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STATUTORY INSTRUMENTS

2015 No. 1546

CUSTOMS

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

Made - - - -	*15th July 2015*
Laid before Parliament	*20th July 2015*
Coming into force - -	*11th August 2015*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 [F1] 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 [F2].

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 [F3], makes the following Order.

F1 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).
F2 S.I. 1994/757, to which there are amendments not relevant to this Order.
F3 2002 c. 28.

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 [F4].

F4 2002 c. 28.

Revocations

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

Interpretation

3.—(1) In this Order—

"the 1979 Act" means the Customs and Excise Management Act 1979 [F5];

"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[F6] as amended by Council Regulation (EU) 2015/613 [F7].

(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.

F5 1979 c. 2.
F6 OJ No L 193, 23.7.2005, p1.
F7 OJ No L 102, 21.4.2015, p3.

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.

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 [F8], 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.

F8 2003 c. 44. At the date of this Order, section 154(1) had not been commenced.

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.

(2) Section 77A of the 1979 Act (provision as to information powers) [F9] 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) [F10] 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 [F11], 146 [F12], 146A [F13], 147 [F14], 148, 150 [F15], 151 [F16], 152 [F17], 154 [F18], and 155 [F19] 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.

F9 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).

F10 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.

F11 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.

F12 Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), **article 4** and the Schedule, paragraph 22.

F13 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.