

**2011 No. 2649**

**CUSTOMS**

**The Export Control (Al-Qaida and Taliban Sanctions)  
Regulations 2011**

<i>Made</i>	- - - -	<i>3rd November 2011</i>
<i>Laid before Parliament</i>		<i>7th November 2011</i>
<i>Coming into force</i>	- -	<i>30th November 2011</i>

The Secretary of State is a Minister designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to restrictive measures against persons or bodies listed by an international organisation.

These Regulations make 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 to Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network <sup>(c)</sup> and to Annex I to Council Regulation (EU) 753/2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan<sup>(d)</sup> to be construed as references to those Annexes 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 and by paragraph 1A of Schedule 2 to that Act<sup>(e)</sup>, makes the following Regulations.

**Citation, Commencement and application**

1.—(1) These Regulations may be cited as the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011 and come into force on 30th November 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<sup>(f)</sup>.

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(a) S.I. 2010/1834.  
(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 L139, 29.5.2002, p9. Annex I was last amended by Council Regulation (EU) No 754/2011 (OJ No L 199, 2.8.2011, p23).  
(d) OJ No L199, 2.8.2011, p1.  
(e) 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 .  
(f) 2002 c.28.

## **Amendment of the Al-Qa'ida and Taliban (United Nations Measures) Order 2002**

2. Articles 3, 4 and 5 of the Al-Qa'ida and Taliban (United Nations Measures) Order 2002(a) are omitted.

### **Interpretation**

3. In these Regulations—

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

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

“the Al-Qaida Regulation” means Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network(d) and a reference to Annex I to that Regulation is to be construed as a reference to that Annex as amended from time to time;

“the Taliban Regulation ” means Council Regulation (EU) No 753/2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan and a reference to Annex I to that Regulation is to be construed as a reference to that Annex as amended from time to time.

### **Offences supplementing the Al-Qaida Regulation**

4.—(1) A person commits an offence and may be arrested who contravenes a prohibition in Article 3 of the Al-Qaida Regulation (prohibition on provision of technical advice, assistance or training related to military activities to any natural or legal person, entity, body or group listed in Annex I).

(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 3 of the Al-Qaida Regulation.

### **Offences supplementing the Taliban Regulation**

5.—(1) A person commits an offence and may be arrested who contravenes a prohibition in Article 2(a) of the Taliban Regulation (prohibition on provision of technical assistance related to the goods and technology listed in the Common Military List of the European Union to any person, group, undertaking or entity listed in Annex I).

(2) A person commits an offence and may be arrested who participates, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in Article 2(a) of the Taliban Regulation.

### **Overlap with the 2008 Order**

6. 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 these Regulations; and
- (b) a corresponding offence under the 2008 Order.

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(a) S.I. 2002/111; articles 3(2) and 5(2) were amended by section 2(3) of the British Overseas Territories Act 2002 (c.8); there are other amending instruments which are not relevant

(b) 1979 c.2.

(c) 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.

(d) The title to the Regulation was amended by Regulation (EU) No 754/2011 (OJ No L 199, 2.8.2011, p23).

## Penalties

7.—(1) A person guilty of an offence under regulation 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.

## Application of the 1979 Act

8.—(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)(a) 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(b), 146(c), 146A(d), 147(e), 148, 150(f), 151(g), 152(h), 154(i), and 155(j) 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.

## 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 Al-Qaida Regulation and the Taliban Regulation and the measures taken to implement them in other member States.

(3) The report must in particular—

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

- (a) set out the objectives intended to be achieved by the rules on penalties applicable to infringements of the provisions of the Al-Qaida Regulation and the Taliban Regulation established by those regulations 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) 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.

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

3rd November 2011

### **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 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network (“the Al-Qaida Regulation”) and Council Regulation (EU) No 753/2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan (“the Taliban Regulation”).

The measures include prohibitions on technical advice, assistance and training related to military activities to any person, body or group listed in Annex I to the Al-Qaida Regulation and prohibitions on technical assistance related to the goods and technology listed in the Common Military List of the European Union to any person, group, undertaking or entity listed in Annex I to the Taliban Regulation..

Regulation 2 revokes articles 3 to 5 of the Al-Qa’ida and Taliban (United Nations Measures) Order 2002 (S.I. 2002/111) which duplicate the effect of provisions contained in the Export Control Order 2008 (S.I. 2008/3231) (“the 2008 Order”), the Al-Qaida Regulation and the Taliban Regulation.

Regulations 4 and 5 make it an offence to contravene provisions in Article 3 and 4(1) of the Al-Qaida Regulation and Article 2 of the Taliban Regulation respectively.

Regulation 6 addresses a limited overlap with the 2008 Order. It provides that if someone acts in a way that would breach both these Regulations and the 2008 Order, that person only commits an offence under these Regulations.

Regulation 7 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 8 provides that the ancillary provisions which apply to their enforcement of customs and excise legislation apply to the enforcement of these Regulations.

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.

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](http://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](http://www.bis.gov.uk)).

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STATUTORY INSTRUMENTS

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