

2008 No. 1805

CUSTOMS

**The Trade in Goods (Categories of Controlled Goods) Order
2008**

<i>Made</i> - - - -	<i>2nd July 2008</i>
<i>Laid before Parliament</i>	<i>9th July 2008</i>
<i>Coming into force</i> - -	<i>1st October 2008</i>

The Secretary of State, in exercise of the powers conferred by sections 4, 5 and 7 of the Export Control Act 2002(a), hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Trade in Goods (Categories of Controlled Goods) Order 2008 and shall come into force on 1st October 2008.

(2) In this Order—

“the Trade Order” means the Trade in Goods (Control) Order 2003(b);

“the Embargoed Destinations Order” means the Trade in Controlled Goods (Embargoed Destinations) Order 2004(c).

Amendments to the Trade Order

2. The Trade Order is amended as set out in the Schedule.

Amendments to the Embargoed Destinations Order

3. For the definition of controlled goods in article 2 of the Embargoed Destinations Order substitute—

““controlled goods” means goods used and unused, specified in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 and paragraphs 1 to 3 of Schedule 1 and paragraph 2 of Schedule 3 to the Trade in Goods (Control) Order 2003. For the avoidance of doubt “controlled goods” does not include software and technology.”.

Malcolm Wicks

Minister of State for Energy

2nd July 2008

Department for Business, Enterprise and Regulatory Reform

(a) 2002 c. 28.

(b) S.I. 2003/2765 amended by S.I. 2005/443, 2006/1331, 2006/1696, 2006/2271, 2007/3224 and 2008/639.

(c) S.I. 2004/318 amended by S.I. 2004/1049, 2004/2741, 2005/232, 2005/445, 2005/3257, 2006/300, 2006/1331, 2006/1696, 2006/2683, 2007/3224, 2007/1334 and 2007/3224.

AMENDMENTS TO THE TRADE ORDER

1. For article 1(2) (citation, commencement and extent), substitute—

“(2) Articles 3(1), 3A(1) to (3) and 4 apply to any person within the United Kingdom and articles 3(2) and 3A(4) to (6) apply to any person elsewhere who is a United Kingdom person.”.
2. In article 2(1) (interpretation)—
 - (a) in the definition of “to acquire”, omit the word “controlled”;
 - (b) after the definition of “the Act” insert—

““category A goods” means goods, both used and unused, specified in Schedule 1 to this Order. For the avoidance of doubt “category A goods” does not include software and technology;

“category B goods” means goods, both used and unused, specified in Schedule 2 to this Order. For the avoidance of doubt “category B goods” does not include software and technology;

“category C goods” means goods, both used and unused, specified in Schedule 3 to this Order, but does not include goods which are category A or B goods. For the avoidance of doubt “category C goods” does not include software and technology”;
 - (c) omit the definition of “controlled goods”;
 - (d) in the definition of “to dispose of”, omit the word “controlled”;
 - (e) omit the definition of “restricted goods”;
 - (f) in the definition of “transfer”, for the words “controlled goods” substitute “category A, B or C goods”;
 - (g) in the definition of “in transit”, for the words “controlled goods” substitute “category A, B or C goods”.
3. In article 3—
 - (a) in the heading, for the words “restricted goods” substitute “category A goods”;
 - (b) in paragraph (1), for the words “any restricted goods,” substitute “any category A goods,”;
 - (c) in paragraph (2), for the words “any restricted goods,” substitute “any category A goods,”;
 - (d) in paragraph (4A)—
 - (i) in sub-paragraph (a), for the words “restricted goods” substitute “category A goods”;
 - (ii) for sub-paragraph (b)(i) substitute—

“(i) the category A goods listed in paragraph 1 of Schedule 1.”;
 - (iii) for sub-paragraph (b)(iv) substitute—

“(iv) the category A goods in sub-paragraphs (b) to (d) of paragraph 2 and paragraph 4 of Schedule 1.”;
 - (e) in paragraph (5), for the words “restricted goods” substitute “category A goods”;
 - (f) in paragraph (6), for the words “restricted goods” substitute “category A goods”;
 - (g) in paragraph (8), for the words “restricted goods” substitute “category A goods”.
4. After article 3, insert—

