
STATUTORY INSTRUMENTS

2018 No. 200

The Export Control (North Korea Sanctions) Order 2018

PART 3

Offences

*Contravention or circumvention of prohibitions in
Chapters II and III of the North Korea Regulation*

Contravention of relevant prohibitions related to goods or technology listed in Annexes II, III, IV, V, VI and VII to the North Korea Regulation

5.—(1) A person who contravenes a relevant prohibition in a provision of the North Korea Regulation mentioned in paragraph (2) commits an offence.

(2) The provisions are—

- (a) Article 3(1)(a) (prohibition on sale, supply or transfer of goods or technology listed in Annex II to the North Korea Regulation to persons in, or for use in, the DPRK);
- (b) Article 3(1)(b) (prohibition on sale, supply, transfer or transport of aviation fuel listed in Annex III to the North Korea Regulation to the DPRK);
- (c) Article 3(1)(c) (prohibition on purchase or transfer from the DPRK of goods and technology listed in Annex II to the North Korea Regulation);
- (d) Article 3(1)(d) (prohibition on purchase or transfer from the DPRK of gold, titanium ore, vanadium ore and rare earth minerals listed in Annex IV to the North Korea Regulation);
- (e) Article 3(1)(e) (prohibition on purchase or transfer from the DPRK of coal, iron and iron ore listed in Annex V to the North Korea Regulation);
- (f) Article 3(1)(f) (prohibition on purchase or transfer from the DPRK of petroleum products listed in Annex VI to the North Korea Regulation);
- (g) Article 3(1)(g) (prohibition on purchase or transfer from the DPRK of copper, nickel, silver or zinc listed in Annex VII to the North Korea Regulation).

Contravention of relevant prohibitions related to items destined for DPRK's or another State's armed forces

6.—(1) A person who contravenes a relevant prohibition in Article 5(1) of the North Korea Regulation (prohibition on sale, supply, transfer to the DPRK of items (other than food or medicine) known or suspected to be destined for the DPRK's armed forces or items which may support another State's armed forces) commits an offence.

(2) A person who contravenes a relevant prohibition in Article 5(2) of the North Korea Regulation (prohibition on sale, supply, transfer from the DPRK of items (other than food or medicine) known or suspected to be destined for the DPRK's armed forces or items which may support another State's armed forces) commits an offence.

Contravention of prohibitions on provision of financing or other assistance related to goods and technology in the EU Common List of Military Equipment or in Annex II to the North Korea Regulation

7.—(1) A person who contravenes a prohibition in a provision of the North Korea Regulation mentioned in paragraph (2) commits an offence.

(2) The provisions are—

- (a) Article 7(1)(a) (prohibition on provision of technical assistance and brokering services related to goods and technology listed in the EU Common List of Military Equipment or Annex II to the North Korea Regulation and related to the provision, manufacture, maintenance and use of such goods);
- (b) in so far as it relates to any activity other than providing financing or financial assistance related to technology, Article 7(1)(b) (prohibition on provision of financing or financial assistance related to goods and technology listed in the EU Common List of Military Equipment or Annex II to the North Korea Regulation or for the provision of related technical assistance);
- (c) in so far as it relates to obtaining financing or financial assistance related to goods, Article 7(1)(d) (prohibition on obtaining financing or financial assistance related to goods and technology listed in the EU Common List of Military Equipment or Annex II to the North Korea Regulation or for the provision of related technical assistance).

(3) A person who contravenes a prohibition in a provision of the North Korea Regulation mentioned in paragraph (4) commits an offence.

(4) The provisions are—

- (a) in so far as it relates to the providing of financing or financial assistance related to technology, Article 7(1)(b);
- (b) Article 7(1)(c) (prohibition on obtaining technical assistance related to goods and technology listed in the EU Common List of Military Equipment or Annex II to the North Korea Regulation and related to the provision, manufacture, maintenance and use of such goods);
- (c) in so far as it relates to any activity other than obtaining financing or financial assistance related to goods, Article 7(1)(d).

Contravention of relevant prohibitions related to luxury goods listed in Annex VIII to the North Korea Regulation

8.—(1) A person who contravenes a relevant prohibition in Article 10(1)(a) of the North Korea Regulation (prohibition on sale, supply or transfer to the DPRK of luxury goods listed in Annex VIII to the North Korea Regulation) commits an offence.

