



CUSTOMS AND EXCISE ACT 1993

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

Approved by Tynwald

17 May 2011

Coming into operation in accordance with article 2

The Treasury makes this Order under section 1 of the Customs and Excise Act 1993⁽¹⁾.

1 Title

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

2 Commencement

(1) This Order comes into operation on the day it is approved by Tynwald.

(2) However, when it is approved it shall be deemed to have come into operation on 28 March 2011.

3 Application of the Export Control (Libya) Order 2011

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

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

MADE *23rd March 2011*

Jane Crane

Minister for the Treasury

⁽¹⁾ 1993 c.7

⁽²⁾ SI 2011 No. 825

SCHEDULE

**EXCEPTIONS, MODIFICATIONS AND ADAPTATIONS SUBJECT TO WHICH
THE EXPORT CONTROL (LIBYA) ORDER 2011 [S.I. 2011 No. 825]
SHALL HAVE EFFECT IN THE ISLAND**

For "1979", in each place it occurs, substitute "1986".

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), in the definition of "assigned matters", for "section 1" substitute "section 184".</p>
6	Penalties	<p>Substitute the following—</p> <p>"6 (1) A person guilty of any offence under article 2(a) or 5(1) of this Order is liable—</p> <p style="margin-left: 40px;">(a) on conviction on information, to custody for a term not exceeding 10 years or to a fine, or to both;</p> <p style="margin-left: 40px;">(b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.</p> <p>(2) A person guilty of an offence under article 2(b) to (d), 3 or 5(2) of this Order is liable—</p> <p style="margin-left: 40px;">(a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both;</p>

(b) on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding £5,000, or to both.

(3) In the case of an offence committed in connection with a prohibition or restriction in Article 2(1)(a) of the Regulation, sections 69(3)(b) and 178(3)(b) of the 1986 Act shall have effect as if for the words "7 years" there were substituted the words "10 years".

7 Application of the 1986 Act

- (1) In sub-paragraph (1), for the words from "Commissioners" to "propose" substitute "Treasury investigates or proposes".
- (2) In sub-paragraph (2), for "77A", in both places, substitute "78A".
- (3) In sub-paragraph (3), for "138" substitute "145".
- (4) In sub-paragraph (4), for "sections 145" to "155" substitute "sections 152 to 155, 157 to 159, 161 and 162".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies in Island law the Export Control (Libya) Order 2011⁽³⁾ with effect from 1 April 2011.

In the applied Order—

- (a) article 2 creates offences for contravention of provisions of Council Regulation (EU) No. 204/2011⁽⁴⁾ which imposed restrictive measures in view of the situation in Libya. There are already offences relating to prohibited importation and exportation of goods in the Customs and Excise Management Act 1986⁽⁵⁾;
- (b) article 3 supplements the provisions of the Council Regulation that allow a competent authority to authorise activities that would otherwise be prohibited. Article 3(1) makes it an offence to provide false information for the purpose of obtaining such an authorisation, and article 3(2) makes it an offence to fail to comply with conditions or requirements attached to an authorisation;
- (c) article 4 addresses a limited overlap with the Export Control Order 2008⁽⁶⁾, providing that someone acts in a way that breaches both the Council Regulation and the 2008 Order will only commit an offence under this Order;
- (d) article 5 contains supplementary provisions about offences, and provide that circumvention of the prohibitions specified in Articles 2 and 3 of the Council Regulation is an offence;
- (e) article 6 sets out the penalties for offences in the Order, and makes consequential amendments to the Customs and Excise Management Act 1986 to ensure that the offences covered by that Act are subject to the same penalties as those in this Order; and
- (f) article 7 makes investigations of offences under this Order assigned matters⁽⁷⁾, and ensures that the same ancillary provisions as apply to the enforcement of customs and excise legislation also apply in relation to enforcement of this Order.

⁽³⁾ SI 2011 No. 825

⁽⁴⁾ OJ No. L58, 3.3.2011, p.1. The Regulation was applied in the Island, with modifications, by SD 157/11

⁽⁵⁾ 1986 c.34

⁽⁶⁾ SI 2008 No. 3231, applied in the Island by SD 104/09. Amendments have been made by means of SD 447/09, SD 73/10, SD 1058/10, SD 149/11 and SD 155/11.

⁽⁷⁾ As defined in section 184(1) of the Customs and Excise Management Act 1986

STATUTORY INSTRUMENTS

2011 No. 825

Customs

The Export Control (Libya) Order 2011

<i>Made</i>	<i>16th March 2011</i>
<i>Laid before Parliament</i>	<i>17th March 2011</i>
<i>Coming into force</i>	<i>18th March 2011</i>

The Secretary of State is a Minister designated¹ for the purposes of section 2(2) of the European Communities Act 1972² 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 any reference to Annex I to Council Regulation (EU) No 204/2011³ to be construed as a reference 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 (Libya) Order 2011.

(2) In this Order—

“the 1986 Act” means the Customs and Excise Management Act 1986⁶;

“Annex I items” means equipment listed in Annex I to the Regulation;

“CML items” means goods or technology listed in the Common Military List of the European Union⁷;

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

¹ S.I. 1994/757, to which there are amendments not relevant to this Order

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), section 3(3) and Schedule, Part 1.