“Transfer, acquisition or disposal of category B goods

3A.— (1) Subject to the provisions of this Order, no person shall—

- (a) arrange the transfer of category B goods from one third country to another third country; or
- (b) acquire or dispose, or agree to acquire or dispose, of any category B goods, where that person knows or has reason to believe that such an acquisition or disposal will or may result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no person shall—

- (a) arrange or negotiate; or
- (b) agree to arrange or negotiate,

a contract for the acquisition or disposal of any category B goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(3) Subject to the provisions of this Order, no person shall in return for a fee, commission or other consideration—

- (a) do any act; or
- (b) agree to do any act,

calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of category B goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(4) Subject to the provisions of this Order, no United Kingdom person shall—

- (a) arrange the transfer of category B goods from one third country to another third country; or
- (b) acquire or dispose, or agree to acquire or dispose, of any category B goods, where that person knows or has reason to believe that such an acquisition or disposal will or may result in the removal of those goods from one third country to another third country.

(5) Subject to the provisions of this Order, no United Kingdom person shall—

- (a) arrange or negotiate; or
- (b) agree to arrange or negotiate,

a contract for the acquisition or disposal of any category B goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(6) Subject to the provisions of this Order, no United Kingdom person shall in return for a fee, commission or other consideration—

- (a) do any act; or
- (b) agree to do any act,

calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of category B goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(7) Paragraphs (1), (2) and (3) apply to any act, or any part of any act, done in the United Kingdom.

(8) Paragraphs (4), (5) and (6) apply to any act, or any part of any act, done outside the United Kingdom or the Isle of Man.

(9) Paragraphs (1) to (6) shall not apply to any person or any United Kingdom person whose sole involvement in relation to the transfer, acquisition or disposal of any category B goods is to provide or agree to provide—

- (a) transportation services,
- (b) financing and financial services,
- (c) insurance or reinsurance services, or
- (d) general advertising or promotion services.

(10) Paragraphs (1) to (6) do not apply to any category B goods that are present in the United Kingdom or the Isle of Man unless they are goods in transit.

(11) For the purposes of paragraphs (1) to (6) category B goods that are goods in transit shall be considered to be located in a third country.

(12) Nothing in paragraphs (1) to (6) shall be taken to prohibit any activities authorised by a licence in writing granted by the Secretary of State under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.”.

5. In article 4—

- (a) in the heading, for the words “controlled goods” substitute “category C goods”;
- (b) in paragraph (1)—
 - (i) in sub-paragraph (a), for the words “controlled goods” substitute “category C goods”; and
 - (ii) in sub-paragraph (b), for the words “controlled goods” substitute “category C goods”;
- (c) in paragraph (2), for the words “controlled goods” substitute “category C goods”;
- (d) in paragraph (3), for the words “controlled goods” substitute “category C goods”;
- (e) in paragraph (4A), for the words “the controlled goods listed at paragraph 2 of Schedule 1” substitute “the category C goods listed at paragraph 2 of Schedule 3”;
- (f) in paragraph (5), for the words “controlled goods” substitute “category C goods”;
- (g) in paragraph (6), for the words “controlled goods” substitute “category C goods”;
- (h) in paragraph (7), for the words “controlled goods” substitute “category C goods”.

6. In article 7(2)—

- (a) in sub-paragraph (a), for the words “the restricted or controlled goods” substitute “the category A, B or C goods”;
- (b) in sub-paragraph (b), for the words “the restricted or controlled goods” substitute “the category A, B or C goods”;
- (c) for sub-paragraph (c), substitute—

“(c) the quantity of the category A, B or C goods;”;
- (d) in sub-paragraph (d), for the words “restricted or controlled goods” substitute “category A, B or C goods”;
- (e) in sub-paragraph (e), for the words “restricted or controlled goods” substitute “category A, B or C goods”.

7. In article 9 (offences and penalties)—

- (a) in paragraph (1), for the words “in article 3 or 4” substitute “in article 3, 3A or 4”
- (b) in paragraph (2)—
 - (i) for the words “any restricted or controlled goods” substitute “any category A, B or C goods”; and
 - (ii) for the words “in article 3(1) or 4” substitute “articles 3, 3A or 4”;

- (c) omit paragraph (3);
- (d) in paragraph (4), after the words “paragraph (2) or” omit “(3)”.

