

Statutory Document No. 2018/0087



Customs and Excise Act 1993

EXPORT CONTROL (VENEZUELA SANCTIONS) ORDER 2018 (APPLICATION) ORDER 2018

Approved by Tynwald: 17 April 2018

Coming into operation in accordance with article 2

The Treasury makes the following Order under sections 1 and 3 of the Customs and Excise Act 1993.

1 Title

This Order is the Export Control (Venezuela Sanctions) Order 2018 (Application) Order 2018.

2 Commencement

This Order comes into operation on 1 March 2018¹.

3 Application of the Export Control (Venezuela Sanctions) Order 2018

- (1) The Export Control (Venezuela Sanctions) Order 2018² (“the applied legislation”) applies to the Island, as part of the law of the Island, subject to the exceptions, modifications and adaptations in the Schedule to this Order.
- (2) The text of the applied legislation is annexed to this Order.

¹ Section 3(1) of the Customs and Excise Act 1993 provides that an Order made under section 1 of that Act shall be laid before Tynwald as soon as is practicable after it is made (and in any case not later than the second sitting of Tynwald following the making of the Order) and if at the sitting at which it is laid Tynwald fails to approve the Order it shall cease to have effect.

² SI 2018/108.

MADE 28TH FEBRUARY 2018

A L CANNAN
Minister for the Treasury

SCHEDULE

[Article 3(1)]

**EXCEPTIONS, MODIFICATIONS AND ADAPTATIONS SUBJECT TO WHICH
THE EXPORT CONTROL (VENEZUELA SANCTIONS) ORDER 2018 [SI 2018 NO.
108] SHALL HAVE EFFECT IN THE ISLAND**

Article	Subject matter	Exception, modification or adaptation	
1	Citation, commencement and application	(1)	In paragraph (1) omit the words from “and comes” onwards.
		(2)	In paragraph (2)(a) for “United Kingdom” substitute “Island” .
		(3)	In paragraph (2)(b) – (a) for “a United Kingdom” substitute “an Island” ; and (b) for “section 11 of the Export Control Act 2002” substitute “article 2(1) of the Export Control Order 2008³ (of Parliament), as it has effect in the Island.”
2	Interpretation	(1)	For “1979”, in both places, substitute “1986” .
		(2)	After “Council Regulation (EU) No 2017/2063” insert “ , as it has effect in the Island ⁴ ” .
8	Penalties	(1)	In paragraph (1), for sub-paragraphs (a) and (b) substitute – “(a) on summary conviction,

³ SI 2008 No 3231, applied in the Island by SD 104/09, which inserted the definition of “Island person”.

⁴ Council Regulation (EU) No 2017/2063 was applied in the Island by SD 2017/0366.

			<p>to custody for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both; or</p> <p>(b) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both. 22.</p>
		(2)	<p>In paragraph (3), for sub-paragraphs (a) and (b) substitute –</p> <p>23(a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both; or</p> <p>(b) on conviction on information, to custody for a term not exceeding 10 years or to a fine, or to both. 22.</p>
		(3)	Omit paragraph (5).
		(4)	<p>In paragraph (6), for “1979”, “68(3)(b)” and “170(3)(b)” substitute 24 1986 22, 24 69(3)(b) 22 and 24 178(3)(b) 22 respectively.</p>
9	Application of the 1979 Act	(1)	In the heading, for “1979” substitute 24 1986 22 .
		(2)	In paragraph (1), for the words from “Commissioners” to and including “propose” substitute 24 Treasury investigates or proposes 22 .
		(3)	In paragraph (2), for “77A of the 1979 Act” substitute 24 78A of the

			1986 Act 22 .
		(4)	In paragraph (3), for “138 of the 1979 Act” substitute 63 145 of the 1986 Act 22 .
		(5)	In paragraph (4), for “Sections 145, 146, 146A, 147, 148, 150, 151, 152, 154 and 155 of the 1979 Act” substitute 63 Sections 152 to 155, 157 to 159, 161 and 162 of the 1986 Act 22 .
		(6)	In paragraph (5) for “section 1 of the 1979 Act” substitute 63 section 184 of the 1986 Act 22 .
10	Amendment to the Export Control Act 2008	After “2008” insert 63 as it has effect in the Island, 22 . ⁵	
11	Review	For “Secretary of State”, on both occasions, substitute 63 Treasury 22 .	

⁵ SI 2008 No 3231 was applied by means of SD 104/09; no previous amendment in relation to Venezuela has previously been made to Parts 2 or 4 of Schedule 4 to the applied Order.

