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STATUTORY INSTRUMENTS

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**2008 No. 3231**

**The Export Control Order 2008**

**PART 1**

**INTRODUCTORY**

**Citation and commencement**

1. This Order may be cited as the Export Control Order 2008 and shall come into force on 6th April 2009.

**Interpretation**

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

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

“category A goods” means goods specified in Part 1 of Schedule 1;

“category B goods” means goods specified in Part 2 of Schedule 1;

“category C goods” means—

(a) military goods other than goods specified in Schedule 1;

(b) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance;

(c) pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4);

(d) oleoresin capsicum (OC) (CAS 8023-77-6);

“CEMA” means the Customs and Excise Management Act 1979(1);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“the Community General Export Authorisation” means the authorisation constituted by Article 6(1) (rules about authorisations) of and Annex II to the dual-use Regulation;

“competent authority” means the Secretary of State or any other authority that is from time to time empowered to grant authorisations under the dual-use Regulation;

“contract promotion activity” means any act calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or movement of goods or any agreement to do such an act;

“country” includes territory;

“the customs and excise Acts” has the same meaning as in section 1 of CEMA;

“the customs territory” means the customs territory described in Article 3 of [Council Regulation \(EEC\) No 2913/92](#) as amended from time to time until its repeal by [Council Regulation \(EC\) No 450/2008](#) and then the customs territory described in Article 3 of the latter Regulation as amended from time to time;

“dual-use” in relation to goods, software or technology, means usable for both civil and military purposes;

“the dual-use Regulation” means [Council Regulation \(EC\) No 1334/2000](#) as amended from time to time;

“embargoed destination” means a country listed in Part 1 or 2 of Schedule 4;

“exportation” shall be construed as follows—

- (a) unless the context otherwise requires, it only includes removal from the United Kingdom to a destination outside the United Kingdom and the Isle of Man;
- (b) it includes shipment as stores;
- (c) in relation to a vessel, vehicle, submersible vehicle or aircraft, it includes taking it out of the United Kingdom, notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power

and cognate expressions shall be construed accordingly;

“the firearms Directive” means [Council Directive 91/477/EEC\(2\)](#);

“general” in relation to a licence, means not granted to a particular person but available for use generally;

“goods subject to trade controls” means goods that are category A goods, category B goods or category C goods.

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

“information security items” means goods, software and technology specified in Part 2 of Category 5 in Annex I to the dual-use Regulation;

“licence” except in article 45(2), means a UK licence or an authorisation granted under the dual-use Regulation or the torture Regulation;

“licence user” means a person who is registered under article 28 to use a general licence or who is entitled to use a general licence without registration owing to the terms of that general licence;

“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;

“military” in relation to goods, software and technology, means listed in Schedule 2;

“payment” includes a payment in money or money’s worth or in kind whether referable to a particular act or made from time to time but does not include a payment made by way of wages or salary;

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

“proper” has the same meaning as in CEMA;

(2) OJ No L 256, 13.9.1991, p51 as amended by Directive [2008/51/EC](#) of the European Parliament and of the Council (OJ No L 179, 8.7.2008, p5).

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

“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 a 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 CEMA;

“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;

“a third country” means any country that is not the United Kingdom or the Isle of Man except that, for the purposes of Part 4 of this Order, goods that are goods in transit are considered to be located in a third country;

“the torture Regulation” means Council Regulation (EC) No 1236/2005 as amended from time to time;

“transfer”, in relation to software or technology, means transfer by electronic or non-electronic means (or any combination of electronic and non-electronic means) from a person or place within the United Kingdom to a person or place outside the United Kingdom, except in articles 10 and 11 where the limitations as to the origin and destination of the transfer do not apply, and cognate expressions shall be construed accordingly;

“transfer by electronic means”, in relation to software or technology, means transmission 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 non-electronic means”, in relation to software or technology, means 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 electronic means;

“in transit” means imported into the United Kingdom for transit or transshipment;

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

“UK controlled” in relation to dual-use goods, software and technology, means listed in Schedule 3;

“UK licence” means a licence in writing granted by the Secretary of State that authorises an act or acts that would otherwise be prohibited by this Order;

“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;

“WMD purposes” 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.

(2) Except in the definition of category C goods, tangible storage media on which military or dual-use software or technology is recorded are taken to be military or dual-use goods respectively.

(3) 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 of that event.

## PART 2

### EXPORT AND TRANSFER CONTROLS

#### **Military goods, etc.**

3. Subject to articles 13 to 18 and 26, no person shall—

- (a) export military goods; or
- (b) transfer military software or technology by electronic means.

#### **Movement of UK controlled dual-use goods, etc. to certain destinations**

4. Subject to articles 13, 14, 17, 18 and 26, no person shall—

- (a) export UK controlled dual-use goods; or
- (b) transfer UK controlled dual-use software or technology by electronic means

to a destination specified in Schedule 3 as a prohibited destination in relation to the goods, software or technology in question.

#### **Movement of UK controlled dual-use goods, etc. within the customs territory**

5.—(1) This article applies where—

- (a) a person (“the relevant person”) knows—
  - (i) that the final destination of UK controlled dual-use goods, software or technology is outside the customs territory; and
  - (ii) that no processing or working is to be performed on the goods, software or technology in question within the customs territory; and
- (b) the goods, software or technology in question are of a kind that is specified in Schedule 3 as prohibited for a particular destination or destinations rather than any destination.