8. In article 12 (application of the Customs and Excise Management Act 1979)—

- (a) in paragraph (1), for “article 3, 4, 10, 11” substitute “articles 3, 3A, 4, 10, 11”; and
- (b) in paragraph (4), after the words “article 9(2)” omit “or (3)”.

9. In article 13(1), for the words “with the supply or delivery of restricted goods or the transfer, acquisition or disposal of controlled goods.” substitute “with the supply or delivery of category A goods or the transfer, acquisition or disposal of category B or C goods.”.

10. For Schedule 1, substitute—

“SCHEDULE 1

Article 2

CATEGORY A GOODS

The following are category A goods for the purposes of this Order:

Certain Security and Para-Military Police Equipment

1. Goods designed for the execution of human beings, as follows—

- (a) Gallows and guillotines;
- (b) Electric chairs;
- (c) Air-tight vaults made of eg steel and glass, designed for the purpose of execution of human beings by the administration of lethal gas or substance;
- (d) Automatic drug injection systems designed for the purpose of execution of human beings by the administration of a lethal chemical substance.

2. Restraints specially designed for restraining human beings, as follows—

- (a) Leg-irons, gangchains, shackles and individual cuffs or shackle bracelets except those that are ‘ordinary handcuffs’. ‘Ordinary handcuffs’ are handcuffs which have an overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 240mm when locked and have not been modified to cause physical pain or suffering;
- (b) Restraint chairs unless designed for disabled persons;
- (c) Shackle boards;
- (d) Thumb-cuffs and thumb-screws, including serrated thumb-cuffs;
- (e) Electric shock belts.

3. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (e.g., electric-shock batons, electric-shock shields, stun-guns and electric-shock dart-guns).

4. Components specially designed or modified for the devices in paragraph 3.

5. Hand-held, spiked batons.

Certain Missiles

6. Missiles capable of a range of 300km or more, and specially designed components therefor, as specified in Schedule 1, Part 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003.

Cluster munitions, explosive submunitions and explosive bomblets

7. Conventional munitions designed to disperse or release explosive submunitions (“cluster munitions”). “Cluster munitions” do not include those munitions described at paragraph 11. “Explosive submunitions” are defined in paragraph 8.

8. Conventional munitions, weighing less than 20 kilograms each, which in order to perform their task are dispersed or released by a “cluster munition” and are designed to function by detonating an explosive charge prior to, on or after impact (“explosive submunitions”). “Explosive submunitions” do not include those submunitions described at paragraph 11.

9. Conventional munitions, weighing less than 20 kilograms each, which are not self propelled and which, in order to perform their task, are specially designed to be dispersed or released by a “dispenser”, and are designed to function by detonating an explosive charge prior to, on or after impact (“explosive bomblets”). “Dispenser” means a container that is designed to disperse or release “explosive bomblets” and which is affixed to an aircraft at the time of dispersal or release.

10. Components specially designed for “cluster munitions”, “explosive submunitions” or “explosive bomblets”.

11. Paragraphs 7 and 8 do not include the following conventional munitions:

- (a) a munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
- (b) a munition or submunition designed to produce electrical or electronic effects;
- (c) a munition that has all of the following characteristics:
 - (i) each munition contains fewer than ten “explosive submunitions”;
 - (ii) each “explosive submunition” weighs more than four kilograms;
 - (iii) each “explosive submunition” is designed to detect and engage a single target object;
 - (iv) each explosive submunition is equipped with an electronic “self-destruction mechanism”. “Self-destruction mechanism” is an incorporated, automatically-functioning mechanism which is in addition to the primary initiating mechanism of the munition and which secures the destruction of the munition into which it is incorporated;
 - (v) each explosive submunition is equipped with an electronic “self-deactivating feature”. “Self-deactivating feature” is one which automatically renders a munition inoperable by means of the irreversible exhaustion of a component (e.g. a battery) that is essential to the operation of the munition.”.

11. For Schedule 2, substitute—

“SCHEDULE 2

Article 2

CATEGORY B GOODS

The following are category B goods for the purposes of this Order:

Small arms, accessories, ammunition and their specially designed components

1. Weapons and their accessories, as follows:

- (a) Smooth-bore weapons with a calibre of less than 20 mm, other firearms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories as specified in Schedule 1, Part I, to the Export of Goods, Transfer of

Technology and Provision of Technical Assistance (Control) Order 2003 under entry ML1;

- (b) Smooth-bore weapons with a calibre of at least 20 mm, but no more than 30 mm, and accessories as specified in Schedule 1, Part I, to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 under entries ML2a and ML2c.

