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STATUTORY INSTRUMENTS

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**2008 No. 3231**

**The Export Control Order 2008**

**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(1) 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—

- (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.

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

(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(2) 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

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(2) 1971 c. 80.

(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)(3) 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)(4) 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(5), 146(6), 146A(7), 147(8), 148, 150(9), 151(10), 152(11), 154(12), and 155(13) of CEMA (proceedings for offences, mitigation of penalties, proof and other matters) shall 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)(14) of CEMA shall have effect as if for the words “7 years” there were substituted the words “10 years”.

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- (3) 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.
- (4) 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.
- (5) 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.
- (6) Section 146 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 22.
- (7) 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.
- (8) 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).
- (9) Section 150 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20 and 25.
- (10) Section 151 was amended by the Magistrates' Courts Act 1980, section 154 and Schedule 7, paragraph 177.
- (11) Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 52, Schedule 4, paragraphs 20 and 26 and Schedule 5.
- (12) Section 154 was modified by the Channel Tunnel (Customs and Excise) Order 1990 (S.I. 1990/2167), article 4 and the Schedule, paragraph 23.
- (13) Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraphs 20, 21 and 27.
- (14) Sections 68(3)(b) and 170(3)(b) were amended by the Finance Act 1988 (c. 39), section 12(1), (6).