(2) Subject to articles 13, 14, 17, 18 and 26, the relevant person shall not—

- (a) export the goods in question; or
- (b) transfer the software or technology in question by electronic means

to a destination within the customs territory.

#### **WMD purposes end-use control supplementing the dual-use Regulation**

6.—(1) This article applies where—

- (a) a person (“the enquirer”) has grounds for suspecting that dual-use goods, software or technology are or may be intended, in their entirety or in part, for WMD purposes; and
- (b) the goods, software or technology in question are not specified in Annex I to the dual-use Regulation.

- (2) Subject to article 26, the enquirer shall not—
  - (a) export the goods in question; or
  - (b) transfer the software or technology in question by electronic means

to a destination outside the customs territory unless, having made all reasonable enquiries as to the proposed use of the goods, software or technology in question, the enquirer is satisfied that they will not be used for WMD purposes.

### **Control on transfers within the customs territory supplementing the dual-use Regulation**

- 7.—(1) This article applies where—
  - (a) a person (“the relevant person”) knows—
    - (i) that the final destination of dual-use goods, software or technology is outside the customs territory; and
    - (ii) that no processing or working is to be performed on the goods, software or technology in question within the customs territory;
  - (b) the relevant person would only be permitted to export or transfer the goods, software or technology in question to a destination outside the customs territory to the extent authorised to do so under Article 3 (controls on listed goods) or 4 (end-use controls) of the dual-use Regulation; and
  - (c) the goods, software or technology in question are not specified in Annex IV to the dual-use Regulation.

- (2) Subject to articles 17 and 26, the relevant person shall not—
  - (a) export the goods in question; or
  - (b) transfer the software or technology in question by electronic means

to a destination within the customs territory.

### **Transit controls supplementing the dual-use Regulation**

8.—(1) Subject to articles 17 and 26, no person shall export goods specified in Annex I to the dual-use Regulation in relation to which there is no export authorisation requirement under Article 3(1) (controls on listed goods) of that Regulation because the goods are in transit.

(2) Paragraph (3) applies where a person (“the exporter”) would only be permitted to export dual-use goods—

- (a) to the extent authorised to do so under Article 4(1) (WMD purposes end-use control) of the dual-use Regulation; or
- (b) after complying with Article 4(4) (requirement to notify competent authority in the case of awareness of end-use for WMD purposes) of the dual-use Regulation,

if those provisions applied but the provisions do not apply because the goods are in transit.

- (3) Subject to article 26, the exporter shall not export the goods in question.

### **Provisions supplementing the torture Regulation**

- 9.—(1) This article applies to—
  - (a) gangchains and leg-irons specially designed for restraining human beings;
  - (b) goods within item 2.1 in Annex II to the torture Regulation (electric-shock belts); and
  - (c) goods within item 2.1 in Annex III to the torture Regulation (portable electric shock devices).

(2) Subject to article 26, no person shall export goods to which this article applies to a destination within the customs territory.

(3) Subject to article 26, no person shall export goods within paragraph (1)(a) or (c) in relation to which there is no export authorisation requirement under Article 5 (export authorisation requirement) of the torture Regulation because the goods are in transit.

#### **Transfers within the United Kingdom for WMD purposes**

**10.**—(1) This article applies where a person (“the transferor”)—

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

and knows that it may be or is intended to be used outside the customs territory or has been informed by the Secretary of State that it may be or is intended to be so used.

(2) Subject to articles 18 and 26, the transferor shall not transfer the software or technology in question to a person or place within the United Kingdom.

#### **Transfers from outside the customs territory for WMD purposes**

**11.**—(1) This article applies where a United Kingdom person (“the transferor”)—

- (a) has been informed by a competent authority that software or technology is or may be intended, in its entirety or in part, for WMD purposes; or
- (b) is aware that software or technology is intended, in its entirety or in part, for WMD purposes.

(2) Subject to articles 18 and 26, the transferor shall not transfer the software or technology in question from a place outside the customs territory to—

- (a) a destination outside the customs territory; or
- (b) a destination within the customs territory if the transferor—
  - (i) knows that the final destination of the software or technology is outside the customs territory; and
  - (ii) knows that no processing or working is to be performed on the software or technology within the customs territory,

or, if the destination is the United Kingdom, knows that the software or technology may be or is intended to be used outside the customs territory or has been informed by the Secretary of State that it may be or is intended to be so used.

#### **Transfers by non-electronic means from the United Kingdom for WMD purposes**

**12.**—(1) This article applies where a person (“the transferor”)—

- (a) has been informed by the Secretary of State that software or technology is or may be intended, in its entirety or part, for WMD purposes; or
- (b) is aware that software or technology is intended, in its entirety or in part, for WMD purposes.

(2) Subject to articles 18 and 26, the transferor shall not transfer the software or technology in question by non-electronic means to—

- (a) a destination outside the customs territory; or

- (b) a destination within the customs territory if the transferor—
  - (i) knows that the final destination of the software or technology is outside the customs territory; and
  - (ii) knows that no processing or working is to be performed on the software or technology within the customs territory.