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order applies in Island law the Export Control (Venezuela Sanctions) Order 2018 (“the applied Order”), which provides for the enforcement of trade restrictions against Venezuela.

The applied Order creates offences and penalties for breaches of Council Regulation (EU) 2017/2063, as it has effect in the Island⁶ (“the EU Regulation”), concerning restrictive measures in view of the situation in Venezuela.

Articles 3, 4 and 5 of the applied Order identify, and make it an offence to breach, certain prohibitions contained within the EU Regulation, including —

- a) the prohibition on the provision of technical assistance, brokering services, finance or financial assistance related to goods and technology listed in the EU Common List of Military Equipment;
- b) the prohibition of the provision, manufacture, maintenance and use of goods and technology listed in the EU Common List of Military Equipment;
- c) the prohibition on the sale or transfer of equipment which might be used for internal repression in Venezuela, or the provision of technical assistance, brokering, financing or financial assistance in relation to such equipment;
- d) the prohibition on the sale, supply, transfer or export of items or the provision of technical assistance, brokering services, financing or financial assistance in relation to such items listed in Annex II of the EU Regulation, without prior authorisation,

to any person, entity or body in, or for use in, Venezuela.

Article 6 of the applied Order creates an offence for the circumvention of the trade restrictions in the EU Regulation.

Article 7 of the applied Order makes it an offence to provide, knowingly or recklessly, false information for the purposes of obtaining an authorisation from the Treasury.

Articles 8 and 9 of the applied Order provides for penalties relating to each of the offences in that Order and provision of enforcement powers contained in the Customs and Excise Management Act 1986.

⁶ Council Regulation (EU) No 2017/2063 was applied in the Island by SD 2017/0366.

Annex

STATUTORY INSTRUMENTS

2018 No. 108

CUSTOMS

The Export Control (Venezuela Sanctions) Order 2018

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

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972¹ 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 States².

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 1A³ of Schedule 2 to, the European Communities Act 1972 and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002⁴.

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~~ **Island** by any person;
 - (b) elsewhere by a person who is a ~~United Kingdom~~ **an Island** person within the meaning of ~~section 11 of the Export Control Act 2002~~ **article 2(1) of the Export Control Order 2008⁵ (of Parliament), as it has effect in the Island.**

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 1, Part 1.

⁴ 2002 c.28.

⁵ SI 2008 No 3231, applied in the Island by SD 104/09, which inserted the definition of "Island person".

Interpretation

2. (1) In this Order—

“the ~~1979~~ **1986** Act” means the Customs and Excise Management Act ~~1979~~ **1986**⁶;

“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, **as it has effect in the Island**⁷, concerning restrictive measures in view of the situation in Venezuela⁸ 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 Equipment⁹ 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.

⁶ ~~1979 c.2.~~ 1986 c.34 (of Tynwald).

⁷ Council Regulation (EU) No 2017/2063 was applied in the Island by SD 2017/0366.

⁸ OJ No L295, 14.11.2017, p.21.

⁹ OJ No C129, 21.4.2015, p.1.

- (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);
 - (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, to custody for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both; or**
- (b) on conviction on information, to custody for a term not exceeding 2 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, to custody for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both; or**

(b) on conviction on information, to custody for a term not exceeding 10 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 2003⁴⁰, for “six months” in paragraph (1)(a)(i) substitute “twelve months”.~~

(6) In the case of an offence committed under the ~~1979~~ **1986 Act** in connection with the prohibitions on exportation in Articles 3(a) or 6(1) of the Venezuela Sanctions Regulation, sections ~~68(3)(b)~~ **69(3)(b)** and ~~170(3)(b)~~ **178(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~~ 1986 Act

9. (1) Where the ~~Commissioners for Her Majesty’s Revenue and Customs investigate or propose~~ **Treasury investigates or proposes** 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~~ **78A of the 1986 Act** (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~~ **145 of the 1986 Act** (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, 146, 146A, 147, 148, 150, 151, 152, 154 and 155 of the 1979 Act~~ **Sections 152 to 155, 157 to 159, 161 and 162 of the 1986 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~~ **section 184 of the 1986 Act**.

⁴⁰—2003 c.44. At the date of this Order, section 154(1) had not been commenced.

PART 5

Miscellaneous

Amendment to the Export Control Order 2008

10. Schedule 4 to the Export Control Order 2008¹¹ **as it has effect in the Island**, 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~~ **Treasury** 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~~ **Treasury** 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.

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

29th January 2018

¹¹ 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.

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](http://www.gov.uk) website (www.gov.uk).