

Title: Export Control (Belarus) and (Syria Amendment) Order 2011 PIR No: RPC-DIT-4167(1) Original IA/RPC No: Lead department or agency: Department for International Trade Other departments or agencies: HM Revenue and Customers	Post Implementation Review
	Date: 18 May 2017
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 5 September 2011
	Recommendation: Keep
Contact for enquiries: Peter Monday	RPC Opinion: Fit for Purpose

1. What were the policy objectives of the measure?

Sanctions against Belarus

The principal policy purpose of the [Export Control \(Belarus\) and \(Syria Amendment\) Order 2011](#) (the “measure”) was to introduce criminal penalties for UK exporters acting in breach of the restrictive measures which were introduced in 2011 to prevent illegal trade in controlled goods (i.e. military equipment) from the EU to Belarus.

Sanctions on Belarus remain in force across all EU Member States as of May 2017. Failure to set down such rules then or now would be in breach of EU law and expose the UK to the risk of infraction proceedings which could be instigated by the EU Commission.

The UK policy objective in setting the required penalty measures was to introduce effective, proportionate and dissuasive penalties, in line with the obligations set by [Council Regulation \(EU\) No 765/2006](#) (the ‘Belarus Regulation’) as principally amended by [Council Regulation \(EU\) No 588/2011](#) (the ‘amending Belarus Regulation’)¹.

The penalties set for infringements of the Belarus Regulation are equivalent to export control offences under UK domestic law.

It should be noted that this review relates to the measure itself 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 legislation².

Sanctions against Syria

Article 9 of the Order only requires review of Articles 1 to 8 of the Order none of which concern Syria. Therefore this review does not extend to the measures against Syria.

¹ [Council Regulation \(EU\) No 588/2011](#) is directly applicable and binding on all EU Member States. It amends the original [Council Regulation \(EU\) 765/2006](#) of 18 May 2006. Under Article 9 of the 2006 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”.

² The Customs and Excise Management Act 1979 - <http://www.legislation.gov.uk/ukpga/1979/2/contents>

2. What evidence has informed the PIR?

No impact assessment was conducted when the measure was originally introduced in 2011, because the obligation to introduce penalties was introduced via EU Regulation 765/2006 and was directly applicable with immediate effect upon its publication in the Official Journal of the European Union. The penalties imposed were, and continue to be, in line with other similar export control penalty measures arising from domestically legislated sanction regimes.

The following evidence has informed the review:

- The list of EU Restrictive measures (sanctions) in force (i.e. the current status of sanctions measures in the EU)
- Export control licensing statistics
- Our knowledge of the volume of correspondence and calls concerning the sanctions or penalty measures in question

The lists all the measures in force on the specified date.

The main EU Decision binding on the UK that currently imposes sanctions on Belarus is [Council Decision 2012/642/CFSP](#) which is valid until 28 February 2018. This places an embargo on arms and related material, a ban on exports of equipment for internal repression and a ban on the provision of certain services.

The main EU implementing regulation in relation to the arms embargo is the Belarus Regulation.

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 2012 and 2016, the Export Control Organisation (ECO) processed 95 export licence applications for Belarus.

79 of these cases were for Standard Individual Export Licences (SIELs), 5 of which were refused.

A further 16 applications were for Open Individual Export Licences (OIELs). Of these 16 OIEL cases, 2 applications were rejected meaning that the exporter would have needed to apply for a SIEL if they wished to pursue their intention to export the goods.

The 5 SIELs refused were for imaging cameras, NBC³ protective/defensive equipment, civil NBC protection equipment, components for NBC protective/defensive equipment, components for civil NBC protection equipment, equipment for the use of NBC protective/defensive equipment, military communications equipment, military laser protection equipment, technology for NBC protective/defensive equipment, and technology for civil NBC protection equipment.

The rejected OIELs were for direct view imaging equipment, imaging cameras, targeting equipment, weapon night sights, components for weapon control equipment, dimensional measuring equipment.

Arms export licensing statistics are published as [Official Statistics on the Gov.uk website and on the Export Control database](#).

³ Nuclear Biological Chemical

There has been little or no correspondence or queries concerning sanctions on Belarus or the associated penalties since the measure came into force.

3. To what extent have the policy objectives been achieved?

The Belarus Regulation stated that Member States “shall 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. 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 we 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) Report⁴ (*Regulatory Justice: Making Sanctions Effective*), if penalties are less than 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 September 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 costs on business (and altering the level of penalties will have no impact on them); and
- b) the requirements of the EU Regulation and existing domestic practice regarding trade sanction measures⁵ leave limited policy flexibility to consider alternative penalty regimes (i.e. it is not practical to do so).

No significant breaches of this sanction have been detected. This 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 adequate. The penalties do not impose compliance costs on business and because the measures under review are in line with other similar penalty measures for domestically-set sanctions, there is no reason to suggest the penalties are excessive⁵.

⁴ <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file44593.pdf>

⁵ 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).

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

Belarus is not a major destination for UK exports. In comparison to other sanctions legislation (for instance covering Russia and Iran) there has been no significant volume of calls or correspondence concerning these sanctions or penalty measures. We would view this as further support for 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 proportionate 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); and
- the 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: Richard Price - Chief Economist DIT

Date: 31 August 2017

Signed: Mark Garnier MP – PUSS DIT

Date: 14 September 2017

Further Information Sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

The 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 the [Belarus Regulation](#) which imposes an arms embargo on Belarus.

As explained above, the provisions in relation to Syria in the measure are not subject to this review. The Syria measures have since been updated and the principal UK legislation creating penalties in relation to the sanctions regimes on Syria is the [Export Control \(Syria Sanctions\) Order 2013](#). This is due to be reviewed in September 2018.

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 do not affect businesses unless they breach the sanctions' regime.
- The penalties are consistent 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 is supported in that there are far fewer queries and less correspondence relating to this measure compared with measures relating to other sanctioned countries (e.g. 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 [Export Control \(Belarus\) and \(Syria Amendment\) Order 2011](#) is not an EU measure specifically, but arises from obligations laid out under the Belarus Regulation as principally amended by the amending Belarus Regulation. Under the Belarus Regulation each EU Member State is obligated to impose penalty measures.

The penalties are therefore set according to each Member State's national practice. The [Belarus Regulation](#) requires that the penalties must be effective, proportionate and dissuasive and that Member States shall take all measures necessary to ensure that the Regulation is implemented and enforced. UK business will, like companies in other Member States, only incur costs if they act in breach of the underlying EU sanctions regime.

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