
STATUTORY INSTRUMENTS

2003 No. 2764

Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003

Citation and commencement

1. This Order may be cited as the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 and shall come into force on 1st May 2004.

Interpretation

2.—(1) In this Order the following expressions have the meanings given to them below, save where an expression is also defined in a Schedule where it has, for the purposes of that Schedule, that meaning—

“the Act” means the Export Control Act 2002;

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

“the Commissioners” means the Commissioners of Customs and Excise;

“the Community General Export Authorisation” means the authorisation constituted by Article 6(1) of “the Regulation” and Annex II to “the Regulation”;

“Community Licence” means an authorisation granted by a “competent authority” (whether before or after commencement of this Order) under “the Regulation”;

“competent authority” means in respect of the United Kingdom, the Secretary of State, and, in respect of another Member State, any authority empowered by that Member State to grant “exportation” or “transfer” authorisations under “the Regulation”;

“country” includes territory;

“customs and excise Acts” has the same meaning as in section 1 of the Customs and Excise Management Act 1979⁽¹⁾;

“dual-use” in relation to “goods” or “technology”, means “goods” or “technology” which can be used for both civil and military purposes, and includes any “goods” or “technology” which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

“the European Community” means the customs territory of the European Community as defined in article 3(3) of Council Regulation (EEC) No 2913/92 of 12th October 1992⁽²⁾;

“exportation” includes “shipment” as “stores” and, unless the context otherwise requires, means exportation from the United Kingdom to any destination outside the United Kingdom and the Isle of Man, except “export” in relation to the exportation from “the European Community” of dual-use “goods”, “software” and “technology”, which has the same meaning as in Article 2(b) of “the Regulation”;

⁽¹⁾ 1979 c. 2.

⁽²⁾ O.J. No. L 302, 19.10.92, p. 1. as amended by the Act of Accession of Austria, Sweden and Finland (O.J. c. 241, 29.08.1994, p. 21.)

“exporter” and other cognate expressions shall be construed accordingly;

“goods” means tangible goods, both used and unused and includes any goods on which “software” or “technology” is recorded;

“importation” and “exportation” in relation to a “vessel”, “vehicle”, submersible vehicle or “aircraft” includes the taking into or out of the United Kingdom of the “vessel”, “vehicle”, submersible vehicle or “aircraft”, notwithstanding that the “vessel”, “vehicle”, submersible vehicle or “aircraft” is conveying “goods” or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

“microprogramme” means a sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register;

“normal commercial journey” means a journey providing transport services in the ordinary course of business;

“prescribed sum” and “proper” have the same meanings as in the Customs and Excise Management Act 1979;

“programme” means a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer;

“in the public domain” means available without restriction upon further dissemination (no account being taken of restrictions arising solely from copyright);

“the Regulation” means Council Regulation (EC) No. 1334/2000 of 22nd June 2000 (as amended by the Council Regulations listed in Schedule 5 to this Order) setting up a Community regime for the control of exports of “dual-use” “goods” and “technology”(3);

“any relevant use” means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;

“scheduled journey” means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such manner that its benefits are available to members of the public from time to time seeking to take advantage of it;

“shipment”(and cognate expressions) and “stores” have the same meanings as in the Customs and Excise Management Act 1979;

“software” means one or more “programmes” or “microprogrammes” fixed in any tangible medium of expression;

“surface effect vehicle” means any air cushion “vehicle”(whether side wall or skirted) and any “vehicle” using the wing-in-ground effect for positive lift;

“technical assistance” means any technical support related to repairs, development, manufacture, assembly, testing, “use”, maintenance or any other technical service;

“technology” means information (including but not limited to information comprised in software and documents such as blueprints, manuals, diagrams and designs) that is capable of use in connection with the development, production or use of any goods;

“transfer”, in relation to any “software” or “technology”, means the “transfer by any electronic” or “transfer by non-electronic means”(or any combination of electronic and non-electronic means) from a person or place within the United Kingdom;

“transferor” and other cognate expressions shall be construed accordingly (except that where the transfer is to a destination outside “the European Community”, transferor has the same meaning as “exporter” in the definition in Article 2(c) of “the Regulation” to the extent that that definition applies);

“transfer by any electronic means”, in relation to any “software” or “technology”, means a transmission of “software” or “technology” by facsimile, telephone or other electronic media (except that oral transmission of “technology” by telephone is included only where the “technology” is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if it had been so read);

“transfer by any non-electronic means”, in relation to any “software” or “technology”, means a disclosure of “software” or “technology” by any means (or combination of means), including oral communication, other than as the “exportation” of “goods” or the “transfer by any electronic means”;

“in transit” means any “goods” imported into the United Kingdom for “transit or transshipment” and includes “goods” which only pass through “the European Community” within the meaning of Article 3(4) of “the Regulation” and “goods” being exported to another Member State which are not being exported from the United Kingdom to that other Member State within the meaning of Article 21 of “the Regulation”;

“transit or transshipment” means transit through the United Kingdom or transshipment with a view to re-exportation of the “goods” in question or transshipment of those “goods” for use as “stores”;

“vehicle” includes a railway carriage;

“vessel” includes any ship, “surface effect vehicle”, vessel of small waterplane area or hydrofoil and the hull or part of the hull of a vessel.

