

Title: The Export Control (Eritrea and Miscellaneous Amendments) Order 2011 PIR No: RPC-3513(1)-DIT Original IA/RPC No: N/A Lead department or agency: Department for Business Other departments or agencies: HM Revenue and Customers	Post Implementation Review
	Date: 25 July 2016
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 13 June 2011
	Recommendation: Keep
Contact for enquiries: Edwina Osborne	RPC Opinion: Green

1. What were the policy objectives of the measure?

The purpose of the policy was to introduce penalties for UK exporters found to be in breach of EU-wide sanctions, which were introduced in 2011 to prevent illegal trade in controlled goods (i.e. arms) from the EU to Eritrea, and which remain in force across all EU Member States as of June 2016. Failure to set down such rules then or now would place the UK in breach of EU law and create a liability for infraction proceedings.

The UK policy objective in setting the required penalty measures was to introduce effective, proportional and dissuasive penalties, in line with the obligations set by Council Regulation (EU) No 667/2010¹, while not gold-plating the EU requirements. The penalties set for infringements of the Regulation are equivalent (as far as possible) to export control offences under UK domestic law.

It should be noted that **this review relates to the penalties themselves and not to the effectiveness of monitoring and enforcing businesses' adherence to the controls, which is the responsibility of Her Majesty's Revenue and Customs and has separate legislation.**

2. What evidence has informed the PIR?

No impact assessment was conducted when the penalty measures were originally introduced in 2011, because the obligation to introduce penalties was introduced via EU Regulation 667/2010 and was directly applicable with immediate effect. The penalties imposed were, and continue to be, in line with other similar export control penalty measures arising from domestically legislated sanctions.

The following evidence has informed the review:

- List of EU Restrictive measures (sanctions) in force (current status of sanctions measures)
- Export control licensing statistics
- Anecdotal evidence concerning volume of correspondence and calls concerning the sanctions or penalty measures in question

List of EU restrictive measures (sanctions) in force (current status of sanctions measures)

The main EU legislation imposing sanctions on Eritrea is Council Decision 2010/127/CFSP (OJ L51, 2.3.2010, p19) which places an embargo on arms and related materiel, a ban on the

¹ Council Regulation (EU) No 667/2010 is directly applicable and binding on all EU Member States. Under Article 14 of the regulation it is specifically stated that "Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary that they are implemented. The penalties provided for must be effective, proportionate and dissuasive".

provision of certain services, inspection of and prior information requirement on certain cargoes to and from Eritrea and an embargo on supplying arms and related materiel to persons and entities. The original Decision has been amended by Council Decision 2010/414/CFSP (OJ L195, 27.7.2010 p74) and Council Decision 2012/632/CFSP (OJ L 282, 16.10.2010, p46). The main implementing regulation is Council Regulation (EU) No 667/2012 (OJ L 195, 27.7.2010, p16). This regulation has been amended by Council Regulation (EU) No 942/2012 (OJ L282, 16.10.2012, p3) and by Council Regulation (EU) No 517/2013 (OJ L 158, 10.6.2013, p1).

The EU sanctions measures are still in place and consequently the UK's implementing order is also still in force.

Export control licensing statistics

Export control licensing statistics indicate that between 2010 and 2015, the Export Control Organisation (ECO) processed 14 export licence applications for Eritrea, demonstrating that Eritrea is a minor destination in terms of arms export licences.

4 of these particular cases were for Standard Individual Export Licences (SIELs), 1 of which was refused in 2012.

A further 10 applications were for Open Individual Export Licences (OIELs). Of these 10 OIEL cases, 2 applications were rejected (in 2012 and 2015) meaning that the exporter would have needed to apply for a SIEL if they wished to pursue their intention to export the goods.

The SIEL refused in 2012 was for the export of body armour and military helmets. The OIELs rejected in 2012 and 2015 respectively were for cryptographic equipment and military support aircraft.

Further arms export licensing statistics are published as Official Statistics on the Gov.uk website and on the Export Control database (<https://www.exportcontroldb.bis.gov.uk>).

Anecdotal evidence

There has been no significant correspondence or queries concerning sanctions on Eritrea or the associated penalties.

3. To what extent have the policy objectives been achieved

The EU Regulation stated that Member States “shall lay down the rules on penalties applicable to infringements of the Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive” and “Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment”. The UK did not receive any communication on these measures from the EU and thus presume that the penalties set under the Order were deemed acceptable.

