

Statutory Document No. 2018/0094



Customs and Excise Act 1993

EXPORT CONTROL (NORTH KOREA 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 (North Korea Sanctions) Order 2018 (Application) Order 2018.

2 Commencement

This Order comes into operation on 14 March 2018¹.

3 Application of the Export Control (North Korea Sanctions) Order 2018

- (1) The Export Control (North Korea 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 2018/200.

MADE 12TH MARCH 2018

A L CANNAN
Minister for the Treasury

SCHEDULE

[Article 3(1)]

**EXCEPTIONS, MODIFICATIONS AND ADAPTATIONS SUBJECT TO WHICH
THE EXPORT CONTROL (NORTH KOREA SANCTIONS) ORDER 2018 [SI 2018
NO. 200] SHALL HAVE EFFECT IN THE ISLAND**

Article	Subject matter	Exception, modification or adaptation
1	Citation and commencement	Omit the words from “and comes” onwards.
2	Extension of offences to extra-territorial acts	For “United Kingdom” onwards substitute 66 Island by an Island person (within the meaning of the Export Control Order 2008 ³ (of Parliament), as it has effect in the Island). 62 .
3	Interpretation	In paragraph (1) – (a) for “1979” in both places substitute 66 1986 62 ; and (b) after “Council Regulation (EU) No 2017/1509 of 30 August 2017” insert 66 , as it has effect in the Island, 62 ⁴ .
4	Licences	For “Secretary of State” in all the places the words occur, substitute 66 Treasury 62 .
22	Offences under this Order: Penalties	(1) In paragraph (1), for sub-paragraphs (a) to (d) substitute - 66 (a) on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding level

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 2017/1509 was applied in the Island by SD 2017/0274.

		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. 22 .
	(2)	In paragraph (3), for subparagraphs (a) to (d) substitute -
		23 (a) on summary conviction, to custody for a term not exceeding 12 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. 22 .
	(3)	Omit paragraph (4).
23	Offences under the 1979 Act in connection with the North Korea Regulation: Penalties	(1) In the heading, for “1979” substitute 23 1986 22 .
		(2) In paragraph (1), for “section 50(2) of the 1979 Act” substitute 23 section 47(2) of the 1986 Act 22 .
		(3) In paragraph (2), for “section 50(4)(b) of the 1979 Act” substitute 23 section 47(4)(b) of the 1986 Act 22 .
		(4) In paragraph (3), for “section 68(2) of the 1979 Act” substitute

- ❏ section 69(2) of the 1986 Act ❏.
- (5) In paragraph (4), for “section 68(3)(b) of the 1979 Act” substitute ❏ section 69(3)(b) of the 1986 Act ❏.
- (6) In paragraph (5), for “section 170(2) of the 1979 Act” substitute ❏ section 178(2) of the 1986 Act ❏.
- (7) In paragraph (6), for “section 170(3)(b) of the 1979 Act” substitute ❏ section 178(3)(b) of the 1986 Act ❏.
- 24 Application of the 1979 Act for the purposes of this Order
- (1) In the heading, for “1979” substitute ❏ 1986 ❏.
- (2) In paragraph (1), for the words from “Commissioners” to and including “propose” substitute ❏ Treasury investigates or proposes ❏.
- (3) In paragraph (2), for “section 1(1) of the 1979 Act” substitute ❏ section 184(1) of the 1986 Act ❏.
- (4) In paragraph (3), for “77A of the 1979 Act” substitute ❏ 78A of the 1986 Act ❏.
- (5) In paragraph (4) –
- (c) for “1991” substitute ❏ 1994 ❏; and
- (d) for “1979” substitute ❏ 1986 ❏.
- (6) In paragraph (6), for “138 of the 1979 Act” substitute ❏ 145 of the

1986 Act⁵.

- (5) In paragraph (8), for “1979” substitute **“1986”**.
- (6) In paragraph (9) -
- (a) for “1979” substitute **“1986”**; and
- (b) for “sections 145, 146, 146A, 147, 148, 150, 151, 152, 154 and 155” substitute **“sections 152 to 155, 157 to 159, 161 and 162”**.
- (7) In paragraph (10)(c) -
- (a) for “146A” substitute **“154”**; and
- (b) after “2018” insert **“**, as it has effect in the Island⁵.

25 Revocation

After “2017” insert **“**, as they have effect in the Island, **”**.

26 Review

- (1) In paragraph (1), for “Secretary of State” substitute **“Treasury”**.
- (2) Omit paragraphs (4) and (5).

⁵ SI 2017 No 83 was applied in the Island by means of SD 2017/0084.