(2) Any reference in this Order to time after an event is a reference to a period of that length of time beginning on the day after that event.

(3) Except where this Order otherwise provides, expressions used in the Regulation which are also used in this Order have the same meaning in this Order as they have in the Regulation.

PART I

CONTROLS ON THE EXPORT OF GOODS

Export of military and certain other goods

3.—(1) Subject to the provisions of this Order, goods of a description specified in Schedule 1 to this Order are prohibited to be exported to any destination.

(2) Paragraph (1) does not prohibit the exportation of any goods in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

(3) Subject to the provisions of this Order, or any contrary provisions in a licence, a licence granted by the Secretary of State in relation to any goods specified in Schedule 1 shall also authorise the exportation or transfer of the minimum technology required for the installation, operation, maintenance and repair of the goods to the same destination as the goods.

Export of dual-use goods and end-use control

4.—(1) Subject to the provisions of this Order, goods of a description specified in Schedule 2 to this Order are prohibited to be exported to the destinations specified in that Schedule as being prohibited destinations in relation to those goods.

(2) Subject to the provisions of this Order—

- (a) goods specified in Annex I but not in Annex IV to the Regulation;
- (b) goods of a description specified in Schedule 2 to this Order; or
- (c) goods not specified in Annex I to the Regulation or Schedule 2 to this Order but for the exportation of which from the European Community an authorisation is required pursuant to:
 - (i) Article 4(1) of the Regulation; or
 - (ii) Article 4(2), (3) or (4) of the Regulation,

are prohibited to be exported to any destination in any Member State where the exporter knows at the time of exportation that the final destination of such goods is outside the European Community and no processing or working is to be performed on those goods in any Member State to which they are to be exported.

(3) Subject to the provisions of this Order, dual-use goods not listed in Annex I of the Regulation, which the exporter has grounds for suspecting are or may be intended, in their entirety or in part, for any relevant use, are prohibited to be exported to any destination outside the European Community, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.

(4) Subject to the provisions of this Order, goods of a description specified in Annex I to the Regulation, which are goods in transit, are prohibited to be exported to any destination.

(5) Subject to the provisions of this Order, paragraphs (1), (2), (3) and (4) do not prohibit the exportation of any goods in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

End-use control and goods in transit

5.—(1) Subject to the provisions of this Order, goods which are goods in transit are prohibited to be exported to any destination where—

- (a) the exporter (or, if the exporter is not within the United Kingdom, any agent of the exporter within the United Kingdom concerned in the exportation or intended exportation) has been informed by a competent authority that such goods are or may be intended, in their entirety or in part, for any relevant use; or
- (b) the exporter is aware that such goods are intended, in their entirety or in part, for any relevant use; or
- (c) the exporter has grounds for suspecting that such goods are or may be intended, in their entirety or in part, for any relevant use, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.

(2) Subject to the provisions of this Order, paragraph (1) does not prohibit the exportation of any goods in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

PART II

CONTROLS ON THE TRANSFER OF TECHNOLOGY

Electronic transfer of controlled military and certain other technology

6.—(1) Subject to the provisions of this Order, no person shall transfer by any electronic means to a person or place outside the United Kingdom any software or technology of a description specified in Schedule 1 to this Order.

(2) Paragraph (1) does not prohibit the transfer of any software or technology of a description specified in Schedule 1 to this Order in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

Electronic transfer of controlled dual-use technology and software and end-use controls

7.—(1) Subject to the provisions of this Order, no person shall transfer by any electronic means any dual-use software or technology of a description specified in Schedule 2 to this Order where the transfer is to a person or place in any destination specified in that Schedule as being a prohibited destination in relation to that software or technology.

(2) Subject to the provisions of this Order, no person shall transfer by any electronic means to a person or place in any Member State any dual-use software or technology that is either—

- (a) specified in Annex I but not in Annex IV to the Regulation;
- (b) specified in Schedule 2 to this Order; or
- (c) not specified in Annex I to the Regulation or Schedule 2 to this Order but for the transfer of which from the European Community an authorisation is required pursuant to—
 - (i) Article 4(1) of the Regulation; or
 - (ii) Article 4(2), (3) or (4) of the Regulation,

if he knows at the time of the transfer that such software or technology is intended for use outside the European Community and no processing or working is to be performed on that software or technology in any Member State to which it is to be transferred.

