



CUSTOMS AND EXCISE ACT 1993

**EXPORT CONTROL (SOMALIA) ORDER 2011
(APPLICATION) ORDER 2011**

Approved by Tynwald

15th March 2011

Coming into operation

1 April 2011

The Treasury makes this Order under sections 1, 3(2) and (4) of the Customs and Excise Act 1993⁽¹⁾.

1 Title

This Order is the Export Control (Somalia) Order 2011 (Application) Order 2011.

2 Commencement

This Order comes into operation on 1 April 2011.

3 Application of the Export Control (Somalia) Order 2011

(1) The Export Control (Somalia) Order 2011⁽²⁾ shall apply in the Island, as part of the law of the Island, subject to the exceptions, modifications and adaptations in the Schedule to this Order.

(2) The text of the applied legislation is annexed to this Order.

Made

9th February 2011.

Ime Crowe

Minister for the Treasury

⁽¹⁾ 1993 c.7

⁽²⁾ SI 2011 No. 146

SCHEDULE

**EXCEPTIONS, MODIFICATIONS AND ADAPTATIONS SUBJECT TO WHICH
THE EXPORT CONTROL (SOMALIA) ORDER 2011 [SI 2011 No. 146]
SHALL HAVE EFFECT IN THE ISLAND**

Article	Subject matter	Exception, modification or adaptation
1	Citation, commencement and interpretation	<p>(1) In paragraph (1), omit the words from “and shall” onwards.</p> <p>(2) In paragraph (2)—</p> <p style="padding-left: 2em;">(a) for “1979”, on each occasion, substitute “1986”; and</p> <p style="padding-left: 2em;">(b) for “section 1” substitute “section 184”.</p>
3	Overlap with other legislation	In paragraph (b), after “(United Nations Sanctions)” insert “(Isle of Man)”.
4	Penalties	<p>(1) In paragraph (1), for “level 3 on the standard scale” substitute “£5,000”;</p> <p>(2) In paragraph (2)—</p> <p style="padding-left: 2em;">(a) for “the statutory maximum” substitute “£5,000”;</p> <p style="padding-left: 2em;">(b) for “imprisonment”, on both occasions, substitute “custody”; and</p> <p style="padding-left: 2em;">(c) for “indictment” substitute “information”.</p>
5	Application of the 1979 Act	<p>(1) For “1979”, wherever occurring, substitute “1986”.</p> <p>(2) In paragraph (1), for the words from “Commissioners” to “propose” substitute “Treasury investigates or proposes”.</p>

- (3) In paragraph (2), for "77A", on both occasions, substitute "78A".
- (4) In paragraph (3), for "138" substitute "145".
- (5) In paragraph (4), for "145" to "155" substitute "152, 153, 154, 155, 157, 158, 159, 161 and 162".
- (6) In the heading to the article, for "1979" substitute "1986".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies in Island law the Export Control (Somalia) Order 2011⁽³⁾ (“the Somalia Order”).

The applied Order creates offences for breaches of EU sanctions in respect of Somalia.

The Somalia Order—

- creates offences for breaches of Council Regulation (EU) No. 356/2010⁽⁴⁾;
- addresses the limited overlap with both the Somalia (United Nations Sanctions) (Isle of Man) Order 2002⁽⁵⁾ and the Export Control Order 2008⁽⁶⁾. It provides that should someone act in a way that would breach both the EU Regulation (and so have committed an offence under this Order) and the UN Order or the 2008 Order then an offence is committed only under the UN Order;
- sets out the penalties for the offences in this Order; and
- makes investigations of such offences assigned matters, being matters for which the Customs and Excise Division of the Treasury have powers to investigate, and modifies certain provisions of the Customs and Excise Management Act 1986 for this purpose.

⁽³⁾ SI 2011 No. 146

⁽⁴⁾ OJ L105, 27.4.2010, p.1

⁽⁵⁾ SI 2002 No. 2630

⁽⁶⁾ SI 2008 No. 3231, applied in the Island by SD 104/09

STATUTORY INSTRUMENTS

2011 No. 146

CUSTOMS

The Export Control (Somalia) Order 2011

Made 25th January 2011

Laid before Parliament 27th January 2011

Coming into force 17th February 2011

The Secretary of State is a Minister designated¹ for the purposes of section 2(2) of the European Communities Act 1972² in relation to restrictive measures against persons or bodies listed by an international organisation.