### **Exceptions for aircraft**

**13.**—(1) Nothing in article 4 or 5 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 country or destination specified in Part 1, 2 or 3 of Schedule 4) after temporary importation into the United Kingdom provided that—

- (a) there has been no change of ownership or registration since such importation; and
- (b) no military goods 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 or 5 shall be taken to prohibit the exportation of any aircraft on a scheduled journey.

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

### **Exceptions for vessels**

**14.**—(1) 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 country or destination specified in Part 1, 2 or 3 of Schedule 4) after temporary importation into the United Kingdom provided that no military goods 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.

(2) Nothing in article 4 or 5 shall be taken to prohibit the exportation of any vessel proceeding on a journey providing transport services in the ordinary course of business.

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

### **Exception for firearms – European firearms pass**

**15.**—(1) 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 the firearms Directive, related ammunition and sight using non-electronic image enhancement for use with such a firearm to any destination in a member State if paragraphs (2) and (3) apply.

(2) This paragraph applies if the firearm, ammunition and sight using non-electronic image enhancement form part of the personal effects of a person (“the holder”) who is in possession of—

- (a) a European firearms pass which has been issued to the holder under section 32A of the Firearms Act 1968(3); or
- (b) a document which has been issued to the holder under the provisions of the law of a member State corresponding to the provisions of that section,

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(3) 1968 c. 27; section 32A was inserted by the Firearms Acts (Amendment) Regulations (S.I. 1992/2823), regulation 5(1) and amended by the Firearms Amendment Act 1997 (c. 5), Schedule 2, paragraph 6.

which, in either case, relates to the firearm.

- (3) This paragraph applies if either—
- (a) the pass or document referred to in paragraph (2) contains authorisation for the possession of the 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
  - (b) the holder on request satisfies the proper officer of Her Majesty's Revenue and Customs at the place of exportation that—
    - (i) the exportation of the firearm is necessary to enable the holder to participate in one of the activities specified in Article 12(2) (hunters and marksmen) of the firearms Directive;
    - (ii) the firearm falls within the category appropriate to that activity in accordance with that Article; and
    - (iii) 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 firearm.

#### **Exception for firearms – firearm or shot gun certificate or permit**

**16.—**(1) This article applies to firearms authorised to be possessed or, as the case may be, purchased or acquired by—

- (a) a firearm certificate or shot gun certificate granted under the Firearms Act 1968;
- (b) a visitor's firearm or shot gun permit granted under section 17 of the Firearms (Amendment) Act 1988<sup>(4)</sup>;
- (c) a firearm certificate granted under the Firearms (Northern Ireland) Order 1981<sup>(5)</sup>; or
- (d) a firearm certificate granted under the Firearms Act 1947 (an Act of Tynwald)<sup>(6)</sup> as amended by the Firearms Act 1968 (an Act of Tynwald)<sup>(7)</sup> and the Air Guns and Shot Guns, etc Act 1968 (an Act of Tynwald)<sup>(8)</sup>.

(2) Subject to paragraph (3), nothing in article 3 shall be taken to prohibit the exportation of any firearm to which this article applies, related ammunition and sight using non-electronic image enhancement for use with such a firearm to—

- (a) any destination in a member State by—
  - (i) any person or body specified in Article 2(2) (Directive not to apply in relation to armed forces, police, public authorities, collectors, etc.) of the firearms Directive; or
  - (ii) the holder of a firearm certificate within paragraph (1)(d); or
- (b) any other destination other than a country or destination specified in Part 1, 2 or 3 of Schedule 4.

(3) The exception in this article only applies if the firearm, related ammunition and sight using non-electronic image enhancement form part of the personal effects of the holder of the relevant certificate or permit and, in a case to which paragraph (2)(b) applies, the certificate or permit is produced by the holder, or the holder's duly authorised agent, with the firearm and, if carried, ammunition and sight to the proper officer of Her Majesty's Revenue and Customs at the place of exportation.

<sup>(4)</sup> 1988 c. 45; section 17 was amended by the Firearms Acts (Amendment) Regulations, regulations 6(1) and 7(1) and the Firearms Amendment Act 1997, Schedule 2, paragraph 19.

<sup>(5)</sup> S.I. 1981/155 (N.I. 2); relevant amending instruments are S.I. 1989/1338 (N.I. 10), 1992/1723 (N.I. 14).

<sup>(6)</sup> Acts of Tynwald 1947, p586.

<sup>(7)</sup> Acts of Tynwald 1968, p464.

<sup>(8)</sup> Acts of Tynwald 1968, p509.



### **Transit or transshipment exception**

17.—(1) Subject to paragraphs (2) and (3), nothing in articles 3, 4, 5, 7 or 8(1) shall be taken to prohibit the exportation of any goods which are goods in transit provided that the conditions in paragraph (4) are met.

