

2009 No. 2151

CUSTOMS

The Export Control (Amendment) (No. 3) Order 2009

Made - - - - *31st July 2009*

Laid before Parliament *4th August 2009*

Coming into force - - *27th August 2009*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to trade in dual-use items, including the transmission of software or technology in intangible form(b).

It appears to the Secretary of State that it is expedient for the references in this Order to Council Regulation (EC) No 428/2009(c), Article 4(8) of Council Regulation (EEC) No 2913/1992(d) and Article 4(19) of Council Regulation (EC) No 450/2008(e) to be construed as references to that instrument and those provisions as amended from time to time.

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, by paragraph 1A of Schedule 2 to that Act(f) and by sections 1, 4 and 7 of the Export Control Act 2002(g), makes the following Order:

Citation and commencement

1. This Order may be cited as the Export Control (Amendment) (No. 3) Order 2009 and shall come into force on 27th August 2009.

2. In this Order, the “2008 Order” means the Export Control Order 2008(h).

Amendments to the 2008 Order

3. The 2008 Order is amended as set out in the Schedule.

31st July 2009

Ian Lucas
Minister for Business and Regulatory Reform
Department for Business, Innovation and Skills

(a) 1972 c 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1).
(b) S.I. 2000/1813.
(c) OJ No L 134, 29.5.2009, p1.
(d) OJ No L 302, 19.10.1992, p.1; the relevant amending instrument is Regulation (EC) No 82/1997 of the European Parliament and of the Council (OJ No L 17, 21.1.1997, p1).
(e) OJ No L 145, 4.6.2008, p1.
(f) Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28.
(g) 2002 c. 28.
(h) S.I. 2008/3231, amended by S.I. 2009/1305 and S.I. 2009/1852.

AMENDMENTS TO THE 2008 ORDER

1. In article 2(1) (interpretation)—

- (a) for the definition of “the Community General Export Authorisation” substitute—

““the Community General Export Authorisation” has the same meaning as in Article 2(9) of the dual-use Regulation;”;
- (b) for the definition of “the dual-use Regulation” substitute—

““the dual-use Regulation” means Council Regulation (EC) No 428/2009 as amended from time to time;”;
- (c) after the definition of “military”, insert—

““non-community goods” means non-community goods described in Article 4(8) of Council Regulation (EEC) No 2913/1992 as amended from time to time until its repeal by Council Regulation (EC) No 450/2008 and then non-community goods described in Article 4(19) of the latter Regulation as amended from time to time;”.
- (d) for the definition of “transfer by electronic means”, substitute—

““transfer by electronic means”, in relation to software and technology, means transmission by facsimile, telephone or other electronic media, and includes the transmission of technology by describing it orally over the telephone;”.

2. For article 8, substitute—

“8.—(1) Subject to articles 17 and 26, no person shall export goods listed in Annex I to the dual-use Regulation where the goods in question are non-community goods which are entering and passing through the customs territory with a final destination outside the customs territory.

(2) Paragraph (3) applies where a person (“the exporter”)—

- (a) has been informed by a competent authority that dual-use goods are or may be intended, in their entirety or in part, for purposes referred to in Article 4(1) of that Regulation (WMD purposes end-use control); or
- (b) is aware that dual-use goods specified are or may be intended, in their entirety or in part, for purposes referred to in Article 4(1) of that Regulation (WMD purposes end-use control);

and the dual-use goods in question are non-community goods which are not listed in Annex I to the dual-use Regulation and which are entering and passing through the customs territory with a final destination outside the customs territory.

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

3. In article 26—

- (a) in paragraph (4), for “Article 6” substitute “Article 9”; and
- (b) in paragraph (5), for “Article 21(1)” substitute “Article 22(1)”.

4. In article 28(1), for “Article 16(1)” substitute “Article 20(1)”.

5. In article 29(4), for “Article 21(5)” substitute “Article 22(8)”.

6. In article 31—

- (a) in paragraph (1), for “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” substitute “under Article 20 (record-keeping) or 22(8) (records of exportation and transfer of listed items within the customs territory) of the dual-use Regulation”;
- (b) in paragraph (2)(b), for “under Article 16 or 21(5)” substitute “under Article 20 or 22(8)”.

7. In article 32(2), for “under Article 9(2) (suspension, revocation, etc. of authorisations) of the dual-use Regulation” substitute “under Article 13(1) (suspension, revocation, etc. of export authorisations) or (4) (suspension, revocation, etc. of authorisations for brokering services) of the dual-use Regulation”.

8. In article 35—

- (a) in paragraph (1), for “21(1)” substitute “22(1)”;
- (b) in paragraph (2), after “Article 4(1) (WMD purpose end-use control)” insert “ or Article 5(1) (brokering services)”;
- (c) in paragraph (4), for “or 21(1)” substitute “, 5(1) or 22(1)”;
- (d) in paragraph (6), for “Article 9(1) (provision of relevant information for licence applications)” substitute “Article 9(2) (provision of relevant information for export authorisation applications) or 10(2) (provision of relevant information for authorisation applications for brokering services)”;
- (e) for paragraph (7) substitute—

“A person who fails to comply with Article 20 (record-keeping), 22(8) (records of exportation and transfer of listed items within the customs territory) or 22(10) (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.”.

