
EXPLANATORY NOTE

(This note is not part of the Order)

This Order consolidates Orders made under the Export Control Act 2002, with some changes. As a consequence the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, the Trade in Goods (Control) Order 2003, the Trade in Controlled Goods (Embargoed Destinations) Order 2004 and the Technical Assistance Control Regulations 2006 and various provisions amending them are revoked (article 45).

This Order is now where penalty and licensing provisions are to be found relating to Council Regulation (EC) No 1334/2000 (the “dual-use Regulation”) and Council Regulation (EC) No 1236/2005 (the “torture Regulation”). These cover, respectively, goods, software and technology that can be used for both civil and military purposes and goods that can be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Part 2 of the Order also supplements the directly applicable provisions of these Regulations by extending their controls, in particular to cover additional goods (see articles 4 and 5), intra-Community transfers and goods in transit (in the circumstances set out in 6, 7, 8 and 9) and different types of transfers of technology (see articles 10, 11 and 12).

Military goods, software and technology are not covered by the Community legislation so these are the subject of article 3. The list of military goods, software and technology in Schedule 2 is based on the Wassenaar Arrangement military list (the Wassenaar Arrangement is an international regime for controlling conventional arms) but national controls (listed as “PL . . .”) have been added.

The remaining provisions of Part 2 are exceptions from the controls, notably covering scheduled flights and other low-risk movements of aircraft and vessels, firearms (to the extent they are the subject of other controls pursuant to Council Directive 91/477/EEC), transit and transshipment, and transfers of software and technology that are of little concern. The extent of the transit and transshipment exception varies according to the type of goods and their destination. A change from the previous Orders is that a more extensive list of countries is subject to transit and transshipment controls in relation to a range of sensitive items including small arms and light weapons.

Part 3 contains a prohibition relating to the provision of technical assistance in relation to chemical, biological or nuclear weapons programmes.

Part 4 contains controls relating to movements of goods between countries other than the United Kingdom and the Isle of Man. The level of control varies according to the sensitivity of the goods, which are organised into three categories (A to C, A being goods with the highest level of sensitivity such as torture equipment), and category B now includes light weapons. In relation to both category A and B there are controls on United Kingdom persons acting outside the United Kingdom. However, for category B, certain ancillary activities are not covered (see article 22(3)). Transportation services are newly covered for this category but drivers, pilots etc. providing services to transport contractors already within the controls are not caught in their own right. Category C exempts transportation services completely along with other ancillary activities (see article 23(2)).

Parts 5 to 7 all relate back to the earlier provisions. Part 5 contains provisions about licences. In particular, there are provisions about record keeping by licence holders (articles 29 and 30) and inspection of the relevant records (article 31) and appeals from licensing decisions (article 33). Part 6 contains provisions about offences and the powers of Her Majesty’s Revenue and Customs who will enforce the Order. Offences relating to exportation out of the United Kingdom without a licence are dealt with in the Customs and Excise Management Act 1979 (sections 68 and 170). Part 7, as

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well as the revocations noted above, contains provisions about the use of information received in the course of operating the controls (article 43).

An Impact Assessment has been prepared in respect of this Order and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.