
STATUTORY INSTRUMENTS

2007 No. 1334

CUSTOMS

The Export Control (North Korea) Order 2007

<i>Made</i>	- - - -	<i>25th April 2007</i>
<i>Laid before Parliament</i>		<i>26th April 2007</i>
<i>Coming into force</i>	- -	<i>27th April 2007</i>

The Secretary of State is a Minister designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) 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.

It appears to the Secretary of State that it is expedient for the references to Council Regulation (EC) No 329/2007(3) to be construed as references to that instrument as amended from time to time in accordance with the procedure set out in Article 13 of that Regulation.

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(4) and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002(5), makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Export Control (North Korea) Order 2007 and shall come into force on 27th April 2007.

(2) In this Order—

“the 1979 Act” means the Customs and Excise Management Act 1979(6);

“the 2003 Order” means the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(7);

“the 2004 Order” means the Trade in Controlled Goods (Embargoed Destinations) Order 2004(8);

(1) S.I. 1994/757.

(2) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1).

(3) OJ No L 88, 29.3.2007, p1.

(4) Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28.

(5) 2002 c. 28.

(6) 1979 c. 2.

(7) S.I. 2003/2764; relevant amending instruments are S.I. 2004/2561, 2004/2741, 2005/232, 2005/468, 2005/3257, 2006/300, 2006/1331, 2006/1696, 2006/2271 and 2006/2683.

(8) S.I. 2004/318; relevant amending instruments are S.I. 2004/1049, 2004/2741, 2005/232, 2005/445, 2005/3257, 2006/300, 2006/1696 and 2006/2683.

- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
- “a Community authorisation” means an authorisation granted under Article 5(3) of the Regulation;
- “the customs and excise Acts” and “assigned matter” have the same meanings as in section 1 of the 1979 Act;
- “North Korea” means the Democratic People’s Republic of Korea;
- “the Regulation” means Council Regulation (EC) No 329/2007.

(3) References in this Order to the Regulation are references to the Regulation as amended from time to time in accordance with the procedure set out in Article 13 of the Regulation.

Amendment of 2003 Order

2.—(1) In article 2(1) of the 2003 Order, after the definition of “normal commercial journey” insert—

““North Korea” means the Democratic People’s Republic of Korea;”.

(2) In article 11(2), (6) and (9) of the 2003 Order, after “Iran” insert “or North Korea”.

Amendment of 2004 Order

3. In the Schedule to the 2004 Order, add the Democratic People’s Republic of Korea at the appropriate place to the list of embargoed destinations.

Offences related to contravention of the Regulation

4.—(1) A person who contravenes any of the following provisions of the Regulation, except by exporting goods, commits an offence—

- (a) Article 2(1)(a) (prohibition on sale etc. to North Korea of goods and technology which could contribute to weapons of mass destruction-related or ballistic missile-related programmes),
- (b) Article 2(3) (prohibition on purchase etc. from North Korea of goods and technology which could contribute to weapons of mass destruction-related or ballistic missile-related programmes),
- (c) Article 3(1)(a) (prohibition on provision to North Korea of technical assistance related to military equipment and other sensitive goods),
- (d) Article 3(1)(b) (prohibition on provision to North Korea of financing or financial assistance related to military equipment and other sensitive goods), or
- (e) Article 4(a) (prohibition on sale etc. to North Korea of luxury goods).

(2) A person who is knowingly concerned in an activity prohibited by Article 2(1)(a) of the Regulation, other than the exportation of goods in contravention of that Article, with intent to evade the prohibition in that Article commits an offence and may be arrested.

(3) A person who is knowingly concerned in an activity prohibited by Article 2(3), 3(1)(a), 3(1)(b) or 4(a) of the Regulation, other than—

- (a) the importation of goods in contravention of Article 2(3), or
- (b) the exportation of goods in contravention of Article 4(a),

with intent to evade the prohibition in that Article commits an offence and may be arrested.

(4) A person who contravenes Article 2(1)(b) (prohibition on participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in Article 2(1)(a) of the Regulation commits an offence and may be arrested.

(5) A person who contravenes—

- (a) Article 3(1)(c) (prohibition on participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in Article 3(1)(a) or (b)), or
- (b) Article 4(b) (prohibition on participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in Article 4(a))

of the Regulation commits an offence and may be arrested.