(2) Paragraph (1) does not apply to—

- (a) anti-personnel landmines and components specially designed for them;
- (b) category A goods;
- (c) equipment, software or technology falling within entry ML18, ML21 or ML22 in Schedule 2, specifically related to anti-personnel landmines or Category A goods;
- (d) goods being exported to a destination specified in Part 1 of Schedule 4;
- (e) military goods being exported to any country or destination specified in Part 2 or 3 of Schedule 4;
- (f) category B goods being exported to any country or destination specified in Part 4 of Schedule 4.

(3) Paragraph (1) does not apply to the extent that—

- (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 the goods are or may be intended, in their entirety or in part, for WMD purposes;
- (b) the exporter is aware that the goods are intended, in their entirety or in part, for WMD purposes; or
- (c) the exporter has grounds for suspecting that the goods are or may be intended, in their entirety or in part, for WMD purposes, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.

(4) The conditions are that—

- (a) the goods in question 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 before the end of the period of 30 days beginning with the date of their importation;
- (b) the destination of the goods in question 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 there at the time of exportation of the goods.

### **Software and technology exceptions**

18.—(1) Nothing in article 3, 4 or 5 shall be taken to prohibit the transfer of technology—

- (a) that is in the public domain;
- (b) that is the minimum technology required for—
  - (i) the installation, operation, maintenance or repair of goods or software that are not military goods or software or UK controlled dual-use goods or software; or
  - (ii) a patent application; or

(c) in the course of basic scientific research.

(2) Nothing in article 10, 11 or 12 shall be taken to prohibit the transfer of software or technology in the public domain.

(3) In this article, “basic scientific research” means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts and not primarily directed towards a specific practical aim or objective.

## PART 3

### TECHNICAL ASSISTANCE CONTROLS

#### End-use control on technical assistance

**19.**—(1) Subject to article 26, no person shall directly or indirectly provide to a person or place outside the customs territory any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which—

- (a) that person has been informed by the Secretary of State is or may be intended, in its entirety or in part, for WMD purposes; or
- (b) that person is aware is intended, in its entirety or in part, for WMD purposes.

(2) Subject to article 26, no United Kingdom person shall directly or indirectly provide from a place outside the customs territory to any person or place outside the customs territory any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which—

- (a) that person has been informed by the Secretary of State is or may be intended, in its entirety or in part, for WMD purposes; or
- (b) that person is aware is intended, in its entirety or in part, for WMD purposes.

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

- (a) directly providing technical assistance includes providing technical assistance or agreeing to do so; and
- (b) indirectly providing technical assistance includes making arrangements under which another person provides technical assistance or agrees to do so.

## PART 4

### TRADE CONTROLS

#### Embargoed destinations

**20.**—(1) This article applies to—

- (a) persons carrying out activities in the United Kingdom; and
- (b) United Kingdom persons.

(2) Subject to articles 25 and 26, no person to whom this article applies shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of

any goods subject to trade controls from one third country to another third country that is an embargoed destination.

### **Category A goods**

**21.**—(1) This article applies to—

- (a) persons carrying out activities in the United Kingdom; and
- (b) United Kingdom persons.

(2) Subject to articles 24, 25 and 26, no person to whom this article applies shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of

any category A goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.

### **Category B goods**

**22.**—(1) This article applies to—

- (a) persons carrying out activities in the United Kingdom; and
- (b) United Kingdom persons.

(2) Subject to paragraphs (3), (4) and (7) and to articles 25 and 26, no person to whom this article applies shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of

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

(3) Nothing in this article shall be taken to prohibit the provision of—

- (a) financing or financial services;
- (b) insurance or reinsurance services; or
- (c) general advertising or promotion services

by a person whose only involvement in the activities described in paragraph (2) is to provide or agree to provide such services.

(4) A person (“the transporter”) whose only involvement in the activities described in paragraph (2) is to provide or agree to provide transportation services in relation to category B goods (“the relevant goods”) only contravenes the prohibition in this article if paragraph (5) or (6) applies.

(5) This paragraph applies if the transporter arranges the removal of the relevant goods from one third country to another third country.

(6) This paragraph applies if the transporter, otherwise than in the course of providing services to another person—

- (a) to whom this article applies; and
- (b) who has agreed to provide transportation services in relation to the relevant goods,

removes or agrees to remove the relevant goods from one third country to another third country.

(7) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out otherwise than for payment.

### **Category C goods**

**23.**—(1) Subject to paragraphs (2) and (3) and to articles 24, 25 and 26, no person shall directly or indirectly—

- (a) agree to supply or deliver; or
- (b) do any act calculated to promote the supply or delivery of

any category C goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.

(2) Nothing in this article shall be taken to prohibit the provision of—

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

by a person whose only involvement in the activities described in paragraph (1) is to provide or agree to provide such services.

(3) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out otherwise than for payment.

### **Exception for movement of goods within the customs territory**

**24.** Nothing in article 21 or 23 shall be taken to prohibit activities related to the movement of the following goods within the customs territory—

- (a) the goods listed in paragraph 1 of Schedule 1;
- (b) individual cuffs;
- (c) shackles except those shackles which have an overall dimension including chain, when measured from the outer edge of one cuff to the outer edge of the other cuff, of between 240mm and 280mm when locked and have not been modified to cause physical pain or suffering;
- (d) the goods listed in paragraphs 2(b), (c) and (d) and 4 of Schedule 1;
- (e) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance;
- (f) pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4);
- (g) oleoresin capsicum (OC) (CAS 8023-77-6).

