

2017 No. 83

CUSTOMS

The Export Control (North Korea Sanctions and Iran, Ivory Coast and Syria Amendment) Order 2017

<i>Made</i>	- - - -	<i>27th January 2017</i>
<i>Laid before Parliament</i>		<i>1st February 2017</i>
<i>Coming into force</i>	- -	<i>22nd February 2017</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) 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(b).

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments to be construed as references to those provisions as amended from time to time.

The Secretary of State makes this Order in exercise of the powers conferred by section 2(2) of, and paragraph 1A(c) of Schedule 2 to, the European Communities Act 1972 and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002(d).

PART 1

Introductory

Citation and commencement

1. This Order may be cited as the Export Control (North Korea Sanctions and Iran, Ivory Coast and Syria Amendment) Order 2017 and comes into force on 22nd February 2017.

Revocation

2. The Export Control (North Korea and Ivory Coast Sanctions and Syria Amendment) Order 2013(e) is revoked.

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- (a) 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).
- (b) S.I. 1994/757, to which there are amendments not relevant to this Order.
- (c) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by the European Union (Amendment) Act 2008, Schedule, Part 1.
- (d) 2002 c.28.
- (e) S.I. 2013/3182.

Application

- 3.** An offence may be committed under this Order—
- (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.

Interpretation

- 4.—(1)** In this Order—

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

“EU authorisation” means an authorisation granted under Article 2(5), 2(7), 2a(3), 3a(1), 3a(3), 4(4) of the North Korea Regulation; and

“the North Korea Regulation” means Council Regulation (EC) No 329/2007^(b) concerning restrictive measures against the Democratic People’s Republic of Korea, and a reference to an Annex to that Regulation is a reference to that Annex as amended from time to time.

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

PART 2

Offences relating to prohibitions in the North Korea Regulation

Offences related to items listed in Annexes I, Ia, Ib, Ic, Id, Ie, If and Ig

5. Unless authorised by an EU authorisation, a person who is knowingly concerned in an activity, other than the export or import of goods, prohibited by any of the following Articles of the North Korea Regulation with intent to evade a prohibition in those Articles commits an offence and may be arrested—

- (a) Article 2(1)(a) (prohibition on the sale, supply, etc. of the goods and technology, including software, listed in Annexes I, Ia, Ib and Ig, to any natural or legal person, entity or body in, or for use in North Korea);
- (b) Article 2(1)(b) (prohibition on the sale, supply, etc. of aviation fuel as listed in Annex Ie to North Korea or transport to North Korea of aviation fuel on board flag vessels and aircraft of member States);
- (c) Article 2(3) (prohibition on the purchase, import or transport of goods and technology listed in Annexes I, Ia, Ib and Ig from North Korea);
- (d) Article 2(4)(a) (prohibition on the import, purchase or transfer of gold, titanium ore, vanadium ore and rare-earth minerals, as listed in Annex Ic, or coal, iron and iron ore, as listed in Annex Id, from North Korea);
- (e) Article 2(4)(b) (prohibition on the import, purchase or transfer from North Korea of petroleum products, as listed in Annex If).

Offences related to any item except food and medicine destined for North Korea’s or another State’s armed forces

6. Unless authorised by an EU authorisation, a person who is knowingly concerned in an activity, other than the export or import of goods, prohibited by any of the following Articles of

(a) 1979 c.2.

(b) OJ No L 88, 29.3.2007, p.1, as most recently amended by Council Implementing Regulation (EU) 2017/80 of 16 January 2017 (OJ No L 12, 17.1.2017, p.86).

the North Korea Regulation with intent to evade a prohibition in those Articles commits an offence and may be arrested—

- (a) Article 2a(1) (prohibition on the sale, supply, etc. of any item, except food or medicine, if the exporter knows or has reasonable grounds to believe the item is destined for North Korea's or another State's armed forces);
- (b) Article 2a(2) (prohibition on the purchase, import or transport from North Korea of items referred to in Article 2a(1)).