(3) Subject to the provisions of this Order, no person shall transfer by any electronic means any dual-use software or technology not listed in Annex 1 of the Regulation, to a person or place outside the European Community where he has grounds for suspecting that such software or technology is or may be intended, in its entirety or in part, for any relevant use, unless he has made all reasonable enquiries as to its proposed use and is satisfied that it will not be so used.

(4) Subject to the provisions of this Order—

- (a) Article 21(1) of the Regulation and paragraphs (1), (2) and (3) of this article do not prohibit the transfer of any dual-use software or technology in relation to which a licence in writing has been granted by the Secretary of State provided that all conditions attaching to the licence are complied with; and
- (b) Article 3(1) of the Regulation does not prohibit the transfer of any dual-use software or technology under the authority of the Community General Export Authorisation, or in relation to which a licence in writing has been granted by the Secretary of State or a Community Licence has been granted by any competent authority, provided that all conditions applying to that authorisation or attaching to the licence or Community Licence are complied with.

End-Use Controls on the transfer of all software and technology by any means*Electronic transfer of all software and technology and end-use controls*

8.—(1) Subject to the provisions of this Order, no person shall transfer by any electronic means any software or technology to a person or place within the United Kingdom, where—

- (a) he has been informed by the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used outside the European Community.

(2) Subject to the provisions of this Order and where paragraph (3) applies, no United Kingdom person shall transfer by any electronic means any software or technology from any place outside the European Community to—

- (a) a person or place outside the European Community; or
- (b) a person or place in any Member State, if he knows at the time of transfer that such software or technology is intended for use outside the European Community and no processing or working is to be performed on that software or technology in any Member State to which it is to be transferred.

(3) This paragraph applies where—

- (a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(4) Subject to the provisions of this Order, no United Kingdom person shall transfer by any electronic means any software or technology from any place outside the European Community to a person or place within the United Kingdom where—

- (a) he has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used outside the European Community.

(5) For the purposes of paragraphs (1) and (4) a person has reason to believe that software or technology may be used outside the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Secretary of State that it may be or is intended to be so used.

(6) Nothing in paragraph (1), (2) or (4) shall be taken to prohibit the transfer of any software or technology in the public domain.

(7) Paragraph (1), (2) or (4) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

Non-electronic transfer of all software and technology and end-use controls

9.—(1) Subject to the provisions of this Order, and where paragraph (2) applies, no person (“the person concerned”) shall transfer by any non-electronic means any software or technology to—

- (a) a person or place outside the European Community; or

- (b) a person or place in any Member State if he knows at the time of transfer that such software or technology is intended for use outside the European Community and no processing or working is to be performed on that software or technology in any Member State to which it is to be transferred.

(2) This paragraph applies where—

- (a) the person concerned has been informed by the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the person concerned is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(3) Subject to the provisions of this Order, no person shall transfer by any non-electronic means any software or technology to a person or place within the United Kingdom where—

- (a) he has been informed by the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used outside the European Community.

(4) Subject to the provisions of this Order and where paragraph (5) applies, no United Kingdom person shall transfer by any non-electronic means any software or technology from any place outside the European Community to—

- (a) a person or place outside the European Community; or
- (b) a person or place in any Member State if he knows at the time of transfer that such software or technology is intended for use outside the European Community and no processing or working is to be performed on that software or technology in any Member State to which it is to be transferred.

(5) This paragraph applies where—

- (a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(6) For the purposes of paragraph (3) a person has reason to believe that software or technology may be used outside the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Secretary of State that it may be or is intended to be so used.

(7) Nothing in paragraph (1), (3) or (4) shall be taken to prohibit the transfer of any software or technology in the public domain.

(8) Paragraphs (1), (3) and (4) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

PART III

CONTROLS ON THE PROVISION OF TECHNICAL ASSISTANCE

End-use control on technical assistance

10.—(1) Subject to paragraphs (3) and (4), no person shall directly or indirectly provide to a person or place outside the European Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which—

- (a) he has been informed by the Secretary of State is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware is intended, in its entirety or in part, for any relevant use.

(2) Subject to paragraphs (3) and (4), no United Kingdom person shall directly or indirectly provide from a place outside the European Community to any person or place outside the European Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which—

- (a) he has been informed by the Secretary of State is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware is intended, in its entirety or in part, for any relevant use.

(3) For the purposes of paragraphs (1) and (2)—

- (a) a person directly provides technical assistance if in particular he provides technical assistance or agrees to do so; and
- (b) a person indirectly provides technical assistance if in particular he makes arrangements under which another person provides technical assistance or agrees to do so.

