
STATUTORY INSTRUMENTS

2018 No. 108

CUSTOMS

The Export Control (Venezuela Sanctions) Order 2018

<i>Made</i>	- - - -	<i>29th January 2018</i>
<i>Laid before Parliament</i>		<i>1st February 2018</i>
<i>Coming into force</i>	- -	<i>26th February 2018</i>

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

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 references to an EU instrument to be construed as references to that instrument 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(3) 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(4).

PART 1

Introductory

Citation, commencement and application

1.—(1) This Order may be cited as the Export Control (Venezuela Sanctions) Order 2018 and comes into force on 26th February 2018.

(2) An offence may be committed under this Order—

- (a) in the United Kingdom by any person;
- (b) elsewhere by a person who is a United Kingdom person within the meaning of section 11 of the Export Control Act 2002.

(1) 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).

(2) S.I. 1994/757, to which there are amendments not relevant to this Order.

(3) 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.

(4) 2002 c. 28.

Interpretation

2.—(1) In this Order—

“the 1979 Act” means the Customs and Excise Management Act 1979⁽⁵⁾;

“EU authorisation” means an authorisation granted under Article 4(1), 6(1) or 7(1) of the Venezuela Sanctions Regulation; and

“the Venezuela Sanctions Regulation” means Council Regulation (EU) No 2017/2063 concerning restrictive measures in view of the situation in Venezuela⁽⁶⁾ and references to that Regulation are references to that Regulation as amended from time to time.

(2) A term used both in this Order and the Venezuela Sanctions Regulation has the meaning that it bears in that Regulation.

PART 2

Offences in relation to prohibitions in the Venezuela Sanctions Regulation

Offences related to goods and technology in the EU Common List of Military Equipment

3.—(1) A person who is knowingly concerned in an activity which is prohibited by a provision of the Venezuela Sanctions Regulation mentioned in paragraph (2) with intent to evade that prohibition commits an offence and may be arrested.

(2) The provisions are—

(a) Article 2(1)(a) (prohibition on the provision of technical assistance, brokering services and other services related to goods and technology listed in the EU Common List of Military Equipment⁽⁷⁾ and to the provision, manufacture, maintenance and use of goods and technology listed in the EU Common List of Military Equipment to any natural or legal person, entity or body in, or for use in, Venezuela);

(b) Article 2(1)(b) (prohibition on the provision of finance or financial assistance related to goods and technology listed in the EU Common List of Military Equipment to any natural or legal person, entity or body in, or for use in, Venezuela).

(3) Paragraph (1) does not apply to a person who is concerned in an activity which is authorised under Article 4(1) of the Venezuela Sanctions Regulation.

Offences related to items listed in Annex I of the Venezuela Sanctions Regulation

4.—(1) A person who is knowingly concerned in an activity (other than the export of goods) which is prohibited by a provision of the Venezuela Sanctions Regulation mentioned in paragraph (2) with intent to evade that prohibition commits an offence and may be arrested.

(2) The provisions are—

(a) Article 3(a) (prohibition on the sale or transfer of equipment listed in Annex I of the Venezuela Sanctions Regulation to any natural or legal person, entity or body in, or for use in, Venezuela);

(b) Article 3(b) (prohibition on the provision of technical assistance, brokering and other services related to the equipment listed in Annex I of the Venezuela Sanctions Regulation to any natural or legal person, entity or body in, or for use in, Venezuela);

(5) 1979 c. 2.

(6) OJ No L 295, 14.11.2017, p. 21.

(7) OJ No C 129, 21.4.2015, p. 1.

- (c) Article 3(c) (prohibition on financing or financial assistance related to the equipment listed in Annex I of the Venezuela Sanctions Regulation to any natural or legal person, entity or body or for use in, Venezuela).

(3) Paragraph (1) does not apply to a person who is concerned in an activity which is authorised under Article 4(1) of the Venezuela Sanctions Regulation.

Offence related to items listed in Annex II of the Venezuela Sanctions Regulation

5.—(1) A person who is knowingly concerned in an activity (other than the export of goods) which is prohibited by a provision of the Venezuela Sanctions Regulation mentioned in paragraph (2) with intent to evade that prohibition commits an offence and may be arrested.

(2) The provisions are—

- (a) Article 6(1) (prohibition on sale, supply, transfer or export of items listed in Annex II of the Venezuela Sanctions Regulation to any person, entity or body in, or for use in, Venezuela, without prior authorisation);
- (b) Article 7(1)(a) (prohibition on providing technical assistance or brokering services related to the items listed in Annex II of the Venezuela Sanctions Regulation to any person, entity or body or for use in Venezuela, without prior authorisation);
- (c) Article 7(1)(b) (prohibition on financing or financial assistance related to the items listed in Annex II of the Venezuela Sanctions Regulation to any person, entity or body in Venezuela, without prior authorisation);
- (d) Article 7(1)(c) (prohibition on providing telecommunications or internet monitoring or interception services to or for the benefit of Venezuela’s Government, public bodies, corporations and agencies or any person or entity acting on their behalf, without prior authorisation).

PART 3

Supplementary offences

Circumvention of prohibitions in the Venezuela Sanctions Regulation

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

- (a) to circumvent a prohibition in a provision of the Venezuela Sanctions Regulation mentioned in paragraph (2); or
- (b) to enable or facilitate the contravention of any such prohibition.

