STATUTORY INSTRUMENTS

2011 No. 2925

CUSTOMS

The Export Control (Sudan and South Sudan Sanctions) and (Miscellaneous Amendments) Regulations 2011

Made - - - -	*6th December 2011*
Laid before Parliament	*8th December 2011*
Coming into force - -	*30th December 2011*

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.

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, makes the following Regulations.

Citation, Commencement and application

1.—(1) These Regulations may be cited as the Export Control (Sudan and South Sudan Sanctions) and (Miscellaneous Amendments) Regulations 2011 and come into force on 30th December 2011.

(2) An offence may be committed under these Regulations —

(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(**3**).

Revocation

2.—(1) The Sudan (Technical Assistance and Financing and Financial Assistance) (Penalties and Licences) Regulations 2004 (**4**) are revoked.

Interpretation

3. In these Regulations—

(**1**) S.I.1994/757, to which there are amendments not relevant to these Regulations.
(**2**) 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).
(**3**) 2002 c.28.
(**4**) S.I. 2004/373 which was amended by regulation 23 of S.I. 2005/3389.

"the 1979 Act" means the Customs and Excise Management Act 1979(**5**);

"the 2008 Order" means the Export Control Order 2008(**6**);

"EU authorisation" means an authorisation granted under Article 4 of the Sudan and South Sudan Regulation;

"the Sudan and South Sudan Regulation" means Council Regulation (EC) No 131/2004 imposing certain restrictive measures in respect of Sudan and South Sudan(**7**).

Offences supplementing the Sudan and South Sudan Regulation

4.—(1) A person who contravenes any of the following provisions of the Sudan and South Sudan Regulation commits an offence and may be arrested—

(a) Article 2(a) (prohibition on provision of technical assistance related to military activities to any person, entity or body in, or for use in Sudan or South Sudan);

(b) Article 2(b) (prohibition on provision of financing or financial assistance related to military activities to any person, entity or body in, or for use in Sudan or South Sudan).

(2) A person commits an offence and may be arrested who participates, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to in Article 2 of the Sudan and South Sudan Regulation.

Offences related to EU authorisations

5.—(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 of the EU authorisation 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.

Penalties

6.—(1) A person guilty of an offence under regulations 4 or 5 is liable—

(a) on summary conviction, to imprisonment for a term not exceeding three 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 two years or to a fine, or to both.

(**5**) 1979 c.2.

(**6**) S.I.2008/3231; relevant amending instruments are S.I. 2009/1305, S.I. 2009/1852, S.I. 2009/2151, S.I. 2009/2969, and S.I. 2010/2007.

(**7**) OJ No L 21, 28.1.2004, p1 as amended by Council Regulation (EC) No 1353/2004 (OJ L 251, 27.7.2004, p1), Commission Regulation (EC) No 1516/2004 (OJ L 278, 27.8.2004, p15), Council Regulation (EC) No 838/2005 (OJ L 139, 2.6.2005, p3), Commission Regulation (EC) No 1354/2005 (OJ L 213, 18.8.2005, p11), Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p1) and Council Regulation (EU) No 1215/2011 (OJ No L 310, 25.11.2011, p1).

Application of the 1979 Act

7.—(1) A matter is to be treated as an assigned matter which the Commissioners for Her Majesty's Revenue and Customs investigate or propose to investigate with a view to determining—

(a) whether there are grounds for believing that an offence under these Regulations has been committed; or

(b) whether a person should be prosecuted for such an offence.

(2) Section 138 of the 1979 Act (provision as to arrest of persons)(**8**) applies to the arrest of a person for an offence under these Regulations as it applies to the arrest of a person for an offence under the customs and excise Acts.

(3) Sections 145(**9**), 146(**10**), 146A(**11**), 147(**12**), 148, 150(**13**), 151(**14**), 152(**15**), 154(**16**), and 155(**17**) of the 1979 Act (proceedings for offences, mitigation of penalties, proof and other matters) apply in relation to offences and penalties under these Regulations as they apply in relation to offences and penalties under the customs and excise Acts.

