

2011 No. 2010

CUSTOMS

**The Export Control (Belarus) and (Syria Amendment) Order
2011**

<i>Made</i>	- - - -	<i>11th August 2011</i>
<i>Laid before Parliament</i>		<i>15th August 2011</i>
<i>Coming into force</i>	- -	<i>5th September 2011</i>

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.

This Order makes provision for a purpose mentioned in section 2(2) of that Act and it appears to the Secretary of State that it is expedient for references to Annex III to Council Regulation (EC) No 765/2006(c) to be construed as references to that Annex as amended from time to time.

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

Citation, Commencement and Interpretation

1.—(1) This Order may be cited as the Export Control (Belarus) and (Syria Amendment) Order 2011 and comes into force on 5th September 2011.

(2) In this Order—

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

“the 2008 Order” means the Export Control Order 2008(g);

“Annex III equipment” means equipment listed in Annex III to the Belarus Regulation;

“the Belarus Regulation” means Council Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, and a reference to Annex III to that Regulation is to be construed as a reference to that Annex as amended from time to time;

(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 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).

(c) OJ No L 134, 25.5.2006, p1. Articles 1a and 1b and Annex III were inserted by Article 1(3) of Council Regulation (EU) No 558/2011(OJ No L161, 21.6.2011, p 1)

(d) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(e) 2002 c.28.

(f) 1979 c.2.

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

“CML items” means goods and technology listed in the Common Military List of the European Union^(a);

“EU authorisation” means an authorisation or an approval granted under either Article 1a(3) or Article 1b(2) of the Belarus Regulation.

(3) An expression used both in this Order and in the Belarus Regulation has the meaning that it bears in the Regulation.

Offences supplementing the Belarus Regulation

2. A person who contravenes any of the following provisions of the Belarus Regulation, except by exporting goods, commits an offence and may be arrested—

- (a) Article 1a(1)(a) (prohibition on sale etc. of Annex III equipment to any person, entity or body in Belarus or for use in Belarus);
- (b) Article 1b(1)(a) (prohibition on provision of technical assistance related to CML items to any person, entity or body in Belarus or for use in Belarus);
- (c) Article 1b(1)(b) (prohibition on provision of technical assistance or brokering services related to Annex III equipment to any person, entity or body in Belarus or for use in Belarus);
- (d) Article 1b(1)(c) (prohibition on provision of financing or financial assistance related to CML items or Annex III equipment to any person, entity or body in Belarus or for use in Belarus).

Offences related to EU authorisations

3.—(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.

Circumvention of prohibitions

4.—(1) A person commits an offence and may be arrested who participates, knowingly and intentionally, in activities the object or effect of which is—

- (a) to circumvent a prohibitions in Article 1a(1)(a) of the Belarus Regulation, or
- (b) to enable or facilitate the contravention of such a prohibition.

(2) A person commits an offence and may be arrested who participates, knowingly and intentionally, in activities the object or effect of which is—

- (a) to circumvent a prohibition in Article 1b(1)(a) to (c) of the Belarus Regulation, or
- (b) to enable or facilitate the contravention of such a prohibition.

(a) OJ No C 86, 18.3.2011, p1.

Overlap with the 2008 Order

5. A person is not guilty of an offence under the 2008 Order who would, apart from this article, be guilty of—

- (a) an offence under this Order; and
- (b) a corresponding offence under the 2008 Order.

Penalties

6.—(1) A person guilty of an offence under articles 2(a) or 4(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 not exceeding the statutory maximum, 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(a), for “six months” in paragraph (1)(a)(i) substitute “twelve months”.

(3) A person guilty of an offence under articles 2(b) to (d), 3 or 4(2) of this Order 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.

(4) In the case of an offence committed under the 1979 Act in connection with the prohibition of exportation in Article 1a(1)(a) of the Belarus Regulation, sections 68(3)(b) and 170(3)(b)(b) of the 1979 Act 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 is to be treated as an assigned matter.

(2) Section 77A of the 1979 Act (provision as to information powers)(c) applies to a person concerned in an activity which, if not authorised by an EU authorisation, would contravene Articles 1a or 1b of the Belarus 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)(d) 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.