(2) A person who contravenes a relevant prohibition in Article 10(1)(b) of the North Korea Regulation (prohibition on purchase or transfer from the DPRK of luxury goods listed in Annex VIII to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to gold, precious metals or diamonds listed in Annex IX to the North Korea Regulation

9.—(1) A person who contravenes a relevant prohibition in Article 11(a) of the North Korea Regulation (prohibition on sale, supply or transfer to or for the Government of the DPRK, its bodies etc of gold, precious metals and diamonds listed in Annex IX to the North Korea Regulation) commits an offence.

(2) A person who contravenes a relevant prohibition in Article 11(b) of the North Korea Regulation (prohibition on purchase or transport from the Government of the DPRK, its bodies etc of gold, precious metals and diamonds listed in Annex IX to the North Korea Regulation) commits an offence.

(3) A person who contravenes a prohibition in Article 11(c) of the North Korea Regulation (prohibition on provision of financing, financial assistance, technical assistance or brokering services to the Government of the DPRK, its bodies etc relating to goods listed in Annex IX to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to DPRK denominated banknotes and minted coinage

10. A person who contravenes a relevant prohibition in Article 12 of the North Korea Regulation (prohibition on sale, supply or transfer of certain DPRK banknotes and minted coinage to or for the benefit of the Central Bank of the DPRK) commits an offence.

Contravention of relevant prohibitions related to statues listed in Annex X to the North Korea Regulation

11. A person who contravenes a relevant prohibition in Article 13 of the North Korea Regulation (prohibition on purchase or transfer from the DPRK of statues listed in Annex X to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to helicopters or vessels listed in Annex XI to the North Korea Regulation

12. A person who contravenes a relevant prohibition in Article 15 of the North Korea Regulation (prohibition on sale, supply or transfer to the DPRK of helicopters or vessels listed in Annex XI to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to seafood listed in Annex XIa to the North Korea Regulation

13. A person who contravenes a relevant prohibition in Article 16a of the North Korea Regulation (prohibition on purchase or transfer from the DPRK of seafood) commits an offence.

Contravention of relevant prohibitions related to lead or lead ore listed in Annex XIb to the North Korea Regulation

14. A person who contravenes a relevant prohibition in Article 16b of the North Korea Regulation (prohibition on purchase or transfer from the DPRK of lead or lead ore listed in Annex XIb to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to condensates and natural gas liquids listed in Annex XIc to the North Korea Regulation

15. A person who contravenes a relevant prohibition in Article 16c of the North Korea Regulation (prohibition on sale, supply or transfer to the DPRK of condensates and natural gas liquids listed in Annex XIc to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to refined petroleum products listed in Annex XI d to the North Korea Regulation

16. A person who contravenes a relevant prohibition in Article 16d of the North Korea Regulation (prohibition on sale, supply or transfer to the DPRK of refined petroleum products listed in Annex XI d to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to crude oil listed in Annex XI e to the North Korea Regulation

17. A person who contravenes a relevant prohibition in Article 16f of the North Korea Regulation (prohibition on sale, supply or transfer to the DPRK of crude oil listed in Annex XI e to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to textiles listed in Annex XI f to the North Korea Regulation

18. A person who contravenes a relevant prohibition in Article 16h of the North Korea Regulation (prohibition on purchase or transfer from the DPRK of textiles listed in Annex XI f to the North Korea Regulation) commits an offence.

Contravention of prohibitions related to mining services, computer services and other services listed in Annex XII to the North Korea Regulation

19.—(1) A person who contravenes a prohibition in a provision of the North Korea Regulation mentioned in paragraph (2) commits an offence.

(2) The provisions are—

- (a) Article 18(1)(a) (prohibition on provision to persons in or for use in the DPRK of services incidental to mining or to manufacturing in the chemical, mining or refining industry referred to in Part A of Annex XII to the North Korea Regulation);
- (b) Article 18(1)(b) (prohibition on provision to persons in or for use in the DPRK of computer and related services referred to in Part B of Annex XII to the North Korea Regulation).

Circumvention of relevant prohibitions in the North Korea Regulation

20.—(1) A person who participates, knowingly and intentionally, in an activity the object or effect of which is—

- (a) to circumvent any relevant prohibition in a provision of the North Korea Regulation mentioned in paragraph (2), or
- (b) to enable or facilitate the circumvention of any such prohibition,

commits an offence.