Offences related to Community authorisations

5.—(1) If, for the purpose of obtaining a Community authorisation, a 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,

that person commits an offence; and any Community authorisation granted in connection with the application for which the false statement was made or the false document or information furnished shall be void from the time it was granted.

(2) A person who, having acted under the authority of a Community authorisation, fails to comply with any of the requirements or conditions to which the Community authorisation is subject commits an offence, unless—

- (a) the Community 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 Community authorisation not been so modified.

Penalties

6.—(1) A person guilty of an offence under article 4(1) of this Order is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Subject to paragraphs (3) and (4), a person guilty of an offence under article 4(2) or (4) of this Order is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine (or both);
- (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or 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 both).

(3) In relation to an offence that is not committed in the United Kingdom or by a United Kingdom person—

- (a) for “ten years” in paragraph (2)(a) substitute “two years”; and
- (b) for paragraph (2)(b) substitute—
 - “(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum (or both).”.

(4) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003⁽⁹⁾, for “twelve months” in paragraph (2)(b)(i) substitute “six months”.

(5) A person guilty of an offence under article 4(3) or (5) or 5 of this Order is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum (or both).

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

Application of the 1979 Act

7.—(1) Where the Commissioners 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 (provision as to information powers)⁽¹¹⁾ shall apply to a person concerned in an activity which, if not authorised under Article 5 of the Regulation, would contravene Article 2, 3 or 4 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)⁽¹²⁾ 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⁽¹³⁾, 146⁽¹⁴⁾, 146A⁽¹⁵⁾, 147⁽¹⁶⁾, 148, 150⁽¹⁷⁾, 151⁽¹⁸⁾, 152⁽¹⁹⁾, 154⁽²⁰⁾, and 155⁽²¹⁾ 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.

(9) 2003 c. 44; at the date of this Order, section 154(1) had not been commenced.

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

(11) 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.

(12) 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.

(13) 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.

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

(15) 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.

(16) 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).

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

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

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

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

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

25th April 2007

Malcolm Wicks
Minister of State for Science and Innovation
Department of Trade and Industry

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is part of the United Kingdom implementation of United Nations Security Council Resolution 1718 (2006) (“UNSCR 1718”), which imposes restrictions on trade with the Democratic People’s Republic of Korea. The Council of the European Union has adopted a Common Position (Council Common Position 2006/795/CFSP(22) – “the Common Position”) in response to UNSCR 1718. Council Regulation (EC) No 329/2007 (“the Regulation”) implements the elements of the Common Position that fall within Community competence.

The Regulation contains Annexes with lists of goods and other items that it affects. Article 13 of the Regulation enables the Commission to amend these Annexes. Article 1(3) of the Order ensures that the offences in the Order do not just relate to the Annexes in the Regulation as originally adopted.

Articles 2 and 3 relate to matters that are outside Community competence. Article 2 amends the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (“the 2003 Order”) to ensure that certain exemptions from export controls no longer apply in relation to exports to North Korea. For example, the exemption relating to exportation of aircraft following temporary importation in article 11(2) of the 2003 Order will no longer apply.

Article 3 amends the Trade in Controlled Goods (Embargoed Destinations) Order 2004 (“the 2004 Order”) so that North Korea becomes an embargoed destination. This means that the trade controls in the 2004 Order that prohibit military and certain other equipment from being supplied from outside the UK to certain destinations extend to North Korea.

Articles 4 to 7 relate to implementation of the Regulation. Article 4 creates offences for contravention of the provisions of the Regulation referred to there. There are already some offences relating to prohibited importation and exportation of goods in sections 50, 68 and 170 of the Customs and Excise Management Act 1979 and the Order creates new offences only where necessary.

Article 5 supplements the provision of the Regulation that allows a competent authority to authorise activities that are otherwise prohibited. Article 5(1) makes it an offence knowingly or recklessly to provide false information for the purpose of obtaining an authorisation. Authorisations may be subject to requirements or conditions that continue even after the activity authorised has been carried out. Article 5(2) 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 6 sets out the penalties relating to the offences in the Order.

Her Majesty’s Revenue and Customs will enforce the provisions of the Order. Article 7 ensures that the same ancillary provisions as apply to their enforcement of customs and excise legislation apply in this context.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.