(4) Paragraphs (1) and (2) do not prohibit the provision of any technical assistance in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

PART IV

EXCEPTIONS TO THE CONTROLS IN PARTS I, II AND III

Aircraft, Vessels, Firearms and ammunition and Goods in Transit

11.—(1) Nothing in article 4 shall be taken to prohibit the exportation of any aircraft the immediately preceding importation of which was on a scheduled journey and which is intended for further scheduled journeys.

(2) Nothing in article 3 shall be taken to prohibit the exportation of any aircraft which is being exported (except to a destination in Iran, Iraq or Libya or to a country or destination specified in Schedule 3 to this Order) after temporary importation into the United Kingdom provided there has been no change of ownership or registration since such importation and that no goods of a description specified in Schedule 1 to this Order have been incorporated into the aircraft since such importation other than by way of replacement for a component essential for the departure of the aircraft.

(3) Nothing in article 4 shall be taken to prohibit the exportation of any aircraft on a scheduled journey.

(4) Nothing in article 3 or 4 shall be taken to prohibit the exportation of any aircraft which is departing temporarily from the United Kingdom on trials.

(5) Nothing in article 3 or 4 shall be taken to prohibit the exportation of any vessel which is departing temporarily from the United Kingdom on trials.

(6) Nothing in article 3 shall be taken to prohibit the exportation of any vessel registered or constructed outside the United Kingdom which is being exported (except to a destination in Iran, Iraq or Libya or to a country or destination specified in Schedule 3 to this Order) after temporary importation into the United Kingdom provided that no goods of a description specified in Schedule 1 to this Order have been incorporated into the vessel since such importation other than by way of replacement for a component essential for the departure of the vessel.

(7) Nothing in article 4 shall be taken to prohibit the exportation of any vessel proceeding on a normal commercial journey.

(8) Nothing in article 3 shall be taken to prohibit the exportation of any firearm falling within category B, C or D of Annex I to Council Directive [91/477/EEC](#)(4), related ammunition and sight using non-electronic image enhancement for use therewith to any destination in a Member State if—

(a) the firearm, ammunition and sight using non-electronic image enhancement form part of the personal effects of a person who is in possession of—

(i) a European firearms pass which has been issued to him under section 32A of the Firearms Act 1968(5); or

(ii) a document which has been issued to him under the provisions of the law of a Member State corresponding to the provisions of that section,

which, in either case, relates to the firearm in question; and

(b) either the said pass or document issued to him contains authorisation for the possession of the said firearm from the Member State of destination and any other Member State through which the holder intends that the firearm will pass on its way to that destination, or the holder of the firearm on request satisfies the proper officer of Customs and Excise at the place of exportation—

(i) that the exportation of the firearm is necessary to enable the holder to participate in one of the activities specified in article 12(2) of that Directive;

(ii) that the firearm falls within the category appropriate to that activity in accordance with that article; and

(iii) that the exportation or passage of the firearm is not to or through a Member State which prohibits or requires an authorisation for the acquisition or possession of the said firearm.

(9) Nothing in article 3 shall be taken to prohibit the exportation of any firearm authorised to be possessed or, as the case may be, purchased or acquired by a valid firearm certificate or shot gun certificate granted under the Firearms Act 1968 or by a visitor's firearm or shot gun permit granted under section 17 of the Firearms (Amendment) Act 1988(6) or by a valid firearm certificate granted under the Firearms (Northern Ireland) Order 1981(7) or granted in the Isle of Man under the Firearms Act 1947 (an Act of Tynwald)(8) as amended by the Firearms Act 1968 (an Act of Tynwald)(9) and the Air Guns and Shot Guns, etc. Act 1968 (an Act of Tynwald)(10), related ammunition and sight using non-electronic image enhancement for use therewith—

(4) O.J. No. L 256, 13.09.91, p. 51.

(5) [1968 c. 27](#) Section 32A inserted by Firearms Act (Amendment) Regulations 1992 S.I. [1992/2823](#), regulation 5(1) amended by Firearms Amendment Act [1997 \(c. 5\)](#).

(6) [1988 c. 45](#).

(7) S.I. [1981/155 \(N. 12\)](#)

(8) Acts of Tynwald 1947, p. 586

(9) Acts of Tynwald 1968, p. 464

(10) Acts of Tynwald 1968, p. 509

- (a) to any destination in a Member State by any person or body specified in article 2(2) of that Directive, or by the holder of a firearm certificate granted under the said Act of 1947, or
- (b) to any other destination other than a destination in Iran, Iraq or Libya or to a country or destination specified in Schedule 3 to this Order,

provided that the firearm, related ammunition and sight using non-electronic image enhancement form part of the personal effects of the holder of the certificate and, in a case to which sub-paragraph (b) applies, the certificate is produced by the holder, or his duly authorised agent, with the firearm and ammunition to the proper officer of Customs and Excise at the place of exportation.

