
STATUTORY INSTRUMENTS

2008 No. 3231

The Export Control Order 2008

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(1); or

(1) 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.

(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,

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(2);

(c) a firearm certificate granted under the Firearms (Northern Ireland) Order 1981(3); or

(d) a firearm certificate granted under the Firearms Act 1947 (an Act of Tynwald)(4) as amended by the Firearms Act 1968 (an Act of Tynwald)(5) and the Air Guns and Shot Guns, etc Act 1968 (an Act of Tynwald)(6).

(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,

(2) 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.

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

(4) Acts of Tynwald 1947, p586.

(5) Acts of Tynwald 1968, p464.

(6) Acts of Tynwald 1968, p509.

ammunition and sight to the proper officer of Her Majesty's Revenue and Customs at the place of exportation.

Transit or transhipment 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 transhipment 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.