### **Exception for activities carried out in the Isle of Man**

**25.** Nothing in this Part shall be taken to prohibit activities carried out in the Isle of Man.

## PART 5

### LICENCES, ETC.

#### **Licences**

**26.**—(1) Nothing in Part 2, 3 or 4 prohibits an activity that is carried out under the authority of a UK licence.

(2) Unless it provides otherwise, a UK licence to export military goods also authorises the export or transfer of the minimum technology required for the installation, operation, maintenance and repair of the goods to the same destination as the goods.

(3) A UK licence to supply or deliver goods subject to trade controls also authorises—

- (a) agreeing to supply or deliver; or
- (b) doing any act calculated to promote the supply or delivery of

the goods.

(4) For the purposes of Article 6 (rules about authorisations) of the dual-use Regulation, the Secretary of State is empowered to grant authorisations.

(5) The authorisation required by Article 21(1) (exportation or transfer of sensitive items within the customs territory) of the dual-use Regulation for exportation or transfer of goods, software or technology from the United Kingdom is a licence granted by the Secretary of State.

(6) A licence granted by the Secretary of State may be—

- (a) either general or granted to a particular person (except that a licence granted under the torture Regulation may not be a general licence);
- (b) limited so as to expire on a specified date unless renewed;
- (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 by the licence.

#### **Person authorised by UK licence to export goods**

**27.**—(1) For the purpose of article 26(1), but subject to paragraph (2) below, the exportation of goods to any destination outside the customs territory shall be regarded as being under the authority of a UK licence to, or for the benefit of, a particular person (“the licence holder”) only if—

- (a) the licence holder is the person on whose behalf the exportation declaration is made; and
- (b) the licence holder is established within the customs territory and either—
  - (i) the licence holder 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 customs territory, the licence holder is a party to one or more contracts under which the ownership of the goods or a similar right of disposal over them has passed to a person not established within the customs territory and pursuant to which the goods are to be, are being or have been exported from the customs territory.

(2) Paragraph (1) 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.

#### **Registration with the Secretary of State**

**28.**—(1) Not later than 30 days after—

- (a) any person first does any act under the authority of a general licence granted by the Secretary of State that does not provide otherwise;
- (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 their name and the address at which copies of the records referred to in article 29(1) or 30(3) of this Order or Article 16(1) (record-keeping) of the dual-use Regulation may be inspected by any person authorised by the Secretary of State or the Commissioners under article 31.

(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 notice of the changed particulars.

### **Record keeping – general**

**29.**—(1) A person who—

- (a) acts under the authority of a general licence granted by the Secretary of State; or
- (b) acts under the authority of the Community General Export Authorisation whilst established in the United Kingdom

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 in relation to each act carried out under the authority referred to in paragraph (1)—

- (a) a description of the act;
- (b) a description of the goods, software or technology to which the act relates;
- (c) the date of the act or the dates between which the act took place;
- (d) the quantity of the goods (if any) to which the act relates;
- (e) the name and address of the person referred to in paragraph (1);
- (f) the name and address of any consignee of the goods to which the act relates or any recipient of the software or technology to which the act relates;
- (g) 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 to which the act relates;
- (h) if different from the person referred to in paragraph (1), the name and address of the supplier of the goods (if any) to which the act relates;
- (i) any further information required by the licence or authorisation referred to in paragraph (1).

(3) The registers or records referred to in paragraph (1) shall be kept—

- (a) in the case of a general licence authorising an activity that would otherwise be prohibited by Part 4 of this Order, for at least four years from the end of the calendar year in which the authorised act took place;
- (b) in any other case, for at least three years from the end of the calendar year in which the authorised act took place

or for such longer period as may be specified in the licence or authorisation referred to in paragraph (1).

(4) The documents and records to be kept in accordance with Article 21(5) (records of exportation and transfer of listed items within the customs territory) of the dual-use Regulation are the registers or records referred to in paragraph (2)(a) to (i).

### **Registration and record keeping – information security items**

**30.**—(1) Not later than 30 days after the first exportation or transfer of information security items not specified in Schedule 5 to this Order from the United Kingdom under the authority of the Community General Export Authorisation by any person, that person shall (in addition to any notice given under article 28(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 Schedule 5 to this Order as is in their possession and such other of that information as they can reasonably be expected to obtain within that time.

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

(3) A person who exports or transfers information security items not specified in Annex IV to the dual-use Regulation to a destination within the customs territory shall maintain registers or records in relation to each such exportation or transfer that contain such of the information specified in Schedule 5 to this Order as they can reasonably be expected to obtain and such other of that information as comes into their possession.

(4) The registers or records referred to in paragraph (3) shall be kept for at least three years from the end of the calendar year in which the exportation or transfer took place.

### **Inspection of records**

**31.**—(1) A person (“a relevant person”) who is required under article 29 or 30 of this Order or under Article 16 (record-keeping) or 21(5) (records of exportation and transfer of listed items within the customs territory) of the dual-use Regulation to keep registers, records or documents (“compulsory records”) shall permit those compulsory records to be inspected and copied by a person authorised by the Secretary of State or the Commissioners.