Offences related to goods and technology in the Common Military List and items listed in Annexes I, Ia and Ib

7. Unless authorised by an EU authorisation, a person who is knowingly concerned in an activity prohibited by any of the following Articles of the North Korea Regulation with intent to evade a prohibition in those Articles commits an offence and may be arrested—

- (a) Article 3(1)(a) (prohibition on the provision of technical assistance and brokering services related to goods and technology listed in the EU Common Military List or in Annexes I, Ia, Ib and Ig to any natural or legal person, entity or body in, or for use in, North Korea);
- (b) Article 3(1)(b) (prohibition on the provision of financing or financial assistance related to goods and technology listed in the EU Common Military List or in Annexes I, Ia, Ib and Ig to any natural or legal person, entity or body in, or for use in, North Korea);
- (c) Article 3(1)(c) (prohibition on obtaining technical assistance related to goods and technology listed in the EU Common Military List or in Annexes I, Ia, Ib and Ig from any natural or legal person, entity or body in, or for use in, North Korea);
- (d) Article 3(1)(d) (prohibition on obtaining financing or financial assistance related to goods and technology listed in the EU Common Military List or in Annexes I, Ia, Ib and Ig from any natural or legal person, entity or body in, or for use in, North Korea).

Offences related to luxury goods listed in Annex III

8. Unless authorised by an EU authorisation, a person who is knowingly concerned in an activity, other than the export or import of goods, prohibited by any of the following Articles of the North Korea Regulation with intent to evade a prohibition in those Articles commits an offence and may be arrested—

- (a) Article 4(1)(a) (prohibition on the sale, supply, etc. of luxury goods, as listed in Annex III, to North Korea);
- (b) Article 4(1)(b) (prohibition on the purchase, import or transfer from North Korea of luxury goods, as listed in Annex III).

Offences related to gold, precious metals and diamonds listed in Annex VII

9. A person who is knowingly concerned in an activity, other than the export or import of goods, prohibited by any of the following Articles of the North Korea Regulation with intent to evade a prohibition in those Articles commits an offence and may be arrested—

- (a) Article 4a(1)(a) (prohibition on the sale, supply, etc. of gold, precious metals and diamonds, as listed in Annex VII, to or for the Government of North Korea etc.);
- (b) Article 4a(1)(b) (prohibition on the purchase, import or transport of gold, precious metals and diamonds, as listed in Annex VII, from the Government of North Korea etc.);
- (c) Article 4a(1)(c) (prohibition on the provision of technical assistance, brokering services, financing or financial assistance, related to the goods referred to in Articles 4a(1)(a) and (b), to the Government of North Korea etc.).

Offences related to North Korean denominated banknotes and minted coinage

10. A person who is knowingly concerned in an activity, other than the export of goods, prohibited by Article 4b of the North Korea Regulation (prohibition on the sale, supply, etc. of newly printed or unissued North Korean denominated banknotes and minted coinage, to or for the benefit of the Central Bank of North Korea) with intent to evade that prohibition commits an offence and may be arrested.

Offences related to commercial activity associated with North Korea

11. A person who is knowingly concerned in an activity prohibited by any of the following Articles of the North Korea Regulation with intent to evade a prohibition in those Articles commits an offence and may be arrested—

- (a) Article 5b(1) (prohibition in the territory of the European Union on accepting or approving investment in any commercial activity where such investment is made by certain persons, entities or bodies associated with North Korea);
- (b) Article 5b(2)(a) (prohibition on establishing a joint venture with or taking or extending an ownership interest in any legal person, entity or body referred to in points (a) to (f) of Article 5b(1) engaged in North Korea's nuclear-related, ballistic-missile-related or other weapons-of-mass-destruction-related activities or programmes, or in the sectors of mining, refining and chemical industries);
- (c) Article 5b(2)(b) (prohibition on granting financing or financial assistance to any legal person, entity or body referred to in points (d) to (f) of Article 5b(1) or for the documented purpose of financing such legal persons, entities or bodies);
- (d) Article 5b(2)(c) (prohibition on providing investment services directly related to the activities referred to in points (a) and (b) of Article 5b(2));
- (e) Article 6a (prohibition on participating in joint ventures or any other business arrangements with entities listed in Annex IV as well as individuals or entities acting for or on their behalf or direction).

Offences related to financing or financial assistance for trade with North Korea relating to nuclear or ballistic-missile programmes

12. A person who is knowingly concerned in an activity prohibited by Article 9b of the North Korea Regulation (prohibition on provision of financing or financial assistance for trade with North Korea where such financial support could contribute to North Korea's nuclear or ballistic-missile programmes or other activities prohibited by the North Korea Regulation or to the circumvention of this prohibition) with intent to evade that prohibition commits an offence and may be arrested.

PART 3

Supplementary offences

Circumvention of prohibitions in the North Korea Regulation

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

- (a) to circumvent any of the prohibitions in Articles 4(a)(1)(c), insofar as the activity concerns the provision of technical assistance or brokering services, 2(1)(a), 2(1)(b), 2a(1), 3(1)(a), 4(1)(a), 4a(1)(a) and 4b of the North Korea Regulation; or
- (b) to enable or facilitate the contravention of any such prohibition.

