STATUTORY INSTRUMENTS

2005 No. 1677

CUSTOMS AND EXCISE

The Export Control (Democratic Republic of Congo) Order 2005

Made - - - -	*23rd June 2005*
Laid before Parliament	*27th June 2005*
Coming into operation -	*27th June 2005*

The Secretary of State, in exercise of the powers conferred upon him by sections 3, 4, 5 and 7 of the Export Control Act 2002(**a**), hereby makes the following Order:

1.—(1) This Order may be cited as the Export Control (Democratic Republic of Congo) Order 2005 and shall come into force on the 27 th June 2005.

(2) In this Order—

"the Regulation" means Council Regulation (EC) No 889/2005 of 13 June 2005(**b**); and

"customs and excise Acts", "assigned matter" and "prescribed sum" have the same meanings as in section 1 of the Customs and Excise Management Act 1979**(c)**.

2. The Democratic Republic of Congo (Financing and Financial Assistance and Technical Advice, Assistance and Training) (Penalties and Licences Regulations) 2004(**d**) are hereby revoked.

3. Any person who, except under the authority of a licence granted under this Order, infringes any of the following prohibitions in the Regulation:

(a) Article 2(a), prohibiting the grant, sale, supply or transfer of technical assistance related to military activities, directly or indirectly to any person, entity or body in, or for use in, the Democratic Republic of Congo; or

(b) Article 2(b), prohibiting financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related material, or for any grant, sale, supply, or transfer of related technical assistance and other services, directly or indirectly to any person, body or entity in, or for use in, the Democratic Republic of Congo; or

(c) Article 2(c), prohibiting the participation, knowingly or intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to in Article 2(a) and (b),

shall be guilty of an offence and may be arrested.

(**a**) 2002 c. 28.
(**b**) OJ No. L152/1, 15.6.2005
(**c**) 1979 c.2
(**d**) S.I. 2004/221

4. Any person who is knowingly concerned in any of the transactions referred to in article 3 of this Order with intent to evade any prohibition in that article shall be guilty of an offence and may be arrested.

5.—(1) Authorisation for a transaction referred to in article 3 of this Order shall in the United Kingdom be by way of a licence in writing granted by the Secretary of State.

(2) If, for the purpose of obtaining a licence, any person—

(a) makes any statement or furnishes any document or information which to his 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,

he shall be guilty of an offence; and any licence granted in connection with the application for which the false statement was made or the false document or information furnished shall be void as from the time it was granted.

(3) Any person who, having acted under the authority of a licence granted under this Order, fails to comply with any of the requirements or conditions to which the licence is subject shall be guilty of an offence, unless—

(a) the licence had been previously modified by the Secretary of State without that person's consent, and

(b) the alleged failure to comply would not have been a failure had the licence not been so modified.

6.—(1) A person guilty of an offence under article 3, or 5(2) or (3) of this Order shall be liable—

(a) on summary conviction to a fine of the prescribed sum or to imprisonment for a term not exceeding 6 months, or to both; or

(b) on conviction on indictment to a fine of any amount or to imprisonment for a term not exceeding 2 years, or to both.

(2) A person guilty of an offence under article 4 of this Order shall be liable—

(a) on summary conviction to a fine of the prescribed sum or to imprisonment for a term not exceeding 6 months, or to both;

(b) on conviction on indictment to a fine of any amount or to imprisonment for a term not exceeding ten years, or to both.

7.—(1) Where the Commissioners of 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 shall be treated as an assigned matter.

(2) Section 138 of the Customs and Excise Management Act 1979 (provision as to arrest of persons) shall apply to the arrest of any person for any offences under article 3 or 4 as it applies to the arrest of any person for offences under the customs and excise Acts.

(3) Sections 145 to 148 and 150 to 155 of the Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties, proof and other matters) shall apply in relation to offences and penalties under this Order and to proceedings for such offences as they apply in relation to offences and penalties and to proceedings for offences under the customs and excise Acts.

Malcolm Wicks
Minister of State for Energy,
Department of Trade and Industry

23rd June 2005

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in respect of the Democratic Republic of Congo in consequence of Council Regulation (EC) No 889/2005 of 13 June 2005 ("the Regulation") which replaces and repeals Council Regulation (EC) No 1727/2003 ("the 2003 Regulation").

This Order revokes the Democratic Republic of Congo (Financing and Financial Assistance and Technical Advice, Assistance and Training) Penalties and Licences Regulations 2004 which made provision in relation to the 2003 Regulation.

The Order also provides that breaches of certain provisions of the Regulation are to be criminal offences. Articles 3 and 4 of this Order create offences in respect of the provisions of Article 2 of the Regulation. Article 5 provides for the licensing of transactions set out in article 3 of the Order. Articles 6 and 7 provide penalties in respect of criminal offences created by the Order and for their enforcement.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business.

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