Furthermore, we consider that the policy objectives have been achieved in relation to being:

Effective and Dissuasive

As suggested in the Macrory (2006) Report² (Regulatory Justice Making Sanctions Effective), if penalties are beneath the potential private benefit to a business of breaching sanctions, some firms may decide to breach them and risk incurring the resulting penalties. As at July 2016, there have been no significant detected breaches of the controls in question, suggesting that the penalties (and any related costs of breaching the sanctions such as reputational impact) are at a level which exceeds the potential benefits of breaching the sanctions. Collecting evidence to monetise the potential benefit to firms of breaching the controls would be impractical and a disproportionate use of resources given that:

- a) the measure does not impose direct costs on compliant businesses (and altering the level of penalties will have no impact on them); and

² <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file44593.pdf>

- b) between the requirements of the EU Regulation and existing domestic practice regarding trade sanction measures, there is limited policy flexibility to consider alternative penalty regimes (i.e. it isn't practical to do so).

For these reasons the nil-detection of significant breaches is viewed as sufficient evidence that the measure under review has been, and continues to be, an effective deterrent.

Proportional

As described above, no detection of significant breaches suggests that the penalty levels are adequately high. Because the penalties do not impose costs on compliant businesses, and because the measures under review are in line with other similar penalty measures for domestically-set sanctions, there is no reason to suggest that the penalties are excessive³.

Because the measure is in line with other, similar UK penalty measures, we can fairly assume that familiarisation costs for businesses producing or distributing relevant products are minimal or nil, whereas an alternative penalty regime may introduce such costs. Again, given that this measure does not impose costs on compliant businesses, it is not proportional to seek to monetise costs and benefits of alternative penalty regimes which can be reasonably expected to be more, not less costly to business.

Finally, Eritrea is not a major destination for export from the UK. In comparison to other sanctions legislation (for instance covering Russia and Iran) there has been no significant increased volume of calls or correspondence concerning these sanctions or penalty measures. We would view this as further support of the proportionality of approach for this review.

In summary, we believe the objectives of the policy under review are being met based on:

- evidence which is proportional to collect (in light of the zero impact of penalties for compliant businesses and limited policy flexibility in choosing a penalty regime given EU requirements and existing domestic export control offence policies);
- implied approval by the EU Commission soon after the measure was established.

As such, we recommend that the policy be kept in its current form.

Sign-off For Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: Michael Williams, Deputy Director and Senior Economist, Trade Policy Group
Date: 31 July 2016

Signed: Mark Garnier, Parliamentary Under Secretary of State, Department for International Trade
Date: 5 September 2016

³ Under the terms of the Export Control Act 2002, the maximum penalty for deliberate and premeditated breaches the UK's export control regulations is up to 10 years in prison and an unlimited fine. Depending on the exact nature of the offence, HMRC also have powers to impose compound penalty fines (for instance in cases of accidental breaches).

Further Information Sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

The main original assumption was that setting penalties in as close a manner as possible to those of domestic export control measures would be appropriate and sufficient to meet the requirements of Council Regulation (EU) No 667/2010.

5. Were there any unintended consequences?

No, the measures are targeted and there have been neither significant known breaches of the controls nor any unintended consequences. Correspondence and queries about the sanctions and the penalty measures have been low compared to some other, similar measures. HMRC has not raised any concerns about the measure from a monitoring and enforcement perspective

6. Has the evidence identified any opportunities for reducing the burden on business?

No. As previously stated, this measure does not impose burdens on businesses.

- The penalties themselves will not affect compliant businesses.
- Because the measure is in line with other UK export control offence measures, we do not have reason to believe businesses have incurred, or will incur, familiarisation or implementation costs with respect to this measure. This has some anecdotal support in that there are, relatively, far fewer queries and correspondence relating to this measure compared with measures relating to other sanctioned countries (for example, Russia and Iran).

7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?

The penalties set will vary between Member States as the underlying sanctions legislation requires that all lay down the rules on penalties applicable to infringements of the provisions of the Regulation and shall take all measures necessary to ensure that they are implemented; and what the penalties actually will be is set according to each Member States' national practice. Ultimately it will be for a court of law to determine the innocence or guilt of a company accused of deliberately breaching sanctions but there will be no cost to compliant businesses across the EU.

As noted in response to question number 6 above, this Order does not impose costs on business.

Additionally, the Export Control (Eritrea and Miscellaneous Amendments) Order 2011 is not an EU measure specifically, but it derives from obligations laid out under Council Regulation (EU) No 667/2010. Under this measure, each EU Member State is obligated to impose penalty measures.

As well as stating under Article 14 of the Council Regulation that all penalty measures should be proportionate, effective and dissuasive, all EU Member States (including the UK) have an obligation to advise the Commission of the penalty measures imposed without delay and also to notify the Commission of any subsequent amendment.

The Commission has raised no objections to the penalty measures imposed by the UK.