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

- (a) to circumvent any of the prohibitions in Articles 4a(1)(c), insofar as the activity concerns the provision of financing or financial assistance, 2(3), 2(4)(a), 2(4)(b), 2a(2), 3(1)(b), 3(1)(c), 3(1)(d), 4(1)(b), 4a(1)(b), 5b(1), 5b(2)(a), 5b(2)(b), 5b(2)(c), 6a and 9b of the North Korea Regulation; or
- (b) to enable or facilitate the contravention of any such prohibition.

Offences related to an EU authorisation

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

(2) An EU authorisation granted in the circumstances referred to in paragraph (1) 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.

PART 4

Enforcement and penalties

Penalties

15.—(1) A person guilty of an offence under article 9(c), insofar as the activity concerns the provision of technical assistance or brokering services, 5(a), 5(b), 6(a), 7(a), 8(a), 9(a), 10 or 13(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, 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)(a)(i) substitute “twelve months”.

(3) A person guilty of an offence under article 9(c), insofar as the activity concerns the provision of financing or financial assistance, 5(c), 5(d), 5(e), 6(b), 7(b), 7(c), 7(d), 8(b), 9(b), 11, 12, 13(2) or 14 of this Order is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine, or to both;

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

(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 under the 1979 Act in connection with the prohibition of exportation in Article 2(1)(a), 2(1)(b), 2a(1), 4(1)(a), 4a(1)(a) or 4b of the North Korea Regulation, sections 68(3)(b)(a) and 170(3)(b)(b) of that Act have effect as if for the words “7 years” there were substituted the words “10 years”.

(5) In the case of an offence committed under the 1979 Act in connection with the prohibition of importation in Article 2(3), 2(4)(a), 2(4)(b), 2a(2), 4(1)(b) or 4a(1)(b) of the North Korea Regulation, sections 50(4)(b)(c) and 170(3)(b) of that Act have effect as if for the words “7 years” there were substituted the words “10 years”.

Application of the 1979 Act

16.—(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.

(2) Section 77A of the 1979 Act (provisions as to information powers)(d) applies to a person concerned in an activity which, if not authorised by an EU authorisation, would contravene Article 2, 2a, 4, 4a or 4b of the North Korea Regulation and accordingly references in section 77A of the 1979 Act to importation or exportation shall be read as including any such activity.

(3) Section 138 of the 1979 Act (provision as to arrest of persons)(e) applies 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.

(a) Section 68(3)(b) was amended by the Finance Act 1988 (c.39), section 12(1)(a); by the Criminal Justice and Immigration Act 2008 (c.4), Schedule 17, Part 2, paragraph 8(4)(a); and by the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12), section 111(7)(a).

(b) Section 170(3)(b) was amended by the Finance Act 1988, section 12(1)(a); by the Import of Seal Skins Regulations 1996/2686, regulation 4(2)(a); by the Criminal Justice and Immigration Act 2008, Schedule 17, Part 2, paragraph 8(5)(a); and by the Anti-Social Behaviour, Crime and Policing Act 2014, section 111(4)(a).

(c) Section 50(4)(b) was amended by the Finance Act 1988, section 12(1)(a); by the Import of Seal Skins Regulations 1996/2686, regulation 4(1)(a); by the Criminal Justice and Immigration Act 2008, Schedule 17, Part 2, paragraph 8(3)(a); and by the Anti-Social Behaviour, Crime and Policing Act 2014, section 111(3)(a).

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

(e) 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.

(4) Sections 145(a), 146(b), 146A(c), 147(d), 148, 150(e), 151(f), 152(g), 154(h), and 155(i) of the 1979 Act (proceedings for offences, mitigation of penalties, proof and other matters) 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) In this article, “the customs and excise Acts” and “assigned matter” have the same meanings as in section 1 of the 1979 Act.

PART 5

Miscellaneous

Amendment to the Export Control Order 2008

17. The Export Control Order 2008(j) is amended as follows—

- (a) in Part 2 of Schedule 4, omit “Ivory Coast (Côte d’Ivoire)”; and
- (b) in Part 4 of Schedule 4—
 - (i) after “Hong Kong Special Administrative Region”, insert “Ivory Coast (Côte d’Ivoire)”; and
 - (ii) after “Sri Lanka”, insert “Syria”.

Amendment to the Export Control (Iran Sanctions) Order 2016

18. In article 14(3) of the Export Control (Iran Sanctions) Order 2016(k)—

- (a) in paragraph (a), after “EU authorisation”, insert “or licence”; and
- (b) in paragraph (b), after “EU authorisation”, insert “or licence”.