(2) A person authorised by the Secretary of State or the Commissioners who produces, if required to do so, a duly authenticated document showing their authority, shall have the right at any reasonable hour to enter for the purpose of paragraph (1)—

- (a) in the case of compulsory records required to be kept under article 29 or 30 of this Order, the premises the address of which has been most recently notified to the Secretary of State under article 28 in relation to the records; or
- (b) in the case of compulsory records required to be kept under Article 16 or 21(5) of the dual-use Regulation, the premises the address of which has been most recently notified to the Secretary of State under article 28 in relation to the records or, if none, such other premises the address of which has been notified for this purpose.

(3) Where a relevant person keeps compulsory records in a form which is not legible, the relevant person shall at the request of a person authorised by the Secretary of State or the Commissioners reproduce the relevant records in a legible form.

### **Amendment, suspension and revocation of licences**

**32.**—(1) The Secretary of State may by notice—

- (a) amend, suspend or revoke a licence granted by the Secretary of State;
- (b) suspend or revoke a general licence granted by the Secretary of State as it applies to a particular licence user.

(2) A notice by the Secretary of State under paragraph (1), under Article 9(2) (suspension, revocation, etc. of authorisations) of the dual-use Regulation or under Article 9(4) (suspension, revocation, etc. of authorisations) of the torture Regulation shall not take effect until—

- (a) in the case of a notice affecting all users of a general licence, it has been published in a manner appearing to the Secretary of State to be suitable for securing that the notice is seen by persons likely to be affected by it;
- (b) in any other case, it has been served on the holder of the licence or on the licence user affected.

### **Licence refusals, etc. and appeals**

**33.**—(1) In the event that the Secretary of State decides not to grant a licence to any person who has applied for one, the applicant 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 other than a general licence, or to suspend a general licence as it applies to a particular licence user, the licence holder or licence user 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 other than a general licence, or to revoke a general licence as it applies to a particular licence user, the licence holder or licence user shall be provided with a written notification setting out the reason or reasons for the decision.

(4) In the event that the Secretary of State decides to amend a licence other than a general licence, and does not do so at the request of the licence holder, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(5) Any person who has a right under any of paragraphs (1) to (4) to a written notification in respect of a decision made by the Secretary of State shall have 28 days beginning with the date of the written notification in which to submit an appeal against the decision in writing to the Secretary of State, Export Control Organisation, Department for Business, Enterprise and Regulatory Reform.

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

(7) Pending determination of any appeal submitted under paragraph (5), any decision taken by the Secretary of State shall continue to have effect.

## **PART 6**

### **OFFENCES, ENFORCEMENT AND PENALTIES**

#### **Offences relating to prohibitions in Parts 2, 3 and 4**

**34.**—(1) Subject to paragraphs (2) and (7), a person who contravenes a prohibition in Part 2 or 4 of this Order commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person who—

- (a) did not know, and had no reason to suppose, that the goods referred to in article 20 were destined for an embargoed destination; and
- (b) is able to show the matters stated in sub-paragraph (a)

shall not be guilty of an offence under paragraph (1) by reason of a contravention of the prohibition in article 20.

(3) A person who contravenes a prohibition in Part 2 or 3 of this Order that is engaged because the person—

- (a) has been informed;



- (b) is aware; or
- (c) has grounds for suspecting

that goods, software or technology are or may be intended, in their entirety or in part, for WMD purposes commits an offence and may be arrested.

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

- (a) on summary conviction—
  - (i) in England and Wales or Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both;
  - (ii) in Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.

(5) Subject to paragraph (7), a person knowingly concerned in activity prohibited by Part 2, 3 or 4 of this Order with intent to evade the relevant prohibition commits an offence and may be arrested.

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

- (a) on summary conviction—
  - (i) in England and Wales or Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both;
  - (ii) in Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding ten years, or to both.

(7) Paragraphs (1) and (5) do not create offences related to prohibitions on the exportation of goods (as to which see CEMA).

(8) In paragraphs (4)(a)(i) and (6)(a)(i) as they apply to England and Wales in the case of an offence committed before section 154(1) of the Criminal Justice Act 2003<sup>(9)</sup> comes into force, for “twelve months” substitute “six months”.

### **Offences relating to prohibitions and restrictions in the dual-use Regulation**

**35.**—(1) Subject to paragraph (8), a person who contravenes a prohibition or restriction in Article 3(1) (controls on listed goods), 4(2) (military end-use control), 4(3) (end-use control relating to use in items exported or transferred without authorisation) or 21(1) (exportation or transfer of sensitive items within the customs territory) of the dual-use Regulation commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (2) A person who—
  - (a) contravenes a prohibition or restriction in Article 4(1) (WMD purposes end-use control) of the dual-use Regulation; or
  - (b) fails to comply with the requirement in Article 4(4) (requirement to notify competent authority in the case of awareness of end-use for WMD purposes) of the dual-use Regulation

commits an offence and may be arrested.

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

- (a) on summary conviction—

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<sup>(9)</sup> 2003 c. 44; at the date of this Order, section 154(1) had not been commenced.

