STATUTORY INSTRUMENTS

2004 No. 373

CUSTOMS AND EXCISE

The Sudan (Technical Assistance and Financing and Financial Assistance) (Penalties and Licences) Regulations 2004

Made - - - -	*12th February 2004*
Laid before Parliament	*16th February 2004*
Coming into force - -	*19th February 2004*

The Secretary of State, being 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 interpretation or reduction, in part or completely, of economic relations with one or more countries which are not Member States, in exercise of the powers conferred upon her by that section, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Sudan (Technical Assistance and Financing and Financial Assistance) (Penalties and Licences) Regulations 2004 and shall come into force on 19th February 2004.

(2) In these Regulations—

"the EC Regulation" means Council Regulation (EC) No. 131/2004 of 26th January 2004 concerning certain restrictive measures in respect of Sudan**(c)**; and

"customs and excise Acts" has the same meaning as in section 1 of the Customs and Excise Management Act 1979**(d)**.

Offences

2.— Any person who, except under the authority of a licence granted by the Secretary of State under these Regulations, directly or indirectly infringes any of the following prohibitions in the EC Regulation:

(a) Article 2(a), prohibiting the grant, sale, supply or transfer to any person, entity or body in, of for use in, Sudan of technical assistance related to military activities, and to the provision, manufacture, maintenance and use of arms and related material of all types; or

(b) Article 2(b), prohibiting the provision of financing or financial assistance related to military activities for any sale, supply, transfer or export of arms and related material or for any grant, sale, supply, or transfer of related technical assistance, to any person, entity or body in, or for use in Sudan; or

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(a) S.I. 1983/1706 and 2000/1813.
(b) 1972 c.68.
(c) OJ No. L21/1, 28.1.2004, p.1.
(d) 1979 c.2.

(c) Article 3, prohibiting the participation, knowingly and intentionally, in activities the object or effect of which is to promote the transactions referred to in Article 2(a) and 2(b);

shall be guilty of an offence and may be arrested.

Licences

3.—(1) Authorisation for the transactions set out in regulation 2, as provided for in Article 2 of the EC Regulation, 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 Regulation, 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.

Penalties

4.—(1) A person guilty of an offence under regulation 2, 3(2) or (3) above shall be liable —

(a) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or to both; or

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(2) Notwithstanding that the offences in regulation 2 are not, by virtue of the term of imprisonment for which a person may be sentenced in respect of them, arrestable offences within the meaning of the Police and Criminal Evidence Act 1984**(a)** and the Police and Criminal Evidence (Northern Ireland) Order 1989**(b)**, section 24(1) of that Act (in England and Wales) and Article 26(2) of that Order (in Northern Ireland) shall apply to the offences as if they were mentioned therein, and the offences shall accordingly be arrestable offences within the meaning of the Act and the Order.

(3) 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 an offence under regulation 2 above as it applies to the arrest of any person for an offence under the customs and excise Acts.

(4) 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 these Regulations and proceedings for such offences as they apply in relation to offences and penalties and proceedings for offences under the customs and excise Acts.

(a) 1984 c.60; section 24(1) was amended by the Criminal Justice and Court Services Act 2000 (c.43), s.74, Sch 7, Pt II, paras.76 and 77 and the Police Reform Act 2002 (c.30), s.48(6).
(b) S.I. 1341 (N.I. 12).

(5) Nothing in subsections (1) to (4) of section 145 of the said Act (institution of proceedings for offences under the customs and excise Acts to be by order of the Commissioners) shall prevent the institution of proceedings by the Secretary of State for an offence under regulation 2.

Nigel Griffiths,
Parliamentary Under-Secretary of State for Small Business and Enterprise,
Department of Trade & Industry

12th February 2004

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations provide that breaches of certain provisions of Council Regulation (EC) 131/2004 ("the EC Regulation") are to be criminal offences. Regulation 2 creates penalties in respect of the following provisions of the EC Regulation:

(a) Article 2(a), prohibiting the grant, sale, supply or transfer, directly or indirectly to any person, entity or body in, of for use in, Sudan of technical assistance related to military activities, and to the provision, manufacture, maintenance and use of arms and related material of all types; or

(b) Article 2(b), prohibiting the provision of financing or financial assistance related to military activities for any sale, supply, transfer or export of arms and related material or for the grant, sale, supply, or transfer of related technical assistance, directly or indirectly to any person, entity or body in, or for use in Sudan; and

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

(d) Regulation 3 provides for licensing of the above transactions; and regulation 4 provides for enforcement and penalties for breach of the EC Regulation.

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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