(10) Subject to article 5 and paragraph (11) below, nothing in article 3, 4(1), 4(2)(a), (b), (c)(ii) or (4) shall be taken to prohibit the exportation of any goods which are goods in transit provided that the conditions in paragraph (12) below are met.

(11) Paragraph (10) does not apply to—

- (a) anti-personnel landmines;
- (b) any goods falling within paragraph c. or g. of entry PL5001 in Part I of Schedule 1 to this Order;
- (c) components specially designed for goods falling within sub-paragraph (a);
- (d) equipment, software or technology falling within entry ML18, ML21 or ML22 in Part I of Schedule 1 to this Order specifically related to goods falling within sub-paragraph (a) or (b);
- (e) any goods being exported to a destination in Iran, Iraq, Libya or North Korea; or
- (f) any goods of a description specified in Schedule 1 to this Order being exported to any country or destination specified in Schedule 3 to this Order.

(12) The conditions are that—

- (a) the goods remain on board a vessel or aircraft for the entire period that they remain in the United Kingdom or are goods on a through bill of lading or through air waybill and in any event are exported within 30 days of their importation;
- (b) the destination of those goods following exportation from the United Kingdom has been determined in the country from which they were originally exported prior to their original exportation in connection with the transaction which has given rise to transit or transshipment and has not been changed prior to their exportation from the United Kingdom, or the goods are being returned to that country; and
- (c) the goods in question were exported from that country in accordance with any laws or regulations relating to the exportation of goods applying therein at the time of exportation of those goods.

PART V

LICENCES AND PERMITS

Licences

12.—(1) The Secretary of State may grant licences and Community Licences.

(2) Subject to Article 6(1) of the Regulation, a Community Licence is the authorisation required by—

- (a) Article 3(1) of the Regulation for the exportation or transfer from the European Community of any goods, software or technology specified in Annex I to the Regulation; or

- (b) Article 4(1), (2) and (3) of the Regulation for the exportation or transfer from the European Community, in the circumstances respectively described in those paragraphs, of any goods, software or technology not listed in Annex I to the Regulation.

(3) A licence granted by the Secretary of State is the authorisation required by Article 21(1) of the Regulation for the exportation or transfer from the United Kingdom to another Member State of any goods, software or technology specified in Annex IV to the Regulation.

(4) Any licence or Community Licence granted or issued by the Secretary of State in pursuance of this Order, may be—

- (a) either general or individual,
- (b) limited so as to expire on a specified date unless renewed, and
- (c) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised under that licence or Community Licence.

(5) Any licence or Community Licence granted under this Order, may be amended, suspended or revoked by the Secretary of State at any time and in such circumstances and on such terms as he thinks fit by serving notice to that effect on the holder of the licence or Community Licence.

(6) For the purposes of articles 3(2), (3), 4(5) and 5(2) of this Order but subject to paragraph (7) below, the exportation of goods to any destination outside the European Community shall be regarded as being under the authority of a licence granted by the Secretary of State to, or for the benefit of, a particular person only if—

- (a) he is the person on whose behalf the exportation declaration is made; and
- (b) he is established within the European Community and either—
 - (i) he is the owner of the goods or has a similar right of disposal over them; or
 - (ii) if no person who is the owner of the goods or has a similar right of disposal over them, is established within the European Community, he is a party to one or more contracts under which ownership of the goods or a similar right of disposal over them has passed to a person not established within the European Community and pursuant to which the goods are to be, are being or have been exported from the European Community.

(7) Paragraph (6) does not apply if no person falls within sub-paragraph (b) of that paragraph or if the exportation is of goods imported into the United Kingdom for transit or transhipment in respect of which the conditions in article 11(12) of this Order are met.

Registration with the Secretary of State

13.—(1) Not later than 30 days after—

- (a) any person first does any act under the authority of—
 - (i) any general licence or Community Licence granted by the Secretary of State that does not provide otherwise,
 - (ii) any individual licence granted under article 4 or 5 by the Secretary of State that does not provide otherwise, or
- (b) any person established in the United Kingdom first does any act under the authority of the Community General Export Authorisation,

the person in question shall give to the Secretary of State written notice of his name and the address at which copies of the records referred to in article 14(1) of this Order may be inspected by any person authorised by the Secretary of State or the Commissioners under article 14(4) of this Order.

(2) A person who has given to the Secretary of State written notice of particulars under paragraph (1) shall, not later than 30 days after any change in those particulars, give to the Secretary of State written notice of the changed particulars.