EXPLANATORY NOTE

(This note is not part of the Order)

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

The applied Order creates offences and penalties for breaches of Council Regulation (EU) 2017/1509, as it has effect in the Island⁶ (“the EU Regulation”), concerning restrictive measures in view of the situation in North Korea.

Article 4 of the applied Order provides for the granting of licences by the Treasury for the purposes of the provisions in the EU Regulation, which allow a competent authority to authorise trade related activities that would otherwise be prohibited. A licence granted by the Treasury may be varied, suspended or revoked. Article 4(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 5 to 19 of the applied Order create offences for contravention of relevant trade restrictions in the EU Regulation.

Article 20 of the applied Order creates an offence for circumventing any relevant trade restriction in the EU Regulation.

Articles 22 to 24 of the applied Order provide 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.

This Order also revokes articles 4 to 16 of the Export Control (North Korea Sanctions and Iran, Ivory Coast and Syria Amendment) Order 2017, as they have effect in the Island by means of SD 2017/0084.

⁶ Council Regulation (EU) No 2017/1509 was applied in the Island by SD 2017/0274.

Annex

STATUTORY INSTRUMENTS

2018 No. 200

CUSTOMS

The Export Control (North Korea Sanctions) Order 2018

Made - - - - 19th February 2018

Laid before Parliament 21st February 2018

Coming into force - - 14th March 2018

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972¹ ("the 1972 Act") in relation to measures relating to the interruption or reduction, in part or completely, of economic relations with one or more countries that are not member States².

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for certain references to provisions of an EU instrument to be construed as references to those provisions 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 of Schedule 2³ to, the 1972 Act and by sections 1 to 5 and 7 of the Export Control Act 2002⁴.

PART 1

General

Citation and commencement

1. This Order may be cited as the Export Control (North Korea Sanctions) Order 2018 and comes into force on 14th March 2018.

Extension of offences to extra-territorial acts

2. An offence under this Order can be committed by conduct wholly or partly outside of the United Kingdom by a United Kingdom person (within the meaning given in section 11 of the Export Control Act 2002) **Island by an Island person (within the meaning 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 the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(1), and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

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 S.I. 2007/1388 and the European Union (Amendment) Act 2008, Schedule, Part 1.

⁴ 2002 c.28. Sections 1 to 4 and 7 were amended by S.I. 2011/1043. Section 5 was amended by S.I. 2011/1043 and S.I. 2012/1809.

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

Interpretation

3. (1) In this Order—

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

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

“the North Korea Regulation” means Council Regulation (EU) 2017/1509 of 30 August 2017, **as it has effect in the Island**, concerning restrictive measures against the Democratic People’s Republic of Korea and repealing Regulation (EC) No 329 of 2007⁷, as amended from time to time.

(2) For the purposes of this Order, “relevant prohibition” means a prohibition in the North Korea Regulation which is not a prohibition on the export or import of goods.

(3) Terms used in this Order and in the North Korea Regulation have the same meaning in this Order as they have in that Regulation.

PART 2

Licences

Licences

4. (1) The ~~Secretary of State~~ **Treasury** may, in accordance with the North Korea Regulation, by licence authorise an activity which would otherwise be prohibited by a listed provision.

(2) The prohibitions in the relevant listed provision do not apply to anything done under the authority of a licence under paragraph (1).

(3) In this article, “listed provision” means any of the following provisions of the North Korea Regulation, Articles 3(1), 5, 7(1), 10(1), 11, 12, 13, 15, 16a, 16b, 16c, 16d, 16f, 16h and 18.

(4) A licence must specify the acts authorised by it and may be—

(a) general or granted to a category of persons or to a particular person;

(b) subject to conditions;

(c) of indefinite duration or subject to an expiry date.

(5) The ~~Secretary of State~~ **Treasury** may vary, suspend or revoke a licence at any time.

(6) On the grant, variation, suspension or revocation of a licence, the ~~Secretary of State~~ **Treasury** must—

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

⁷ OJ No. L224, 31.8.2017, p.1, as last amended by Council Implementing Regulation (EU) No 2018/87 of 22 January 2018 (OJ No. L1161, 22.01.2018, p.1).

- (a) in the case of a licence granted to a particular person, give written notice of its grant, variation, suspension or revocation to that person;
 - (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the ~~Secretary of State~~ **Treasury** considers appropriate to publicise the grant, variation, suspension or revocation of the licence.
- (7) A person commits an offence who, for the purposes of obtaining a licence—
- (a) makes any statement or provides any document or information which the person knows to be false in a material respect, or
 - (b) recklessly makes any statement or provides any document or information which is false in a material respect.
- (8) A licence granted in the circumstances referred to in paragraph (7) is void from the time at which it was granted.
- (9) A person who purports to act under the authority of a licence but who fails to comply with any condition included in the licence commits an offence.