(2) The provisions are Article 2(1)(a), Article 2(1)(b), Article 3(a), Article 3(b), Article 3(c), Article 6(1), Article 7(1)(a), Article 7(1)(b) and Article 7(1)(c).

Offences related to EU authorisations

7.—(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.

PART 4

Enforcement and penalties

Penalties

8.—(1) A person guilty of an offence under the provisions of this Order mentioned in paragraph (2) 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 Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (iii) in Scotland, to imprisonment for a term not exceeding twelve 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.

(2) The provisions are—

- (a) article 3(1) in connection with the prohibitions in Article 2(1)(b) of the Venezuela Sanctions Regulation;
- (b) article 4(1) in connection with the prohibitions in Article 3(c) of the Venezuela Sanctions Regulation;
- (c) article 5(1) in connection with the prohibitions in Article 7(1)(b) or 7(1)(c) of the Venezuela Sanctions Regulation;
- (d) article 6;
- (e) article 7(1).

(3) A person guilty of an offence under the provisions of this Order mentioned in paragraph (4) 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 Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (iii) in Scotland, to imprisonment for a term not exceeding twelve 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.

(4) The provisions are—

- (a) article 3(1) in connection with the prohibitions in Article 2(1)(a) of the Venezuela Sanctions Regulation;
- (b) article 4(1) in connection with the prohibitions in Article 3(a) or 3(b) of the Venezuela Sanctions Regulation;

(c) article 5(1) in connection with the prohibitions in Article 6(1) or 7(1)(a) of the Venezuela Sanctions Regulation.

(5) In the case of an offence committed after the commencement of section 154(1) of the Criminal Justice Act 2003(8), for “six months” in paragraph (1)(a)(i) substitute “twelve months”.

(6) In the case of an offence committed under the 1979 Act in connection with the prohibitions on exportation in Articles 3(a) or 6(1) of the Venezuela Sanctions Regulation, sections 68(3)(b)(9) and 170(3)(b)(10) of that Act have effect as if for the words “7 years” there were substituted the words “10 years”.

Application of the 1979 Act

9.—(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(11) (provisions as to information powers) applies to a person concerned in an activity which, if not authorised by an EU authorisation, would contravene Article 3(a) or 6(1) of the Venezuela Sanctions Regulation.

(3) Section 138 of the 1979 Act(12) (provision as to arrest of person) 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.

(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)

(8) 2003 c.44. At the date of this Order, section 154(1) had not been commenced.

(9) 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).

(10) 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).

(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), paragraph 7 of Schedule 1.

(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); 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).

(14) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), 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, section 50(6), Schedule 4, paragraphs 20 and 24, 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) and by the Finance Act 2016 sections 174(1) and (2).

(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; 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.

(17) 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, the Director of Revenue and Customs Prosecutions) Order (S.I. 2014/834), Schedule 2, paragraph 2(a) and the Finance Act 2016 sections 174(1) and (3).

(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, sections 50(6) and 52(1) and (2), Schedule 4, paragraphs 20 and 26 and Schedule 5.

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

10. Schedule 4 to the Export Control Order 2008⁽²²⁾ is amended as follows—

- (a) in Part 2, before “Zimbabwe” insert “Venezuela”; and
- (b) in Part 4, omit “Venezuela”.

PART 6

General

Review

11.—(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 Venezuela Sanctions Regulation and the measures taken to implement them in European Union 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 Venezuela Sanctions 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 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.

(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, sections 50(6), 52(2), Schedule 4 paragraphs 20, 21(j) and 27 and Schedule 5.

(22) S.I. 2008/3231. The relevant amending instruments are S.I. 2009/1305, 2009/2969, 2010/2007, 2011/1304, 2015/1546, 2016/503, 2016/992, 2017/85, 2017/193 and 2017/697.

29th January 2018

Liam Fox
Secretary of State for International Trade
Department for International Trade

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the enforcement of trade restrictions against Venezuela specified in Regulation (EU) No. 2017/2063 concerning restrictive measures against Venezuela (OJ L 295, 14.11.2017, p. 21–37) (“the Venezuela Sanctions Regulation”).

Articles 3, 4 and 5 identify, and make it an offence to breach, certain prohibitions found within the Venezuela Sanctions Regulation. This is subject to applicable authorisations. In the UK authorisations are granted by way of licences issued by the Export Control Joint Unit in the Department for International Trade.

Article 6 creates an offence for the circumvention of the trade restrictions in the Venezuela Sanctions Regulation.

Article 7(1) supplements the provisions of the Venezuela Sanctions Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Article 7(1) makes it an offence knowingly or recklessly to provide false information for the purpose of obtaining an authorisation. An authorisation granted in these circumstances is void from the time it is granted.

Article 8 sets out the penalties relating to each of the offences in the Order.

Article 9 applies the ancillary provisions relevant to the enforcement of customs and excise legislation to the enforcement of this Order.

Article 10 amends Schedule 4 to the Export Control Order 2008, moving Venezuela from Part 4 of Schedule 4 into Part 2 of Schedule 4. This places Venezuela into the list of countries which are embargoed and subject to transit control for military goods.

Article 11 provides that the Secretary of State must review this Order and sets out those matters to be taken into account in carrying out such a review.

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 Joint Unit, Department for International Trade, 3 Whitehall Place, London SW1A 2AW and on the gov.uk website (www.gov.uk).