(4) "The customs and excise Acts" and "assigned matter" have the same meanings as in section 1 of the 1979 Act.

Amendments to the 2008 Order related to South Sudan arms embargo

8. In Part 2 of Schedule 4 to the 2008 Order, at the appropriate place insert "South Sudan".

Review

9.—(1) The Secretary of State must from time to time—

(a) carry out a review of regulations 1 and 3 to 8,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(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 Sudan and South Sudan 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 Sudan and South Sudan Regulation established by those regulations and the measures taken to implement them,

(**8**) Section 138 was amended by the Police and Criminal Evidence Act 1984 (c.60), sections 114(1) and 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), Schedule 6, paragraph 9; and by the Serious Organised Crime and Police Act 2005 (c. 15), Schedule 7, paragraph 54.

(**9**) 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.

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

(**11**) 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.

(**12**) Section 147 was amended by the Magistrates' Courts Act 1980 (c.43), Schedule 7, paragraph 176; by the Criminal Justice Act 1982 (c.48), Schedule 14, paragraph 42 and Schedule 16; and by the Finance Act 1989, section 16(2).

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

(**14**) Section 151 was amended by the Magistrates' Courts Act 1980, Schedule 7, paragraph 177.

(**15**) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 52(1), Schedule 4, paragraphs 20 and 26 and Schedule 5.

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

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

(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 regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Miscellaneous Amendments

10. The following provisions, which deal with the overlap between the 2008 Order and the instruments listed are omitted—

(a) regulation 6 of the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011(**18**);

(b) article 5 of the Export Control (Belarus) and (Syria Amendment) Order 2011(**19**);

(c) article 5 of the Export Control (Syria and Miscellaneous Amendments) Order 2011(**20**);

(d) article 11 of the Export Control (Iran) Order 2011(**21**);

(e) article 4 of the Export Control (Eritrea and Miscellaneous Amendments) Order 2011(**22**).

Mark Prisk
Minister of State for Business and Enterprise
Department for Business, Innovation and Skills

6th December 2011

(**18**) S.I. 2011/2649.
(**19**) S.I. 2011/2010.
(**20**) S.I. 2011/1304, amended by S.I. 2011/2010.
(**21**) S.I. 2011/1297.
(**22**) S.I. 2011/1296.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for penalties and enforcement of certain restrictive measures in Council Regulation (EC) No 131/2004 imposing certain restrictive measures in respect of Sudan and South Sudan ("the Sudan and South Sudan Regulation").

The measures include prohibitions on the provision of technical assistance, financing or financial assistance related to military activities to any person, entity or body in, or for use in Sudan or South Sudan.

Regulation 2(1) revokes the Sudan (Technical Assistance and Financing and Financial Assistance) (Penalties and Licenses) Regulations 2004 (S.I. 2004/373), which are replaced by these Regulations.

Regulation 4 makes it an offence to contravene provisions in Articles 2 and 3 of the Sudan and South Sudan Regulation.

Regulation 5 supplements the provisions of the Sudan and South Sudan Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Regulation 5(1) makes it an offence knowingly and recklessly to provide false information for the purpose of obtaining an authorisation. Authorisations may be subject to requirements or conditions which continue even after the activity authorised has been carried out. Regulation 5(3) 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.

Regulation 6 sets out the penalties relating to the offences in regulations 4 and 5.

Her Majesty's Revenue and Customs will enforce the provisions of the Regulations. Regulation 7 provides that the ancillary provisions which apply to their enforcement of customs and excise legislation apply to the enforcement of these Regulations.

Regulation 8 amends Part 2 of Schedule 4 to the Export Control Order 2008 (S.I.2008/3231) to make South Sudan an 'embargoed destination' for the purposes of the application of trade controls under that Order.

Regulation 9 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Regulation 10 amends the instruments listed in that regulation so as to revoke the provisions which deal with the limited overlap between the Export Control Order 2008 and those instruments.

A regulatory 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 this instrument on www.legislation.gov.uk. Further information is available from the Export Control Organisation, BIS, 1 Victoria Street, London SW1H 0ET and on BIS website (www.bis.gov.uk).