(3) Not later than 30 days after the first exportation or transfer of any goods, software or technology specified in Part 2 of category 5 in Annex I to the Regulation but not specified in Part I of Schedule 4 to this Order from the United Kingdom under the authority of the Community General Export Authorisation by any person, he shall (in addition to any notice given under paragraph (1)) give to the Secretary of State in relation to those goods or that software or technology written notice of such of the information specified in Part II of Schedule 4 to this Order as is in his possession and such other information as he can reasonably be expected to obtain within that time.

(4) A person who has given to the Secretary of State written notice of information under paragraph (3) shall, not later than 30 days after any change in that information, give to the Secretary of State written notice of the changed information.

Record keeping and inspection

14.—(1) Any person acting under the authority of any general licence granted under this Order shall keep detailed registers or records.

(2) The registers or records shall contain sufficient detail as may be necessary to allow the following information, where appropriate, to be identified—

- (a) a description of the goods that have been exported or the software or technology that has been transferred;
- (b) the date of the exportation or transfer;
- (c) the quantity of the goods;
- (d) the name and address of the person referred to in paragraph (1);
- (e) the name and address of any consignee of the goods;
- (f) in so far as it is known to the person referred to in paragraph (1) the name and address of the end-user of the goods, software or technology; and
- (g) any further information required to be kept by the competent authority who has authorised the exportation or transfer.

(3) Any person established in the United Kingdom who exports any goods or transfers any software or technology from the European Community under the authority of a Community Licence, and any such person who exports any goods or transfers any software or technology from the United Kingdom under the authority of the Community General Export Authorisation shall keep detailed registers or records to allow the information specified in paragraph (2) to be identified.

(4) The register or records referred to in paragraphs (1) and (3) shall be kept for at least 3 years from the end of the calendar year in which the authorised act took place and the person referred to in paragraphs (1) and (3) shall permit any such registers or records to be inspected and copied by any person authorised by the Secretary of State or the Commissioners.

(5) Any person who has been granted a Community Licence under this Order in relation to the exportation or transfer from the European Community of any goods, software or technology shall, upon request in writing by the Secretary of State or the Commissioners, produce any registers or records he may hold that relate to the application for that Community Licence and any such register or records shall be kept for at least 3 years from the end of the calendar year in which the authorised act took place and he shall permit any such registers or records to be inspected or copied by any person authorised by the Secretary of State or the Commissioners.

(6) Any person authorised by the Secretary of State or the Commissioners shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any reasonable hour to enter—

- (a) for the purpose of paragraph (4), the premises of the address which has most recently been notified to the Secretary of State under article 13; or
- (b) for the purpose of paragraph (5), any premises the address of which has been notified for this purpose by the licence holder to a competent authority when applying for a licence.

(7) Where the registers or records required to be maintained under this article are kept in a form which is not legible the exporter or transferor shall at the request of the person authorised by the Secretary of State or the Commissioners, reproduce such registers or records in a legible form.

(8) The documents and the records to be kept in accordance with Article 21(5) of the Regulation shall be the registers or records referred to in paragraph (2)(a) to (g). Paragraphs (6) and (7) and the provision in paragraph (4) relating to inspection and copying shall apply for the production of such documents and records to the competent authorities in accordance with Article 21(5) of the Regulation as they apply in respect of the inspection and copying of records referred to in paragraph (4) or (as the case may be) in respect of entry into premises for the purpose of paragraph (4).

(9) Any person who exports or transfers to another Member State any goods, software or technology listed in Part 2 of category 5 in Annex I to the Regulation but not listed in Annex IV to the Regulation shall maintain registers or records in relation to each such exportation or transfer that contain such of the information specified in Part II of Schedule 4 to this Order as he can reasonably be expected to obtain and such other of that information as comes into his possession. These registers or records shall be kept for at least 3 years from the end of the calendar year in which the authorised act took place, and he shall permit any such registers or records to be inspected and copied by any person authorised by the Secretary of State or the Commissioners. Paragraphs (6) and (7) and the provision in paragraph (4) relating to inspection and copying, shall apply to the production of such documents or records as they apply in respect of registers or records referred to in paragraph (4) or (as the case may be) in respect of entry into premises for the purpose of paragraph (4).

Licence refusals etc. and appeals

15.—(1) In the event that the Secretary of State decides not to grant a licence under this Order to any person who has applied for a licence, he shall be provided with a written notification setting out the reason or reasons for the decision.

(2) In the event that the Secretary of State decides to suspend a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) In the event that the Secretary of State decides to revoke a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(4) Any person who has a licence application refused under this Order or who has a licence suspended or revoked under article 12 of this Order shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Secretary of State, Export Control Organisation, Department of Trade and Industry, 4 Abbey Orchard Street, London SW1P 2HT.