(2) The provisions are—

- (a) Article 3(1)(a), (b), (c), (d), (e), (f) or (g);
- (b) Article 5(1) or (2);
- (c) Article 7(1)(a);
- (d) in so far as it relates to any activity other than providing financing or financial assistance related to technology, Article 7(1)(b);
- (e) in so far as it relates to obtaining financing or financial assistance related to goods, Article 7(1)(d);
- (f) Article 10(1)(a) or (b);

- (g) Article 11(a), (b) or (c);
- (h) Article 12;
- (i) Article 13;
- (j) Article 15;
- (k) Article 16a;
- (l) Article 16b;
- (m) Article 16c;
- (n) Article 16d;
- (o) Article 16f;
- (p) Article 16h;
- (q) Article 18(1)(a) or (b).

(3) A person who participates, knowingly and intentionally, in an activity the object or effect of which is—

- (a) to circumvent any of the prohibitions in a provision of the North Korea Regulation mentioned in paragraph (4), or
- (b) to enable or facilitate the circumvention of any such prohibition,

commits an offence.

(4) The provisions are—

- (a) in so far as it relates to providing financing or financial assistance related to technology, Article 7(1)(b);
- (b) Article 7(1)(c);
- (c) in so far as it relates to any activity other than obtaining financing or financial assistance related to goods, Article 7(1)(d).

Defence

Defence

21.—(1) It is a defence for a person charged with a relevant offence to show that they did not know and had no reasonable cause to suspect that their actions would contravene the relevant prohibition in the North Korea Regulation.

(2) In this article “relevant offence” means an offence under any provision of this Order other than—

- (a) article 4(7) or (9);
- (b) article 20(1)(a) or (b);
- (c) article 20(3)(a) or (b).

Penalties

Offences under this Order: Penalties

22.—(1) A person guilty of an offence under a provision of this Order mentioned in paragraph (2) is liable—

- (a) on summary conviction in England and Wales, to a term of imprisonment not exceeding three months or a fine (or both);
 - (b) on summary conviction in Scotland, to a term of imprisonment not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to a term of imprisonment not exceeding three months or a fine not exceeding the statutory maximum (or both);
 - (d) on conviction on indictment, to a term of imprisonment not exceeding two years or a fine (or both).
- (2) The provisions are—
- (a) article 4(7) or (9);
 - (b) article 7(3).
- (3) A person guilty of an offence under any other provision of this Order is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both);
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine (or both).
- (4) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003⁽¹⁾ comes into force, the reference in paragraph (3)(a) to 12 months is to be read as a reference to six months.

Offences under the 1979 Act in connection with the North Korea Regulation: Penalties

23.—(1) Paragraph (2) applies where a person is guilty of an offence under section 50(2) of the 1979 Act in connection with a DPRK import prohibition.

(2) Where this paragraph applies, the reference to 7 years in section 50(4)(b) of the 1979 Act⁽²⁾ is to be read as a reference to 10 years.

(3) Paragraph (4) applies where a person is guilty of an offence under section 68(2) of the 1979 Act in connection with a DPRK export prohibition.

(4) Where this paragraph applies, the reference to 7 years in section 68(3)(b) of the 1979 Act⁽³⁾ is to be read as a reference to 10 years.

(5) Paragraph (6) applies where a person is guilty of an offence under section 170(2) of the 1979 Act in connection with a DPRK export prohibition or a DPRK import prohibition.

(6) Where this paragraph applies, the reference to 7 years in section 170(3)(b) of the 1979 Act⁽⁴⁾ is to be read as a reference to 10 years.

(7) In this article—

⁽¹⁾ 2003 c. 44.

⁽²⁾ The words “7 years” were inserted in section 50(4)(b) of the Customs and Excise Management Act 1979 by the Finance Act 1988, section 12.

⁽³⁾ The words “7 years” were inserted in section 68(3)(b) of the Customs and Excise Management Act 1979 by the Finance Act 1988, section 12.

⁽⁴⁾ The words “7 years” were inserted in section 170(3)(b) of the Customs and Excise Management Act 1979 by the Finance Act 1988, section 12.

“DPRK export prohibition” means a prohibition on exportation imposed by any of the following provisions of the North Korea Regulation—

- (a) Article 3(1)(a) or (b);
- (b) Article 5(1);
- (c) Article 10(1)(a);
- (d) Article 11(a);
- (e) Article 12;
- (f) Article 15;
- (g) Article 16c;
- (h) Article 16d;
- (i) Article 16f;

“DPRK import prohibition” means a prohibition on importation imposed by any of the following provisions of the North Korea Regulation—

- (a) Article 3(1)(c), (d), (e), (f) or (g);
- (b) Article 5(2);
- (c) Article 10(1)(b);
- (d) Article 11(b);
- (e) Article 13;
- (f) Article 16a;
- (g) Article 16b;
- (h) Article 16h.

