

2011 No. 1297

CUSTOMS

The Export Control (Iran) Order 2011

Made - - - - - *18th May 2011*

Laid before Parliament *23rd May 2011*

Coming into force - - - *13th June 2011*

The Secretary of State is 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 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 references to an Annex to Council Regulation (EU) No 961/2010(c) 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 Act(d) and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002(e), makes the following Order:

Citation, commencement

1. This Order may be cited as the Export Control (Iran) Order 2011 and comes into force on 13th June 2011.

Revocations

- 2.—(1) The following instruments are revoked—
- (a) Export Control (Iran) Order 2007(f),
 - (b) Export Control (Iran) (Amendment) Order 2007(g),
 - (c) Export Control (Iran) (Amendment) Order 2008(h), and
 - (d) Export Control (Iran) (Amendment) Order 2010(i).

(a) S.I. 1994/757, to which there are amendments not relevant to this Order.
(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 L 281, 27.7.2010, p1.
(d) 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 (c.7).
(e) 2002 c.28.
(f) S.I. 2007/1526.
(g) S.I. 2007/2170.
(h) S.I. 2008/3063.
(i) S.I. 2010/144.

Interpretation

3.—(1) In this Order—

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

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

“Annex I items” means goods or technology listed in Annex I to the Regulation;

“Annex II items” means goods or technology listed in Annex II to the Regulation;

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

“Annex IV items” means goods or technology listed in Annex IV to the Regulation;

“Annex VI items” means equipment or technology listed in Annex VI to the Regulation;

“CML items” means goods or technology listed in the Common Military List of the European Union(c);

“EU authorisation” means an authorisation granted under article 3, 5(2), 7, 12 or 13 of the Regulation;

“the Regulation” means Council Regulation (EU) No 961/2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007, and a reference to an Annex to that Regulation is to be construed as a reference to that Annex as amended from time to time;

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

Savings

4. An authorisation which was granted under Article 3 or 5(2) of Council Regulation (EC) No 423/2007 as last amended by Council Regulation (EU) No 1228/2009(d) and was in effect immediately before the coming into force of this Order has effect as if it were a licence granted under Article 3 or 5(2) of Council Regulation (EU) No. 961/2010.

Offences related to Annexes I, II and III items

5. A person who contravenes any of the following provisions of the Regulation, except by exporting or importing goods, commits an offence and may be arrested—

- (a) Article 2(1)(a) (prohibition on sale etc. of Annex I or II items to any Iranian person, entity or body or for use in Iran);
- (b) Article 2(1)(b) (prohibition on sale etc. of Annex III items to any Iranian person, entity or body or for use in Iran);
- (c) Article 4 (prohibition on purchase etc. of Annex I, II or III items from Iran);
- (d) Article 5(1)(a) (prohibition on provision of technical assistance related to CML items to any Iranian person, entity or body or for use in Iran);
- (e) Article 5(1)(b) (prohibition on provision of technical assistance or brokering services related to Annex I or II items to any Iranian person, entity or body or for use in Iran);
- (f) Article 5(1)(c) (prohibition on provision of technical assistance or brokering services related to Annex III items to any Iranian person, entity or body or for use in Iran);
- (g) Article 5(1)(d) (prohibition on provision of financing or financial assistance related to CML items or Annex I, II or III items to any Iranian person, entity or body or for use in Iran).

(a) 1979 c.2.

(b) S.I.2008/3231; relevant amending instruments are S.I. 2009/1305, S.I. 2009/1852, S.I. 2009/2151, S.I. 2009/2969, S.I. 2010/2007.

(c) OJ No C 69, 18.3.2010, p19.

(d) OJ No L 330, 16.12.2009, p49 the Regulation was last amended by Council Regulation (EU) No 1228/2009.

Offences related to Annex IV items

- 6.—(1) A person contravenes a provision of the Regulation listed in paragraph 2, if that person—
- (a) does an act for which an authorisation is required by that provision, and
 - (b) does not have the required authorisation.
- (2) A person who contravenes any of the following provisions of the Regulation, except by exporting goods, commits an offence and may be arrested—
- (a) Article 3(1) (authorisation required for sale, etc. of Annex IV items to any Iranian person, entity or body or for use in Iran);
 - (b) Article 5(2)(a) (authorisation required for provision of technical assistance or brokering services related to Annex IV items to any Iranian person, entity or body or for use in Iran);
 - (c) Article 5(2)(b) (authorisation required for provision of financing or financial assistance related to Annex IV items to any Iranian person, entity or body or for use in Iran) .
- (3) A person commits an offence and may be arrested if that person—
- (a) is concerned in an activity, except by exporting goods, for which an authorisation is required by Article 3(1) of the Regulation;
 - (b) does not have the required authorisation; and
 - (c) is knowingly concerned in that activity with intent to evade a restriction specified in that Article.
- (4) A person commits an offence and may be arrested if that person —
- (a) is concerned in an activity, except by exporting goods, for which an authorisation is required by Article 5(2)(a) or (b) of the Regulation;
 - (b) does not have the required authorisation; and
 - (c) is knowingly concerned in that activity with intent to evade a restriction specified in that Article.