(5) Any appeal submitted under paragraph (4) shall specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal.

(6) Pending determination of any appeal submitted under paragraph (4), any decision taken by the Secretary of State shall continue to have effect.

PART VI

GENERAL

Offences and penalties

16.—(1) Any person who contravenes a prohibition or restriction in—

- (a) article 6, 7(1), 7(2)(a), 7(2)(b) or 7(2)(c)(ii) of this Order; or
- (b) Article 3(1), 4(2), 4(3) or 21(1) of the Regulation in respect of the transfer of software and technology,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who contravenes a prohibition or restriction in—

- (a) article 4(2)(c)(i), 4(3) or 5 of this Order;
- (b) article 7(2)(c)(i), 7(3), 8(2), 8(4), 9(1), 9(4), 10(1) or 10(2) of this Order;
- (c) article 8(1) or 9(3) of this Order; or
- (d) Article 4(1) of the Regulation,

shall be guilty of an offence and may be arrested.

(3) A person guilty of an offence under paragraph (2) shall be liable—

- (a) on summary conviction to a fine of the prescribed sum or to imprisonment for a term not exceeding 6 months, or to both; or
- (b) on conviction on indictment to a fine of any amount or to imprisonment for a term not exceeding 2 years, or to both.

(4) Any person knowingly concerned in the transfer of software or technology, or in the attempted transfer of software or technology, with intent to evade any prohibition or restriction in—

- (a) article 6, 7(1), 7(2), 7(3), 8(2), 8(4), 9(1) or 9(4) of this Order;
- (b) article 8(1) or 9(3) of this Order; or
- (c) Article 3(1), 4(1), 4(2), 4(3) or 21(1) of the Regulation,

shall be guilty of an offence.

(5) Any person knowingly concerned in the provision, or attempted provision, of technical assistance related to the supply, delivery, manufacture, maintenance or use of anything, with intent to evade any prohibition or restriction in article 10 of this Order shall be guilty of an offence.

(6) A person guilty of an offence under paragraph (4) or (5) shall be liable—

- (a) on summary conviction to a fine of the prescribed sum or to imprisonment for a term not exceeding 6 months, or to both; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding 10 years, or to both.

(7) Any person who fails to comply with the requirement in Article 4(4) of the Regulation shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of the prescribed sum;
- (b) on conviction on indictment to a fine of any amount or to imprisonment for a term not exceeding two years, or to both.

(8) Any person who fails to comply with Article 21(5) or (7) of the Regulation shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(9) Any person who fails to comply with Article 9(1) of the Regulation shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale and any licence or Community Licence or permission which may have been granted by the Secretary of State, or any competent authority in connection with the application shall be void as from the time it was granted.

Misleading applications for licences

17.—(1) Where for the purpose of obtaining any licence or Community Licence or permission under this Order any person either—

- (a) makes any statement or furnishes any document or information which to his 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,

he shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction to a fine of the prescribed sum; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding 2 years, or to both,

and any licence, Community Licence or permission which may have been granted by the Secretary of State or any competent authority in connection with the application for which the false statement was made or the false document or information was furnished, shall be void as from the time it was granted.

Failure to comply with licence conditions

18.—(1) Subject to the provisions of paragraph (3), any person who—

- (a) has done any act under the authority of—
 - (i) a licence granted by the Secretary of State under this Order;
 - (ii) the Community General Export Authorisation;
 - (iii) a Community Licence granted by the Secretary of State under this Order; or
 - (iv) a Community Licence sought by or on behalf of a person in or established in the United Kingdom; and
- (b) fails to comply with—
 - (i) any conditions attaching to that licence, Community Licence or applying on the use of the Community General Export Authorisation;
 - (ii) any obligation under article 13; or
 - (iii) any obligation under article 14,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction to a fine of the prescribed sum; and
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding 2 years, or to both.

(3) No person shall be guilty of an offence under paragraph (1) where—

- (a) as the case may be—

- (i) in the case of a licence the condition in question had been previously modified by the Secretary of State; or
- (ii) in the case of a Community Licence the condition in question had been previously modified by the Secretary of State or other competent authority which granted that Community Licence; or
- (iii) in the case of the Community General Export Authorisation the condition in question had been previously modified; and
- (b) the alleged failure to comply would not have been a failure had the licence, Community Licence or Community General Export Authorisation not been so modified; and
- (c) the condition with which he failed to comply was modified, by the competent authority that granted the licence, Community Licence or Community General Export Authorisation after the doing of the act authorised by the licence, Community Licence or Community General Export Authorisation.