³ OJ No. L58, 3.3.2011, 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 (c.7), section 3(3) and Schedule, Part 1

⁵ 2002 c.28

⁶ 1986 c.34 (of Tynwald)

⁷ OJ No. C69, 18.3.2010, p.19

“EU authorisation” means an authorisation granted under Article 2(4) or 3(3) of the Regulation;

“the 2008 Order” means the Export Control Order 2008⁸;

“the Regulation” means Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation of Libya, and any reference to Annex I to that Regulation is to be construed as a reference to that Annex as amended from time to time;

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

Offences supplementing the Regulation

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

- (a) Article 2(1)(a) (prohibition on sale etc. to any person, entity or body in Libya or for use in Libya of Annex I equipment),
- (b) Article 3(1)(a) (prohibition on provision to any person, entity or body in Libya or for use in Libya of technical assistance related to CML items),
- (c) Article 3(1)(b) (prohibition on provision to any person, entity or body in Libya or for use in Libya of technical assistance or brokering services related to Annex I equipment),
- (d) Article 3(1)(c) (prohibition on provision to any person, entity or body in Libya or for use in Libya of financing or financial assistance related to CML items or Annex I equipment).

Offences related to EU authorisations

3. (1) If, for the purpose of obtaining an EU authorisation, a person—

- (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,

that person commits an offence; and any EU authorisation granted in connection with the application for which the false statement was made or the false document or information furnished shall be void from the time it was granted.

(2) A person who, having acted under the authority of an EU authorisation, fails to comply with any of the requirements or conditions to which the EU authorisation is subject commits an offence, 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.

Overlap with the 2008 Order

4. 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 2008 Order,

that person shall not be guilty of the offence under the 2008 Order.

Supplementary provisions as to Offences

5. (1) A person who participates, knowingly and intentionally, in activities the object or effect of which is—

- (a) to circumvent the prohibitions specified in Article 2(1)(a) of the Regulation, or
- (b) to enable or facilitate the contravention of any such prohibition

⁸ SI 2008/3231; relevant amending instruments are SI 2009/1305, SI 2009/1852, SI 2009/2151, SI 2009/2969, SI 2010/2007

commits an offence and may be arrested.

- (2) A person who participates, knowingly and intentionally, in activities the object or effect of which is —
 - (a) to circumvent the prohibitions specified in Article 3(1)(a) to (c) of the Regulation, or
 - (b) to enable or facilitate the contravention of any such prohibition

commits an offence and may be arrested.

Penalties

6. (1) *A person guilty of any offence under article 2(a) or 5(1) of this Order is liable—*
 - (a) *on conviction on information, to custody for a term not exceeding 10 years or to a fine, or to both;*
 - (b) *on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.*
- (2) *A person guilty of an offence under article 2(b) to (d), 3 or 5(2) of this Order is liable—*
 - (a) *on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both;*
 - (b) *on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding £5,000, or to both.*
- (3) *In the case of an offence committed in connection with a prohibition or restriction in Article 2(1)(a) of the Regulation, sections 69(3)(b) and 178(3)(b) of the 1986 Act shall have effect as if for the words “7 years” there were substituted the words “10 years”.*

Application of the 1986 Act

7. (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) shall apply to a person concerned in an activity which, if not authorised by an EU authorisation, would contravene Article 2 or 3 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 to 155, 157 to 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.

Amendments to the 2008 Order related to Libya arms embargo

8. In Schedule 4 to the 2008 Order—
 - (a) in Part 2, at the appropriate place insert “Libya”;
 - (b) in Part 4, omit “Libya”.

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

16th March 2011

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision relating to the enforcement of the elements falling within the remit of the Department for Business, Innovation and Skills ("BIS") of Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya ("the Libya Regulation").

The Libya Regulation implements, so far as is possible within the framework of the Treaty on the Functioning of the European Union, the sanctions imposed by Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya (OJ L 58, 3.3.2011, p. 53).

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 Libya Regulation referred to there. There are already offences relating to prohibited importation and exportation of goods in sections 50, 68 and 170 of the Customs and Excise Management Act 1979 ("the 1979 Act") (1979 c. 2).

Article 3 supplements the provisions of the Libya Regulation that allow a competent authority to authorise 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. Authorisations may be subject to requirements or conditions which continue even after the activity authorised has been carried out. Article 3(2) 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 addresses a limited overlap with 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 2008 Order, they only commit an offence under this Order.

Article 5 contains supplementary provisions about offences. Article 5(1) and (2) provide that circumvention of the prohibitions specified in Articles 2 and 3 of the Regulation is an offence.

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 Libya and for a range of trading activities involving military goods to Libya. Article 8 increases the level of control by making Libya 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). It also has the effect that a number of exceptions in the 2008 Order can no longer be used in relation to exports of military goods to Libya: the exceptions for aircraft and vessels (articles 13 and 14), the exception for holders of a firearm or shot gun certificate or permit (article 16), and the transit or transshipment exception (article 17).

A regulatory impact assessment has not been prepared for this instrument as it has no or minimal impact on business, charities or voluntary bodies. Further information is available from the Export Control Organisation, BIS, 1 Victoria Street, London SW1H 0ET and on BIS website (www.bis.gov.uk).