Offences related to Annex VI items

7. A person who contravenes any of the following provisions of the Regulation, except by exporting goods, commits an offence and may be arrested—
- (a) Article 8(1) (prohibition on sale etc. of Annex VI items to any Iranian person, entity or body or for use in Iran);
 - (b) Article 9(a) (prohibition on provision of technical assistance or brokering services related to Annex VI items to any Iranian person, entity or body or for use in Iran); or
 - (c) Article 9(b) (prohibition on provision of financing or financial assistance related to Annex VI items to any Iranian person, entity or body or for use in Iran).

Offences related to restrictions on financing of certain enterprises

- 8.—(1) A person who contravenes any of the following provisions of the Regulation commits an offence and may be arrested—
- (a) Article 11(1)(a) (prohibition on the granting of any financial loan or credit to any Iranian person, entity or body engaged in certain activities);
 - (b) Article 11(1)(b) (prohibition on the acquisition or extension of a participation in any Iranian person, entity or body engaged in certain activities);
 - (c) Article 11(1)(c) (prohibition on the creation of a joint venture with any Iranian person, entity or body engaged in certain activities);

- (d) Article 11(4) (prohibition of establishing cooperation with an Iranian person, entity or body engaged in the transmission of natural gas referred to in Article 11(3)(b) of the Regulation).
- (2) A person commits an offence and may be arrested if that person—
- (a) does an act for which authorisation is required by Article 12(1) of the Regulation (the making of an investment through transactions referred to in Article 11(1) of the Regulation in an Iranian person, entity or body engaged in the manufacture of goods or technology listed in Annex IV), and
 - (b) does not have the required authorisation.
- (3) A person commits an offence and may be arrested if that person —
- (a) is concerned in an activity for which an authorisation is required under Article 12(1) of the Regulation,
 - (b) does not have the required authorisation, and
 - (c) is knowingly concerned in that activity with intent to evade the restriction in that Article.

Offences related to restrictions on Iranian investment in the uranium mining and nuclear industry

9. A person who contravenes Article 15(a) of the Regulation (accepting or approving, by concluding an agreement or by any other means, that the granting of any financial loan or credit, or the acquisition or extension of a participation, or the creation of any joint venture be made by one or more Iranian persons, entities or bodies, in an enterprise engaged in the activities specified in that Article) commits an offence and may be arrested.

Offences related to EU authorisations

10.—(1) A person commits an offence and may be arrested who, for the purpose of obtaining an EU authorisation—

- (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.

(2) An EU authorisation granted in connection with the application for which the false statement was made or the false document or information furnished is void from the time it was granted.

(3) A person who, having acted under the authority of an EU authorisation, fails to comply with a requirement or condition to which the EU authorisation is subject commits an offence and may be arrested, 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

11. 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 this Order; and
- (b) a corresponding offence under the 2008 Order.

Supplementary provisions as to Offences

12.—(1) — A person commits an offence and may be arrested who participates, knowingly and intentionally, in activities the object or effect of which is (whether directly or indirectly)—

- (a) to circumvent the prohibitions of the Regulation specified in articles, 5(a) to (c) or 7(a) of this Order, or
- (b) to enable or facilitate the contravention of any such prohibition.

(2) A person commits an offence and may be arrested who participates, knowingly and intentionally, in activities the object or effect of which is (whether directly or indirectly)—

- (a) to circumvent the prohibitions of the Regulation specified in articles 5(d) to (g), 7(b) or (c), 8(1) or 9 of this Order, or
- (b) to enable or facilitate the contravention of any such prohibition.

(3) The limitation of liability in Article 32(2) of the Regulation applies to the offences in articles 5 to 9 of this Order.

Penalties

13.—(1) Subject to paragraph (2), a person guilty of an offence under articles 5(a), (b) or (c), 6(2)(a) or 6(3), 7(a) or 12(1) of this Order is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six 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 ten years or to a fine, or to both.

(2) In relation to an offence committed after the commencement of section 154(1) of the Criminal Justice Act 2003^(a), for “six months” in paragraph (1)(b)(i) substitute “twelve months”.

(3) A person guilty of an offence under articles 5(d) to (g), 6(2)(b) or (c), 6(4), 7(b) or (c), 8, 9, 10 or 12(2) of this Order 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.