Customs powers to require evidence of destination

19.—(1) Any person who exports, or ships any controlled good, shall, if so required by the Commissioners, provide within such time as the Commissioners may determine evidence of the destination to which the goods were delivered and, if he fails to do so, he shall be guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Customs powers

20.—(1) Goods in relation to which a Community Licence has not been granted and which are brought to any place in the United Kingdom for the purpose of being exported, may be detained by the proper officer of Customs and Excise as if they were liable to forfeiture, if and so long as that officer has reason to believe that a competent authority (after, if necessary, having had the impending exportation brought to its attention) might inform the exporter as provided in Article 4(1), (2) or (3) of the Regulation or article 5 of this Order.

(2) Any goods, listed in Annex I to the Regulation in relation to which a Community Licence has been granted which are brought to any place in the United Kingdom for the purpose of being exported to a destination outside the European Community may be detained by the proper officer of Customs and Excise for a period of ten working days as if they were liable to forfeiture where that officer or the Secretary of State has grounds for suspicion that—

- (a) relevant information was not taken into account when the Community Licence was granted; or
- (b) circumstances have materially changed since the issue of the Community Licence, provided that the period shall be extended to 30 working days where the Secretary of State certifies that a request for such an extension in accordance with Article 12(4) of the Regulation has been received from the Member State which granted the Community Licence.

Application of the Customs and Excise Management Act 1979

21.—(1) It shall be the duty of the Commissioners to take such action as they consider appropriate to secure the enforcement of the provisions of this Order described in paragraph (3).

(2) It shall be the duty of the Commissioners to take such action as they consider appropriate to secure the enforcement of the Regulation in respect of the export of dual-use goods, software and technology.

(3) The provisions referred to in (1) are articles 3, 4, 5, 6, 7, 8, 9, 10, 17, 18 and 19 but excluding articles 8(1) and 9(3). Article 14 of this Order shall be enforced only insofar as the obligation relates to the powers of the Commissioners.

(4) Sections 145 to 148 and 150 to 152(b) and 153 to 155 of the Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties, proof and other matters) apply in relation to offences and penalties created under this Order and proceedings for such offences as they apply in relation to offences and penalties and proceedings for offences under the customs and excise Acts.

(5) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the Commissioners by virtue of paragraph (3) shall not be offences under the customs and excise Acts for the purposes of section 145 of the Customs and Excise Management Act 1979.

(6) In the case of any person who is guilty of any offence related to any prohibition or restriction in articles 3, 4 or 5 of this Order or in Article 3(1), 4(1), (2) (3) or 21(1) of the Regulation, sections 68(3)(b) and 170(3)(b) of the Customs and Excise Management Act 1979 shall have effect as if for the words “7 years” there were substituted the words “10 years”.

(7) Paragraph 6 does not apply in respect of prohibitions or restrictions on the exportation of firearms falling within section 5 of the Firearms Act 1968.

Use and disclosure of information

22.—(1) This article applies to information which is held by—

- (a) the Secretary of State, or
- (b) the Commissioners,

in connection with the operation of controls imposed by this Order or by any directly applicable Community provision on the exportation of goods, the transfer of technology or participation in the provision of services connected with the development, production or use of goods or technology.

(2) Information to which this article applies may be used for the purposes of, or for any purposes connected with—

- (a) the exercise of functions in relation to any control imposed by this Order or by any other order made under the Act;
- (b) giving effect to any European Community or other international obligation of the United Kingdom;
- (c) facilitating the exercise by an authority or international organisation outside the United Kingdom of functions which correspond to functions conferred by or in connection with any activity subject to control by this Order or any other order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this article unless the making of the disclosure is proportionate to the object of the disclosure.

(4) For the purposes of this article “information” is any information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this article shall be taken to affect any power to disclose information that exists apart from this article.

(6) The information that may be disclosed by virtue of this article includes information obtained before the commencement of this Order.

Service of notices

23. Any notice to be given to the Secretary of State by a person under this Order may be given by an agent of his; and shall be sent by post or delivered to the Secretary of State at the Export Control Organisation, Department of Trade and Industry, 4 Abbey Orchard Street, London SW1P 2HT.

Revocations

24. Subject to article 25, the Regulations specified in Schedule 6 to this Order are hereby revoked.

Transitional arrangements

25. Notwithstanding the revocation of the Regulations specified in article 24—

- (a) licences issued by the Secretary of State which have not ceased to have effect before 1st May 2004 shall continue to have effect until the same date as they would have had effect if those Regulations had not been revoked, and any licence shall be deemed on and after 1st May 2004 to have been made under this Order;
- (b) the Regulations specified in article 24 shall continue to apply in relation to any export which has occurred before 1st May 2004 and to any export which takes place on or after that date in respect of which a licence has been issued before that date.

30th October 2003

Patricia Hewitt,
Secretary of State for Trade and Industry