Proceedings

Application of the 1979 Act for the purposes of this Order

24.—(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 is to be treated as an assigned matter.

(2) In this article “assigned matter” has the meaning given in section 1(1) of the 1979 Act⁽⁵⁾.

(3) Section 77A⁽⁶⁾ of the 1979 Act applies to a person concerned in a relevant activity as it applies to a person concerned in the importation or exportation of goods but with the modifications specified in paragraph (4).

(4) The modifications are—

- (a) the reference in subsection (1) to a person concerned in the importation or exportation of goods for which for that purpose an entry is required by regulation 5 of the Customs

(5) The definition of “assigned matter” in section 1(1) of the Customs and Excise Management Act 1979 was amended by the Commissioners Revenue and Customs Act 2005 (c.11), Schedule 4, paragraph 22(a), the Scotland Act 2012 (c. 11), section 24(7), the Wales Act 2014 (c.29), section 7(1).

(6) Section 77A of the Customs and Excise Management Act 1979 was inserted by the Finance Act 1987 (c.16), section 10 and amended by S.I. 1992/3095.

Controls on Importation of Goods Regulations 1991 or an entry or specification is required by or under the 1979 Act is to be read as a reference to a person concerned in a relevant activity;

- (b) any other reference to importation or exportation is to be read as a reference to a relevant activity.

(5) For the purposes of paragraphs (3) and (4), “relevant activity” means an activity (other than the importation or exportation of goods) which, if not authorised by a licence under this Order, would contravene Article 3, 5, 7, 10, 11, 12, 13, 15, 16a, 16b, 16c, 16d, 16f, 16h or 18 of the North Korea Regulation.

(6) Section 138 of the 1979 Act(7) applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, an offence under this Order as it applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, an offence for which the person is liable to be arrested under the customs and excise Acts but with the modifications specified in paragraph (7).

(7) The modifications are—

- (a) any reference to an offence under, or for which a person is liable to be arrested under, the customs and excise Acts is to be read as a reference to an offence under this Order;
- (b) in subsection (2) for the words “any person so liable” there is substituted “any such person”.

(8) The provisions of the 1979 Act mentioned in paragraph (9) apply for the purposes of proceedings for an offence under this Order as they apply for the purposes of proceedings for an offence under the customs and excise Acts but with the modifications specified in paragraph (10).

(9) The provisions of the 1979 Act are sections 145, 146, 146A, 147, 148, 150, 151, 152, 154 and 155(8).

(10) The modifications are—

- (a) a reference to proceedings for an offence under the customs and excise Acts is to be read as a reference to proceedings for an offence under this Order;
- (b) a reference to an offence for which a person is liable to be arrested under the customs and excise Acts is to be read as a reference to an offence under this Order;
- (c) section 146A has effect as if for subsection (1) of that section there was substituted—
“(1) The following provisions apply in relation to proceedings for an offence under the Export Control (North Korea) Sanctions Order 2018.”;
- (d) the reference in section 151 to any penalty imposed under the customs and excise Acts is to be read as a reference to any penalty imposed under this Order.

(7) Section 138 of the Customs and Excise Management Act 1979 was amended by the Police and Criminal Evidence Act 1984 (c. 60), section 114(1), Schedule 6, paragraph 37, and Schedule 7, Part 1, the Finance Act 1988 (c. 39), section 11, the Serious and Organised Crime Act 2005 (c. 15), Part 4 of Schedule 7, paragraph 54, S.I. 1989/1341 and S.I. 2007/288.

(8) Section 145 of the Customs and Excise Management Act 1979 was amended by the Police and Criminal Evidence Act 1984, section 114(1), the Commissioner for Revenue and Customs Act 2005, Schedule 4, paragraph 23(a), and S.I. 2014/834. Section 146A was inserted by the Finance Act 1989 (c. 26), section 16, and amended by the Commissioner for Revenue and Customs Act 2005, Schedule 4, paragraph 24, the Finance Act 2016 (c. 24), section 174, and S.I. 2014/834. Section 147 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 14, paragraph 42, the Finance Act 1989, section 16(2), and the Criminal Justice Act 2003, Part 2 of Schedule 3, paragraph 50. Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraph 26, and Schedule 5. Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule, 4, paragraph 27, and Schedule 5.