

**EXPLANATORY MEMORANDUM TO**  
**THE EXPORT CONTROL (GUINEA) ORDER 2010**  
**2010 No. 364**

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments

**2. Purpose of the instrument**

2.1. The Export Control (Guinea) Order 2010 (“the Order”) makes provision with regard to Council Regulation (EU) No 1284/2009 of 22 December 2009 (“the 2009 Regulation”) concerning restrictive measures against Republic of Guinea.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1. The Department is today laying before Parliament the Export Control (Guinea) Order 2010.

3.2 The Department considers that in order to give effect to our European obligations in respect of Guinea, it is necessary for the Order to come into force as soon as possible. This is because the 2009 Regulation, which is directly applicable, came into force on 23 December 2009, the day of its publication in the Official Journal. It needs the offences created in the Order relating to the provisions in the 2009 Regulation to make it fully effective in the United Kingdom. Accordingly, it has been decided to bring the Order into force earlier than the usual minimum 21 days after laying.

3.3 We would draw the Joint Committee’s attention to one drafting matter that has also arisen in relation to previous sanctions Orders (S.I. 2007/1334, S.I. 2007/1526 and S.I. 2008/1098). It relates to article 6 of the Order. The general presumption is, of course, that legislation is concerned with conduct taking place in the territory to which it extends. We take the view that Article 18 of the 2009 Regulation overrides that presumption in this case. However, as might be expected, the enabling powers in the Export Control Act 2002 are quite limited in the area of extra-territorial offences. In particular, we cannot use the powers in the Export Control Act 2002 to create offences that cover conduct taking place on aircraft or vessels under UK jurisdiction (pursuant to Article 18(b) of the 2009 Regulation) unless the offences are committed by UK nationals or companies. Consequently we cannot apply the 10 year maximum period of imprisonment available under the Export Control Act 2002 in all circumstances where the Regulation applies and are limited to the maximum sentences provided by the European Communities Act 1972. We have, however, sought to keep the penalties for offences committed in the United Kingdom or by

United Kingdom persons in line with penalties for equivalent offences under the Export Control Order 2008 (S.I. 2008/3231).

3.4 “United Kingdom person” is defined in section 11(1) of the Export Control Act 2002 and we rely on section 11 of the Interpretation Act 1978.

#### **4. Legislative Context**

4.1 The Council of the European Union adopted Council Decision 2009/1003/CFSP (“the Council Decision”) on 22 December 2009. This amended the existing EU sanctions against the Republic of Guinea (in Common Position 2009/788/CFSP) adding new restrictive measures on the sale, supply, transfer and export of equipment which might be used for internal repression. The Council Decision also provides for new controls on technical assistance, brokering and other services, and financing and financial assistance relating to such equipment and to arms and related material. The 2009 Regulation implements those elements within the amended sanctions that fall within Community competence.

4.2 The original EU sanctions were implemented in the UK by the Export Control (Amendment) (No. 4) Order 2009 (S.I. 2009/2969)

#### **5. Territorial Extent and Application**

5.1. This instrument applies to all of the United Kingdom.

#### **6. European Convention on Human Rights**

6.1 As this instrument is subject to negative instrument resolution procedure and does not amend primary legislation, no statement is required.

#### **7. Policy Background**

- *What is being done and why*

7.1 The government’s policy is to support the EU legislation concerning restrictive measures against Guinea.

7.2. The 2009 Regulation implements provisions within the Council Decision relating to extension of the arms embargo to technical assistance, brokering and other services and financing and financial assistance as well as implementing new prohibitions relating to equipment which might be used for internal repression.

7.3. The Order is also in line with the general policy to implement EU Legislation in a timely and appropriate manner.

- *Consolidation*

7.4. No consolidation is required.

## **8. Consultation outcome**

8.1. This is purely a technical implementation of a directly applicable EU Regulation. No consultation was necessary.

## **9. Guidance**

9.1. As this is a technical measure no guidance is necessary although a Notice to Exporters explaining the implementation of the Regulation will be published.

## **10. Impact**

10.1. The impact on business, charities or voluntary bodies is minimal.

10.2. The impact on the public sector is minimal.

10.3. An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1. This legislation applies to small business.

## **12. Monitoring & Review**

12.1. The EU sanctions will be monitored in accordance with Article 6 of Common Position 2009/788/CFSP (which will expire on 26th October 2010 unless it is renewed).

## **13. Contact**

13.1. Jim Bouttell at the Department for Business, Innovation and Skills Tel: 020 7215 4648, or email: jim.bouttell@bis.gsi.gov.uk can answer any queries regarding this instrument.

**DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS**  
**February 2010**