(a) 2003 c.44; Section 154(1) had not been commenced at the date of this Order.
(b) Sections 68(3)(b) and 170(3)(b) were amended by the Finance Act 1988 (c.39), section 12(1) and (6).
(c) 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.
(d) 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.

(4) Sections 145(a), 146(b), 146A(c), 147(d), 148, 150(e), 151(f), 152(g), 154(h), and 155(i) 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.

Amendments to the 2008 Order related to Belarus arms embargo

8. In Schedule 4 to the 2008 Order—

- (a) in Part 2, at the appropriate place insert “Belarus”;
- (b) in Part 4, omit “Belarus”.

Review

9.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of articles 1 to 8 of this Order,
- (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 Belarus 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 Belarus Regulation established by this Order and the measures taken to implement them,
- (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) “Review period” means—

- (a) the period of five years beginning with the day on which this Order comes into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this Order is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

-
- (a) 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.
 - (b) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 22.
 - (c) 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.
 - (d) 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).
 - (e) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25.
 - (f) Section 151 was amended by the Magistrates’ Courts Act 1980, section 154 and Schedule 7, paragraph 177.
 - (g) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 52, Schedule 4, paragraphs 20 and 26 and Schedule 5.
 - (h) Section 154 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 23.
 - (i) Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20, 21 and 27.

Amendments to the Export Control (Syria and Miscellaneous Amendments) Order 2011

10. In article 7(2) for “2 to 5,8,9,11,12 or 15” substitute “2 and 3”.

11th August 2011

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision relating to the enforcement of certain restrictive measures against Belarus set out in Council Regulation (EC) No 765/2006 (OJ L 134, 20.5.2006, p1) (“the Belarus Regulation”) as amended by Council Regulation (EU) No 588/2011 (OJ L 161, 21.6.2011, p1) (“the amending Belarus Regulation”).

The amending Belarus Regulation implements the sanctions imposed by Council Decision 2011/357/CFSP (OJ L 161, 21.6.2011, p25) amending Decision 2010/639/CFSP concerning restrictive measures against Belarus.

The measures include prohibitions on trade, technical assistance, financing, financial assistance or brokering in equipment which may be used for internal repression and restrictions on the provision of technical assistance, financing or financial assistance related to the goods and technology listed in the Common Military List of the European Union.

Article 2 creates offences for contravention of the provisions of the Belarus Regulation referred to there. There are already offences relating to prohibited exportation of goods in sections 68 and 170 of the Customs and Excise Management Act 1979 (“the 1979 Act”) (1979 c. 2).

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

Article 4(1) and (2) provide that circumvention of the prohibitions specified in Articles 1a and 1b of the Belarus Regulation is an offence.

Article 5 provides that if a person acts in a way that would breach both this Order and the Export Control Order 2008 (“the 2008 Order”), that person only commits an offence under this Order.

Article 6 sets out the penalties relating to the offences in the Order, and makes some consequential modifications to the 1979 Act to ensure that the offences covered by that Act are subject to the same penalties as those in the Order.

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.

In the United Kingdom, under the 2008 Order, a licence was already required to export military goods to Belarus and for a range of trading activities. Article 8 increases the level of control by making Belarus an “embargoed destination” for the purposes of the trade controls in the 2008

Order so that stricter controls apply, including restrictions on the activities of United Kingdom persons overseas (see article 20 of the 2008 Order).

Article 9 requires the Secretary of State to review the operation and effect of articles 1 to 8 of this Order and publish a report within five years after it comes into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Order should remain as it is, or be revoked or be amended. A further instrument would be needed to revoke the Order or to amend it.

Article 10 corrects a cross-reference in article 7(2) of The Export Control (Syria and Miscellaneous Amendments) Order 2011 (S.I. 2011/1304)

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 the Order 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).

© Crown copyright 2011

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2011 No. 2010

CUSTOMS

The Export Control (Belarus) and (Syria Amendment) Order
2011

£5.75

E1126 08/2011 111126T 19585

ISBN 978-0-11-151463-4



9 780111 514634