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 I of Council Regulation (EU) No 356/2010³ 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 Act⁴ and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002⁵, makes the following Order:

Citation, commencement and interpretation

1. (1) This Order may be cited as the Export Control (Somalia) Order 2011.

(2) In this Order—

“designated person” means person listed in Annex I to the Regulation;
“military goods and technology” means goods and technology included in the Common Military List of the European Union⁶;

“the 1986 Act” means the Customs and Excise Management Act 1986⁷;

¹ SI 2010/1834

² 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), Schedule 1

³ OJ No L105, 27.04.2010, p.1

⁴ Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and amended by the European Union (Amendment) Act 2008, section 3(3) and Schedule, part 1

⁵ 2002 c.28

⁶ OJ No C69, 18.3.2010, p.19

"the customs and excise Acts" and "assigned matter" have the same meanings as in *section 184* of the *1986 Act*;

"the Regulation" means Council Regulation (EU) No 356/2010 and references to Annex I of that Regulation are to be construed as references to that Annex as amended from time to time.

Offences related to military activities

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

- (a) Article 8(1)(a) (prohibition on provision to any designated person of technical assistance related to military activities or to the supply etc. of military goods and technology);
- (b) Article 8(1)(b) (prohibition on provision to any designated person of financing etc. related to military activities or to the supply etc. of military goods and technology); or
- (c) Article 8(1)(c) (prohibition on provision to any designated person of investment services related to military activities or to the supply etc. of military goods and technology).

(2) A person who contravenes Article 8(2) (prohibition on participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in Article 8(1)(a), (b) or (c)) of the Regulation commits an offence and may be arrested.

Overlap with other legislation

3. 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 Somalia (United Nations Sanctions) (*Isle of Man*) Order 2002⁸ ("the UN Order") or under Part 2, 3 or 4 of the Export Control Order 2008⁹,

that person shall be guilty only of the offence under the UN Order.

Penalties

4. (1) A person guilty of an offence under article 2(1) of this Order is liable on summary conviction to a fine not exceeding *£5,000*.

(2) A person guilty of an offence under article 2(2) of this Order is liable—

- (a) on summary conviction to a fine not exceeding *£5,000* or to *custody* for a term not exceeding three months, or both; or
- (b) on conviction on *information* to a fine or to *custody* for a term not exceeding two years, or to both.

⁷ 1986 c.34

⁸ SI 2002/2630

⁹ SI 2008/3231; relevant amending instruments are SI 2009/1305, 2009/1852, 2009/2151, 2009/2969

Application of the 1986 Act

5. (1) Where the *Treasury investigates or proposes* 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 78A of the 1986 Act (provision as to information powers)¹⁰ shall apply to a person concerned in an activity which would contravene Article 8 of the Regulation and accordingly references in section 78A of the 1986 Act to exportation shall be read as including any such activity.

(3) Section 145 of the 1986 Act (provision as to arrest of persons) 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 152, 153, 154, 155, 157, 158, 159, 161 and 162 of the 1986 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.

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

25th January 2011

¹⁰ Section 78A inserted by GC 261/87 and amended by SD 86/93

EXPLANATORY NOTE

(This note is not part of the Order)

This Order creates offences in connection with provisions of Council Regulation (EU) No 356/2010 ("the Regulation") that fall within the remit of the Department for Business, Innovation and Skills. The Regulation relates to Somalia and implements, so far as is possible within the framework of the Treaty on the Functioning of the European Union, additional restrictive measures imposed on listed persons and entities by the United Nations, in accordance with United Nations Security Council Resolution 1844 (2008). On 12 April 2010 the United Nations Sanctions Committee adopted a list of persons and entities subject to those measures; that list was adopted by Council Decision 2010/231/CFSP, and implemented into EU law by the Regulation.

Article 2 creates offences for contravention of the specified provisions of the Regulation. 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 3 addresses a limited overlap with the Somalia (United Nations Sanctions) Order 2002 ("the UN Order") and the Export Control Order 2008 ("the 2008 Order"). It provides that, if someone acts in a way that would breach both the Regulation – leading to an offence under this Order – and the UN Order or 2008 Order, an offence is committed only under the UN Order.

Article 4 sets out the penalties relating to the offences in the Order. The more serious penalties are reserved for knowing and intentional participation in activities designed to circumvent the prohibitions in the Regulation. Her Majesty's Revenue and Customs will enforce the provisions of the Order. Article 5 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.