(4) In the case of an offence committed in connection with a prohibition or restriction on exportation in Article 2(1)(a) or (b), Article 3(1) or Article 8(1) of the Regulation, sections 68(3)(b) and 170(3)(b)(b) of the 1979 Act shall have the effect as if for the words “7 years” there were substituted the words “10 years”.

Application of the 1979 Act

14.—(1) Where the Commissioners for Her Majesty’s 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.

(a) 2003 c.44; at the date of this Order, section 154(1) had not been commenced.

(b) Sections 68(3)(b) and 170(3)(b) were amended by the Finance Act 1988 (c.39), section 12(1) and (6).

(2) Section 77A of the 1979 Act (provision as to information powers)(a) shall apply to a person concerned in an activity which, if not authorised by an EU authorisation, would contravene Articles 2 to 5, 8, 9, 11,12 or 15 of the Regulation and accordingly references in section 77A of the 1979 Act to exportation shall be read as including any such activity.

(3) Section 138 of the 1979 Act (provision as to arrest of persons)(b) 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 145(c), 146(d), 146A(e), 147(f), 148, 150(g), 151(h), 152(i), 154(j), and 155(k) of the 1979 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.

(5) For the purposes of this article, “the customs and excise Acts” and “assigned matter” have the same meanings as in section 1 of the 1979 Act.

Review

15.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of this Order,
- (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 Regulation and the measures taken to implement them in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the rules on penalties applicable to infringements of the provisions of the Regulation established by this Order 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) “Review period” means—

- (a) the period of five years beginning with the day on which this Order comes into force, and
- (b) subject to paragraph (5), each successive period of five years.

(a) Section 77A was inserted by the Finance Act 1987 (c. 16), section 10 and amended by the Customs and Excise (Single Market etc.) Regulations 1992 (S.I. 1992/3095), Schedule 1, paragraph 7.

(b) Section 138 was amended by the Police and Criminal Evidence Act 1984 (c. 60), sections 114(1) and 119, 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), article 90(1) and Schedule 6, paragraph 9; and by the Serious Organised Crime and Police Act 2005 (c. 15), Schedule 7, paragraph 54.

(c) 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.

(d) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 22.

(e) 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.

(f) Section 147 was amended by the Magistrates’ Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 176; by the Criminal Justice Act 1982 (c. 48), sections 77 and 78, Schedule 14, paragraph 42 and Schedule 16; and by the Finance Act 1989, section 16(2).

(g) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25.

(h) Section 151 was amended by the Magistrates’ Courts Act 1980, section 154 and Schedule 7, paragraph 177.

(i) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 52, Schedule 4, paragraphs 20 and 26 and Schedule 5.

(j) Section 154 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 23.

(k) Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20, 21 and 27.

(5) If a report under this Order is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

18th May 2011

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision relating to the enforcement of certain restrictive measures against Iran set out in Council Regulation (EU) No 961/2010 of 25 October 2010, repealing Regulation (EC) No 423/2007 (OJ L 281, 27.10.10, p1) (“the Iran Regulation”).

The Iran Regulation implements the sanctions imposed by Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ L 195, 27.7.2010, p39), which in turn implements the restrictive measures contained in the United Nations Security Council Resolution UNSCR 1929 (2010) of 9 June 2010 and adopts accompanying measures with a view to supporting that Resolution.

The measures include restrictions on trade in dual-use goods and technology, as well as equipment which may be used for internal repression, restrictions on trade in key equipment and technology for the Iranian oil and gas industry, restrictions on financing of certain Iranian related enterprises and restrictions on Iranian investment in the uranium mining and nuclear industry.

Article 2 revokes the Orders which currently make provision for penalties for contravention of the restrictive measures against Iran which have been replaced and extended by the Iran Regulation.

Article 4 provides that any authorisations which were issued under Council Regulation (EC) No 423/2007 continue to have effect for the purposes of the Iran Regulation.

Articles 5 to 9 create offences for contravention of the provisions of the Iran 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 10 supplements the provisions of the Iran Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Article 10(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 10(3) 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 11 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 this Order and the 2008 Order, that person only commits an offence under this Order.

Article 12 contains supplementary provisions about offences. Article 12(1) and (2) provide that circumvention of the prohibitions of the Iran Regulation specified in articles 5, 7, 8(1) or 9 of the Order is an offence. Article 11(3) refers to the limitation of liability in Article 32(2) of the Regulation which provides that the prohibitions set out in the Regulation shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe those prohibitions.

Article 13 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 14 ensures that the same ancillary provisions as apply to their enforcement of customs and excise legislation apply in this context.

Article 15 requires the Secretary of State to review the operation and effect of this Order and publish a report within five years after it comes into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Order should

remain as it is, or be revoked or be amended. A further instrument would be needed to revoke the Order or to amend it.

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 the Order on 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).

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STATUTORY INSTRUMENTS

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£5.75