- (i) in England and Wales or Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both;
  - (ii) in Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.
- (4) Subject to paragraph (8), a person knowingly concerned in an activity prohibited or restricted by Article 3(1), 4(1), 4(2), 4(3) or 21(1) of the dual-use Regulation with intent to evade the relevant prohibition or restriction commits an offence and may be arrested.
- (5) A person guilty of an offence under paragraph (4) shall be liable—
- (a) on summary conviction—
    - (i) in England and Wales or Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both;
    - (ii) in Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; or
  - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding ten years, or to both.
- (6) A person who fails to comply with Article 9(1) (provision of relevant information for licence applications) of the dual-use Regulation commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and any licence which may have been granted in connection with the application shall be void as from the time it was granted.
- (7) A person who fails to comply with Article 16 (record-keeping), 21(5) (records of exportation and transfer of listed items within the customs territory) or 21(7) (requirement in relation to commercial documents for exportation and transfer of listed items within the customs territory) of the dual-use Regulation commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) Paragraphs (1) and (4) do not create offences related to prohibitions or restrictions on the exportation of goods from the United Kingdom (as to which see CEMA).
- (9) In paragraphs (3)(a)(i) and (5)(a)(i) as they apply to England and Wales in the case of an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, for “twelve months” substitute “six months”.

### **Offences relating to prohibitions and restrictions in the torture Regulation**

**36.**—(1) A person who contravenes a prohibition or restriction in Article 3(1) (export prohibition) of the torture Regulation in respect of the supply of technical assistance as defined in the torture regulation commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person knowingly concerned in the provision of technical assistance as defined in the torture Regulation with intent to evade the prohibition on the provision of technical assistance in article 3(1) of the torture Regulation commits an offence and may be arrested.

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

(a) on summary conviction—

- (i) in England and Wales or Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both;
- (ii) in Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding ten years, or to both.

(4) A person who contravenes a prohibition or restriction in Article 4(1) (import prohibition) of the torture Regulation in respect of the acceptance of technical assistance as defined in the torture Regulation commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) A person knowingly concerned in the acceptance of technical assistance as defined in the torture Regulation with intent to evade the prohibition on the acceptance of technical assistance in article 4(1) of the torture Regulation commits an offence and may be arrested.

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

(a) on summary conviction—

(i) in England and Wales or Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both; or

(ii) in Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both; or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.

(7) A person who fails to comply with Article 8(2) (provision of relevant information for licence applications) of the torture Regulation commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and any licence which may have been granted in connection with the application shall be void as from the time it was granted.

(8) In paragraph (3)(a)(i) as it applies to England and Wales in the case of an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, for “twelve months” substitute “six months”.

### **Misleading applications for licences**

**37.—**(1) Where for the purpose of obtaining a licence a person (“the applicant”) either—

(a) makes a statement or furnishes a document or information which to the applicant’s knowledge is false in a material particular; or

(b) recklessly makes a statement or furnishes a document or information which is false in a material particular

the applicant commits an offence and any licence that has been granted in connection with the application for which the false statement was made or the false document or information was furnished is void as from the time it was granted.

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

(a) on summary conviction—

(i) in England and Wales or Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both;

(ii) in Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both; or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.

**Failure to comply with licence conditions**

**38.**—(1) A person who, having acted under the authority of a licence or the Community General Export Authorisation, fails to comply with—

- (a) any of the requirements or conditions to which the licence or the Community General Export Authorisation is subject; or
- (b) any obligation under article 28, 29, 30 or 31

commits an offence unless paragraph (2) applies.

(2) This paragraph applies if—

- (a) the licence was modified after the completion of the act authorised; and
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified.

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

- (a) on summary conviction—
  - (i) in England and Wales or Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both;
  - (ii) in Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.

**Customs powers to require evidence of destination**

**39.**—(1) This article applies where a person (“the exporter”) has exported goods and required a licence to do so.

(2) The Commissioners may require the exporter to provide within such time as the Commissioners may determine evidence of the destination to which the goods in question were delivered.

(3) A person who fails to comply with a requirement imposed by the Commissioners under paragraph (2) commits an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**Customs powers relating to dual-use goods**

**40.**—(1) Goods in relation to which a 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 Her Majesty’s Revenue and Customs 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—

- (a) that the goods are or may be intended, in their entirety or in part, for WMD purposes; or
- (b) as provided in Article 4(2) (military end-use control) or 4(3) (end-use control relating to use in items exported or transferred without authorisation) of the dual-use Regulation.

(2) Any goods listed in Annex I to the dual-use Regulation in relation to which a 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 customs territory may be detained by a proper officer of Her Majesty’s Revenue and Customs 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 licence was granted; or

(b) circumstances have materially changed since the issue of the 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) (customs procedures) of the dual-use Regulation has been received from the member State which granted the licence.

(3) In this article, “working day” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971(10) in the part of the United Kingdom where the goods referred to in paragraph (2) have been detained.