Amendment to the Export Control (Syria Sanctions Order) 2013

19. The Export Control (Syria Sanctions) Order 2013(l) is amended as follows—

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- (a) Section 145 was amended by the Police and Criminal Evidence Act 1984, section 114(1); by the Commissioners for Revenue and Customs Act 2005 (c.11), sections 50(6), 52(2), Schedule 4, paragraphs 20 and 23; and by the Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order (S.I. 2014/834), Schedule 2, paragraph 2(a).
 - (b) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), the Schedule, paragraph 22.
 - (c) 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, section 50(6), Schedule 4, paragraphs 20 and 24 and by the Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order, Schedule 2, paragraph 2(b).
 - (d) 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; by the Finance Act 1989, sections 16(2) and (4) and 187, Schedule 17, Part I; and by the Criminal Justice Act 2003 (c.44), Schedule 37(4), paragraph 1.
 - (e) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25 and by the Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order (S.I. 2014/834), Schedule 2, paragraph 2(a).
 - (f) Section 151 was amended by the Magistrates’ Courts Act 1980, section 154 and Schedule 7, paragraph 177.
 - (g) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, sections 50(6) and 52(1) and (2), Schedule 4, paragraphs 20 and 26 and Schedule 5.
 - (h) Section 154 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 23.
 - (i) Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, sections 50(6), 52(2), Schedule 4, paragraphs 20, 21(j) and 27 and Schedule 5.
 - (j) S.I. 2008/3231, relevant amending instruments are S.I. 2009/1305, 2009/2969, 2010/615, 2010/2007, 2011/825, 2011/1304, 2011/2010, 2013/3182, 2014/2357, 2015/1546, 2015/1586 and 2016/503.
 - (k) S.I. 2016/503.
 - (l) S.I. 2013/2012, to which there are amendments not relevant to this Order.

- (a) in article 4, for “a person shall not (directly or indirectly) export, supply or transfer” substitute “a person commits an offence and may be arrested if that person (directly or indirectly) exports, supplies or transfers”; and
- (b) in article 5(1), for “a person shall not (directly or indirectly) provide” substitute “a person commits an offence and may be arrested if that person (directly or indirectly) provides”.

PART 6

General

Review

20.—(1) The Secretary of State must from time to time—

- (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 North Korea 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 North Korea 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) The first report under this Order must be published before the end of the period of five years beginning with the day on which this Order comes into force.

(5) Reports under this Order are afterwards to be published at intervals not exceeding five years.

Mark Garnier

Parliamentary Under-Secretary of State for International Trade
Department for International Trade

27th January 2017

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement of trade restrictions against North Korea specified in Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People’s Republic of Korea (OJ No L 88, 29.3.2007, p.1) (the “North Korea Regulation”) as last amended by Council Implementing Regulation (EU) 2017/80 (OJ No L 12, 17.1.2017, p.86). This Order revokes the Export Control (North Korea and Ivory Coast Sanctions and Syria Amendment) Order 2013 (S.I. 2013/3182).

Articles 5 to 12 create offences for contravention of the trade restrictions in the North Korea Regulation.

Article 13 creates offences for the circumvention of the trade restrictions in the North Korea Regulation.

Article 14 supplements the provisions of the North Korea Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Article 14(1) makes it an offence knowingly and recklessly to provide false information for the purpose of obtaining an authorisation and article 8(3) makes it an offence to fail to comply with authorisation requirements or conditions.

Article 15 sets out the penalties relating to the offences in the Order.

Article 16 applies the ancillary provisions relevant to the enforcement of customs and excise legislation to the enforcement of this Order.

Article 17 omits Ivory Coast from the list in Part 2 of Schedule 4 to the Export Control Order 2008 (S.I. 2008/3231) and inserts it into the list in Part 4 of Schedule 4 to that Order, reflecting the fact that the Ivory Coast is no longer an embargoed destination.

Article 18 makes a minor amendment to the Export Control (Iran Sanctions) Order 2016 (S.I. 2016/503).

Article 19 makes a minor amendment to the Export Control (Syria Sanctions) Order 2013 (S.I. 2013/2012). This amendment, along with the amendment to the Export Control Order 2008 in article 17(b)(ii), re-enacts and therefore continues the amendments that were contained in the Export Control (North Korea and Ivory Coast Sanctions and Syria Amendment) Order 2013, which is revoked by this Order.

An 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, Department for International Trade, 1 Victoria Street, London SW1H 0ET and on the gov.uk website (www.gov.uk).

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