply to their enforcement of customs and excise legislation apply in this context.

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

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(a) OJ No L 346, 23.12.2009, p26.  
(b) OJ No L 281, 28.10.2009, p7.  
(c) OJ No L 346, 23.12.2009, p51.  
(d) OJ No C 65, 19.3.2009, p1.





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STATUTORY INSTRUMENTS

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