### **Application of CEMA in respect of offences**

**41.**—(1) Where the Commissioners for Her Majesty’s Revenue and Customs investigate or propose to investigate any matter with a view to determining—

- (a) whether there are grounds for believing that an offence has been committed by reason of a contravention of—
  - (i) article 3, 4, 5, 6, 7, 8, 9, 11, 12, 19, 20, 21, 22, 23, 37, 38 or 39 of this Order;
  - (ii) article 31 of this Order so far as it relates to the powers of the Commissioners;
  - (iii) the dual-use Regulation; or
  - (iv) the torture Regulation; or
- (b) whether a person should be prosecuted for such an offence,

the matter shall be treated as an assigned matter.

(2) Section 77A of CEMA (provision as to information powers)(11) shall apply to a person concerned in an activity which, if not authorised by a licence, would contravene—

- (a) article 3, 4, 5, 6, 7, 8, 9, 11, 12, 19, 20, 21, 22 or 23 of this Order;
- (b) the dual-use Regulation; or
- (c) the torture Regulation,

and accordingly references in section 77A of CEMA to exportation shall be read as including any such activity.

(3) Section 138 of CEMA (provision as to arrest of persons)(12) shall apply to the arrest of a person for an offence under this Order as it applies to the arrest of a person for an offence under the customs and excise Acts.

(4) Sections 145(13), 146(14), 146A(15), 147(16), 148, 150(17), 151(18), 152(19), 154(20), and 155(21) of CEMA (proceedings for offences, mitigation of penalties, proof and other matters) shall

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(10) 1971 c. 80.

(11) Section 77A was inserted by the Finance Act 1987 (c. 16), section 10 and amended by the Customs and Excise (Single Market etc.) Regulations 1992 (S.I. 1992/3095), Schedule 1, paragraph 7.

(12) Section 138 was amended by the Police and Criminal Evidence Act 1984 (c. 60), sections 114(1) and 119, Schedule 6, paragraph 37 and Schedule 7, Part 1; by the Finance Act 1988 (c. 39), section 11; by the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341), article 90(1) and Schedule 6, paragraph 9; and by the Serious Organised Crime and Police Act 2005 (c. 15), Schedule 7, paragraph 54.

(13) Section 145 was amended by the Police and Criminal Evidence Act 1984, section 114(1); and by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraphs 20 and 23.

(14) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 22.

(15) Section 146A was inserted by the Finance Act 1989 (c. 26), section 16(1) and amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 24.

(16) Section 147 was amended by the Magistrates’ Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 176; by the Criminal Justice Act 1982 (c. 48), sections 77 and 78, Schedule 14, paragraph 42 and Schedule 16; and by the Finance Act 1989, section 16(2).

(17) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25.

(18) Section 151 was amended by the Magistrates’ Courts Act 1980, section 154 and Schedule 7, paragraph 177.

apply in relation to offences and penalties under this Order as they apply in relation to offences and penalties under the customs and excise Acts.

(5) For the purposes of the application of section 145 of CEMA to this Order, only offences related to contraventions of the provisions referred to in paragraph (1)(a) are offences under the customs and excise Acts.

### **Increase of maximum penalty for prohibited exportation provided for in CEMA**

**42.** In the case of an offence committed in connection with a prohibition or restriction on exportation in Part 2 of this Order, the dual-use Regulation or the torture Regulation, sections 68(3)(b) and 170(3)(b)(22) of CEMA shall have effect as if for the words “7 years” there were substituted the words “10 years”.

## **PART 7**

### **GENERAL**

#### **Use and disclosure of information**

**43.—**(1) This article applies to information which is held from time to time by the Secretary of State or the Commissioners in connection with the operation of controls imposed by

- (a) this Order; or
- (b) any directly applicable Community provision on the export of goods, the transfer of software or technology, participation in the provision of technical assistance, or activities which facilitate, or are otherwise connected with, the acquisition, disposal or movement of goods.

(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 Export Control Act 2002;
- (b) giving effect to any Community provision 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 Export Control Act 2002,

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 affect any power to disclose information that exists apart from this article.

(19) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 52, Schedule 4, paragraphs 20 and 26 and Schedule 5.

(20) Section 154 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 23.

(21) Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20, 21 and 27.

(22) Sections 68(3)(b) and 170(3)(b) were amended by the Finance Act 1988 (c. 39), section 12(1), (6).

(6) The information that may be disclosed by virtue of this article includes information obtained before this Order came into force.

### **Service of notices**

**44.** Any notice to be given to the Secretary of State by a person under this Order may be given by an agent of that person; and shall be sent by post or delivered to the Secretary of State at the Export Control Organisation, Department for Business, Enterprise and Regulatory Reform.

### **Revocations and transitional arrangements**

**45.—**(1) Subject to paragraphs (2) and (3), the legislation specified in column (1) of Schedule 6 is revoked to the extent specified in column (3) of that Schedule.

(2) This Order does not apply to—

- (a) any export of goods, transfer of technology or participation in the provision of technical assistance; or
- (b) any activity which facilitates, or is otherwise connected with, the acquisition, disposal or movement of goods

that takes place in accordance with the terms of a licence granted before 6th April 2009 under the legislation referred to in paragraph (1), the dual-use Regulation or the torture Regulation or to any such licence.

(3) To the extent that, owing to paragraph (2), this Order does not apply, the legislation referred to in paragraph (1) continues to apply.

15th December 2008

*Ian Pearson*  
Economic and Business Minister  
Department for Business, Enterprise and  
Regulatory Reform