9. In article 40(2), for “Article 12(4)” substitute “Article 16(4)”.

10. In Part 1 of Schedule 2—

- (a) in entry ML10.e., for ““use””, substitute “use”;
- (b) in entry ML10.f., for ““use””, substitute “use”;
- (c) in entry ML17.d., for ““use””, substitute “use”;
- (d) in entry ML22, for “technology” where it last appears substitute ““technology””.

11. For Part 2 of Schedule 2, substitute —

“PART 2

EXPLOSIVE-RELATED GOODS AND TECHNOLOGY

PL8001 Explosive-related “goods” and “technology”, as follows:

- a. Equipment and devices, other than those in Part I of this Schedule or in 1A004.d., 1A005, 1A006, 1A007, 1A008, 3A229, 3A232 or 5A001.h. in Annex I to “the dual-use Regulation”, for detection of or use with “explosives” or for dealing with or protecting against “improvised explosive devices”, as follows, and specially designed components therefor:
 - 1. Electronic equipment designed to detect “explosives” or “explosive signatures”;
N.B.: See also 1A004.d. in Annex I to “the dual-use Regulation”.
Note: PL8001.a.1. does not control equipment requiring operator judgment to establish the presence of “explosives” or “explosive signatures”.
 - 2. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of “improvised explosive devices”;
N.B.: See also 5A001.h. in Annex I to “the dual-use Regulation”.
 - 3. Equipment and devices specially designed to initiate explosions by

electrical or non-electrical means, (eg, firing sets, detonators and igniters);

N.B.: See also 1A007, 1A008, 3A229 and 3A232 in Annex I to “the dual-use Regulation”.

Note: PL8001.a.3. does not control:

- a. Equipment and devices specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the initiation or creation of explosions;
- b. Pressure controlled equipment specially designed for down-hole oilfield equipment applications and which are incapable of use at atmospheric pressure; and
- c. Detonating cord.

4. Equipment and devices, including, but not limited to: shields and helmets, specially designed for the disposal of “improvised explosive devices”;

N.B.: See also 1A005, 1A006 and 5A001.h. in Annex I to “the dual-use Regulation”.

Note: PL8001.a.4. does not control bomb blankets, mechanical handling equipment for manoeuvring or exposing “improvised explosive devices”, containers designed for holding “improvised explosive devices” or objects suspected of being such devices or other equipment specially designed to temporarily protect against “improvised explosive devices” or objects suspected of being such devices.

- b. Linear cutting explosive charges other than those listed at entry 1A008 of Annex I to “the dual-use Regulation”;
- c. “Technology” “required” for the “use” of “goods” in this Part of this Schedule.”

N.B. See article 18 of this Order for exceptions from the controls on “technology”.

12. In Schedule 3—

- (a) in entry PL9005, after ““goods”” where it first appears, omit ““software””;
- (b) in entry PL9005.b., for “technology” where it last appears substitute ““technology””;
- (c) in entry PL9008.c., for “technology” where it last appears substitute ““technology””;
- (d) in entry PL9009.c., for “technology” in both places where it appears substitute ““technology””.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements in part Council Regulation (EC) No 428/2009 (“the Regulation”) which repeals Council Regulation (EC) No 1334/2000(a). It amends the Export Control Order 2008 (“the 2008 Order”) to provide for licensing, enforcement and penalties in relation to brokering services of dual-use items controlled by the Regulation. It also makes further consequential amendments and updates to the control lists appearing in the schedules to the 2008 Order.

The Regulation is based on a recast proposal designed in part to implement United Nations Security Council Resolution 1540 (2004) (“UNSCR 1540”). UNSCR 1540 establishes binding obligations on all United Nations member states to take and enforce effective measures against the proliferation of WMD, their means of delivery and related materials. To comply with these obligations, the Regulation introduces controls on brokering services and optional controls on dual-use items in transit.

The Regulation re-enacts to a large extent the provisions of Council Regulation (EC) 1334/2000, insofar as exports of dual-use goods are concerned. In particular, it replicates the controls on exports of listed goods and end-use export controls.

The Regulation also allows for member states to introduce or maintain additional controls on dual-use items in certain circumstances.

Paragraph 1 of the Schedule to the Order amends article 2 of the 2008 Order to reflect relevant changes and introduces a definition of “non-community goods”.

Paragraph 2 of the Schedule to the Order makes consequential amendments to national transit controls supplementary to the Regulation.

Paragraphs 3 to 7 of the Schedule to the Order introduce provisions relating to licences and record keeping for brokering services of dual-use goods.

Paragraph 8 of the Schedule to the Order amends article 35 of the 2008 Order to provide for offences and penalties in relation to brokering services prohibited by the Regulation.

By amending Schedule 2 Part 2 to the 2008 Order, paragraph 11 of the Schedule to the Order puts into effect changes to the control of certain items agreed by the United Kingdom as a member of the Wassenaar Arrangement, an international non-proliferation regime.

Paragraph 11 of the Schedule to the Order, along with paragraphs 10 to 12, make minor corrections to some entries in the control lists contained in the Schedules to the 2008 Order.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

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(a) OJ No L 159, 30.6.2000, p1.

STATUTORY INSTRUMENTS

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£4.00