2. Ammunition for weapons described at paragraph 1 and specified in Schedule 1, Part I, to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 under entry ML3a.

3. Components specially designed for any weapon, accessory or ammunition described at paragraphs 1 and 2.

Man-portable air defence systems, missiles for man-portable air defence systems, associated equipment and their specially designed components

4. Man-portable air defence systems (MANPADS), as follows:

- (a) Surface-to-air missile systems designed to be man-portable and carried and fired by a single individual;
- (b) Surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.

5. Missiles for MANPADS.

6. ‘Production’ equipment specially designed for MANPADS. ‘Production’ means all production stages (e.g., product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance).

7. Field test equipment specially designed for MANPADS.

8. Specialised training equipment and simulators for MANPADS.

9. Components specially designed for goods described at paragraphs 4 to 8.”

12. After Schedule 2, add Schedule 3—

“SCHEDULE 3

Article 2

CATEGORY C GOODS

The following are category C goods for the purposes of this Order:

1. Goods, used and unused, specified in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003.

2. The following goods:

- (a) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance;
- (b) Pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4);
- (c) Oleoresin capsicum (OC) (CAS 8023-77-6).”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Trade in Goods (Control) Order 2003 (“the Trade Order”) and the Trade in Controlled Goods (Embargoed Destinations) Order 2004 (“the Embargoed Destinations Order”).

The main changes to the Trade Order are as follows.

Provision is made to distinguish between three categories of military and para-military goods whose trade between one overseas country and another require controls. Article 2(1) of the Trade Order, which contains a number of definitions, is amended by paragraph 2 of the Schedule. In particular, new article 2(1) contains definitions of category A, B and C goods.

Category A goods include certain paramilitary goods relating to which there is evidence of their use in torture or other inhumane or degrading treatment, cluster munitions and certain long range missiles; see paragraph 10 of the Schedule. Article 3 of the Trade Order is amended so as to prohibit any person within the United Kingdom, or a United Kingdom person anywhere in the world, from supplying or delivering, or doing any act calculated to promote the supply or delivery of, category A goods without a licence from the Secretary of State; see paragraph 3 of the Schedule.

Category B goods include small arms and man portable air defence systems; see paragraph 11 of the Schedule. Article 3A of the Trade Order, inserted by paragraph 4 of the Schedule, prohibits any person in the United Kingdom, or a United Kingdom person anywhere in the world, from transferring, acquiring or disposing, or arranging or negotiating a contract for the acquisition or disposal of category B goods without a licence from the Secretary of State. In addition, the provisions on category B goods prohibit any person, or a United Kingdom person anywhere in the world, in return for a fee, commission or other consideration from doing any act or agreeing to do any act, without a licence, which would promote the arrangement or negotiation of a contract for the acquisition or disposal of category B goods where that person knows or has reason to believe that the goods will be moved from one third country to another third country. Persons whose sole involvement in the movement of category B goods from one overseas country to another is to provide transport, finance, insurance or general advertising or promotion services are exempt from these controls.

Category C goods include goods which fall within Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764 as amended) but which are not category A or B goods; see paragraph 12 of the Schedule. Article 4 of the Trade Order is amended so as to prohibit certain activities in relation to category C goods. These activities are the same activities as those controlled in respect of category B goods but the controls are limited to the activities of any person in the United Kingdom; see paragraph 5 of the Schedule.

By paragraph 7 of the Schedule, Article 9 of the Trade Order is amended to provide offences and penalties in relation to the prohibitions and restrictions created by this Order.

Article 12 of the Trade Order is amended to make provision for the application of the Customs and Excise Management Act 1979 in relation to the prohibitions and restrictions created by this Order; see paragraph 8 of the Schedule.

Article 3 of the Order amends the definition of controlled goods in Article 2 of the Embargoed Destinations Order by extending it to all the goods listed at Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003.

STATUTORY INSTRUMENTS

2008 No. 1805

CUSTOMS

**The Trade in Goods (Categories of Controlled Goods) Order
2008**

£3.00

© Crown copyright 2008

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E2727 7/2008 182727T 19585