

EXPLANATORY MEMORANDUM TO THE EXPORT CONTROL (IRAN) ORDER 2007

2007 No.1526

1. This explanatory memorandum has been prepared by the Department of Trade & Industry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments

2. Description

2.1. The Export Control (Iran) Order 2007 ('the Iran Order') implements certain European and other international obligations of the UK in respect of trade with Iran. To this end it makes provision with regard to Council Regulation (EC) No 423/2007 of 19 April 2007 ('the 2007 Regulation') imposing certain restrictive measures in respect of Iran.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. The Department is today laying before Parliament the Export Control (Iran) Order 2007.

3.2 The Department considers that in order to give effect to our European and other international obligations in respect of Iran, it is necessary for this Order to come into force as soon as possible. In particular, the 2007 Regulation, which is directly applicable, came into force immediately on its publication in the Official Journal on 20 April 2007. It needs the offences and licensing provisions created by the Order to make it fully effective in the UK.

3.3 The Committee will note Article 3(3) of the Order which concerns financial assistance relating to items in Annex II to the 2007 Regulation – the less sensitive of the listed goods and technology. The 2007 Regulation contains no absolute prohibition on financial assistance relating to such items. Instead, there is a licence requirement. Financial assistance relating to Annex I items is treated differently. First, there is an absolute prohibition. Second, Article 12(2) of the 2007 Regulation creates a specific defence where the financier did not know and had no reasonable cause to believe his actions would infringe the prohibition (we refer to this in Article 2(2) of the Order). There is no equivalent defence relating to Annex II items. This is incongruous. We do not believe it is the intention of the Regulation, in this context, to create an offence of strict liability relating to Annex II items. Consequently, relying on a purposive construction of the Regulation, we have included our own defence. We are pursuing with the Commission the question of whether this point can be clarified.

3.4 Like the similar provision in the Export Control (North Korea) Order 2007 (S.I. 2007/1334), Article 5(3) adjusts the maximum prison sentences available in cases where we are limited by the maxima in the European Communities Act 1972.

4. Legislative Background

4.1 United Nations Security Council Resolution 1737 (2006) (“UNSCR1737”) was adopted on 23 December 2006. Among other things, this proposes certain restrictions on trade with Iran related to its nuclear programme. The response to UNSCR1737 has been co-ordinated at European level. The Council of the European Union adopted a Common Position (Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran – “the Common Position”). The 2007 Regulation implements those elements of the Common Position that fall within Community competence.

5. Extent

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative instrument resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The government’s policy is to support the EU legislation concerning restrictive measures against Iran, in the same way as we support the UNSCR from which it derives.

7.2. The Order provides for national offences, penalties and licensing provisions that are required to supplement Articles 2-6 of the 2007 Regulation. These provisions are concerned with prohibiting:

- Trade with Iran in specified dual-use goods which could contribute to Iran’s enrichment-related, reprocessing, or heavy water related activities, or to the development of nuclear weapon delivery systems; and provision of related services; and
- Technical and financial assistance to Iran regarding such dual-use items.

7.3. The Order is also in line with the general policy to implement EU Legislation in a timely and appropriate manner.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no or minimal impact on business, charities or voluntary bodies.

8.2. There is no or minimal impact on the public sector.

9. Contact

9.1. Jim Bouttell at the Department of Trade and Industry, Tel: 020 7215 4648, or

email: jim.bouttell@dti.gsi.gov.uk can answer any queries regarding this instrument.

DEPARTMENT OF TRADE AND INDUSTRY

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