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 XIId 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 XIId to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to crude oil listed in Annex XIe 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 XIe to the North Korea Regulation) commits an offence.

Contravention of relevant prohibitions related to textiles listed in Annex XIIf 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 XIIf 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).~~

- (a) **on summary conviction, to custody for a term not exceeding 3 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 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).~~
- (a) **on summary conviction, to custody for a term not exceeding 12 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) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003⁸ 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~~ 1986 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~~ **section 47(2) of the 1986 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~~ **section 47(4)(b) of the 1986 Act** 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~~ **section 69(2) of the 1986 Act** in connection with a DPRK export prohibition.

⁸ 2003 c.44.

(4) Where this paragraph applies, the reference to 7 years in ~~section 68(3)(b) of the 1979 Act~~ **section 69(3)(b) of the 1986 Act** 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~~ **section 178(2) of the 1986 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~~ **section 178(3)(b) of the 1986 Act** is to be read as a reference to 10 years.

(7) In this article—

“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~~ 1986 Act for the purposes of this Order

24. (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 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~~ **section 184(1) of the 1986 Act**.

(3) ~~Section 77A of the 1979 Act~~ **78A of the 1986 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 Controls on Importation of Goods Regulations ~~1991~~ **1994** or an entry or specification is required by or under the ~~1979~~ **1986** 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~~ **145 of the 1986 Act** 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~~ **1986** 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 **1986** Act are ~~sections 145, 146, 146A, 147, 148, 150, 151, 152, 154 and 155~~ **sections 152 to 155, 157 to 159, 161 and 162.**

(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~~ **154** 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, **as it has effect in the Island.**”;
- (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.

PART 4

Miscellaneous

Revocation

25. Articles 4 to 16 of the Export Control (North Korea Sanctions and Iran, Ivory Coast and Syria Amendment) Order 2017⁹, **as they have effect in the Island**, are revoked.

Review

26. (1) The ~~Secretary of State~~ **Treasury** must from time to time—
- (a) carry out a review of the regulatory provisions contained in this Order,
 - (b) set out the conclusions of the review in a report, and
 - (c) publish the report.
- (2) The first report under this Order must be published before 14th March 2023.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.
- ~~(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015¹⁰ requires that a review carried out under this article must, so far as is reasonable, have regard to the rules on penalties applicable to infringements of the North Korea Regulation and the measures taken to implement them in other member States.~~

⁹ S.I. 2017/83.

¹⁰ 2015 c.26. Section 30(3) was amended by the Enterprise Act 2016 (c.12), section 19.

~~(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must in particular—~~

- ~~(a) set out the objectives intended to be achieved by the regulatory provisions referred to in paragraph (1)(a);~~
- ~~(b) assess the extent to which these objectives are achieved;~~
- ~~(c) assess whether those objectives remain appropriate, and~~
- ~~(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provisions.~~

19th February 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 makes provision in connection with the trade restrictions against North Korea specified in Council Regulation (EU) No 2017/1509 of 30 August 2017, as last amended by Council Implementing Regulation (EU) No 2018/87 of 22 January 2018 (OJ No. L1 16I, 22.01.2018, p.1) ("the North Korea Regulation"). This Order revokes articles 4 to 16 of the Export Control (North Korea Sanctions and Iran, Ivory Coast and Syria Amendment) Order 2017 (S.I. 2017/83).

Article 4 provides for the granting of licences for the purposes of the provisions of the North Korea Regulation which allow a competent authority to authorise trade related activities which would otherwise be prohibited. The competent authority for these purposes is the Secretary of State. A licence granted by the Secretary of State may be varied, suspended or revoked. Article 4(7) makes it an offence to knowingly or recklessly provide false information for the purpose of obtaining a licence. Article 4(9) makes it an offence to fail to comply with any condition attached to a licence.

Articles 5 to 19 create offences for contravention of relevant trade restrictions in the North Korea Regulation. "Relevant trade restrictions" do not include restrictions on the export or import of goods. Offences for contravention or circumvention of restrictions on the export or import of goods are to be found in the Customs and Excise Management Act 1979.

Article 20 creates an offence of circumventing any relevant trade restriction in the North Korea Regulation.

Article 21 makes provision for a defence for a person charged with certain offences under the Order.

Article 22 sets out the penalties relating to the offences under this Order. Article 23 makes modifications to the penalties that will apply where a person is guilty of an offence under the 1979 Act in connection with the exportation or importation of goods which is prohibited by the North Korea Regulation.

Article 24 applies (with modifications) sections 77A, 138, 145, 146, 146A, 147, 148, 150, 151, 152, 154 and 155 of the Customs and Excise Management Act 1979 for the purposes of the Order. These sections, as applied, make provision in connection with the investigation of and proceedings for offences under this Order.

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