
STATUTORY INSTRUMENTS

2003 No. 2764

**Export of Goods, Transfer of Technology and Provision
of Technical Assistance (Control) Order 2003**

**PART VI
GENERAL**

Offences and penalties

16.—(1) Any person who contravenes a prohibition or restriction in—

- (a) article 6, 7(1), 7(2)(a), 7(2)(b) or 7(2)(c)(ii) of this Order; or
- (b) Article 3(1), 4(2), 4(3) or 21(1) of the Regulation in respect of the transfer of software and technology,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who contravenes a prohibition or restriction in—

- (a) article 4(2)(c)(i), 4(3) or 5 of this Order;
- (b) article 7(2)(c)(i), 7(3), 8(2), 8(4), 9(1), 9(4), 10(1) or 10(2) of this Order;
- (c) article 8(1) or 9(3) of this Order; or
- (d) Article 4(1) of the Regulation,

shall be guilty of an offence and may be arrested.

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

- (a) on summary conviction to a fine of the prescribed sum or to imprisonment for a term not exceeding 6 months, or to both; or
- (b) on conviction on indictment to a fine of any amount or to imprisonment for a term not exceeding 2 years, or to both.

(4) Any person knowingly concerned in the transfer of software or technology, or in the attempted transfer of software or technology, with intent to evade any prohibition or restriction in—

- (a) article 6, 7(1), 7(2), 7(3), 8(2), 8(4), 9(1) or 9(4) of this Order;
- (b) article 8(1) or 9(3) of this Order; or
- (c) Article 3(1), 4(1), 4(2), 4(3) or 21(1) of the Regulation,

shall be guilty of an offence.

(5) Any person knowingly concerned in the provision, or attempted provision, of technical assistance related to the supply, delivery, manufacture, maintenance or use of anything, with intent to evade any prohibition or restriction in article 10 of this Order shall be guilty of an offence.

(6) A person guilty of an offence under paragraph (4) or (5) shall be liable—

- (a) on summary conviction to a fine of the prescribed sum or to imprisonment for a term not exceeding 6 months, or to both; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding 10 years, or to both.

(7) Any person who fails to comply with the requirement in Article 4(4) of the Regulation shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of the prescribed sum;
- (b) on conviction on indictment to a fine of any amount or to imprisonment for a term not exceeding two years, or to both.

(8) Any person who fails to comply with Article 21(5) or (7) of the Regulation shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

(9) Any person who fails to comply with Article 9(1) of the Regulation shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale and any licence or Community Licence or permission which may have been granted by the Secretary of State, or any competent authority in connection with the application shall be void as from the time it was granted.

Misleading applications for licences

17.—(1) Where for the purpose of obtaining any licence or Community Licence or permission under this Order any person either—

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or
- (b) recklessly makes any statement or furnishes any document or information which is false in a material particular,

he shall be guilty of an offence.

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

- (a) on summary conviction to a fine of the prescribed sum; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding 2 years, or to both,

and any licence, Community Licence or permission which may have been granted by the Secretary of State or any competent authority in connection with the application for which the false statement was made or the false document or information was furnished, shall be void as from the time it was granted.

Failure to comply with licence conditions

18.—(1) Subject to the provisions of paragraph (3), any person who—

- (a) has done any act under the authority of—
 - (i) a licence granted by the Secretary of State under this Order;
 - (ii) the Community General Export Authorisation;
 - (iii) a Community Licence granted by the Secretary of State under this Order; or
 - (iv) a Community Licence sought by or on behalf of a person in or established in the United Kingdom; and
- (b) fails to comply with—
 - (i) any conditions attaching to that licence, Community Licence or applying on the use of the Community General Export Authorisation;

- (ii) any obligation under article 13; or
- (iii) any obligation under article 14,

shall be guilty of an offence.

- (2) A person guilty of an offence under paragraph (1) shall be liable—
 - (a) on summary conviction to a fine of the prescribed sum; and
 - (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding 2 years, or to both.
- (3) No person shall be guilty of an offence under paragraph (1) where—
 - (a) as the case may be—
 - (i) in the case of a licence the condition in question had been previously modified by the Secretary of State; or
 - (ii) in the case of a Community Licence the condition in question had been previously modified by the Secretary of State or other competent authority which granted that Community Licence; or
 - (iii) in the case of the Community General Export Authorisation the condition in question had been previously modified; and
 - (b) the alleged failure to comply would not have been a failure had the licence, Community Licence or Community General Export Authorisation not been so modified; and
 - (c) the condition with which he failed to comply was modified, by the competent authority that granted the licence, Community Licence or Community General Export Authorisation after the doing of the act authorised by the licence, Community Licence or Community General Export Authorisation.

Customs powers to require evidence of destination

19.—(1) Any person who exports, or ships any controlled good, shall, if so required by the Commissioners, provide within such time as the Commissioners may determine evidence of the destination to which the goods were delivered and, if he fails to do so, he shall be guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Customs powers

20.—(1) Goods in relation to which a Community 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 Customs and Excise 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 as provided in Article 4(1), (2) or (3) of the Regulation or article 5 of this Order.

(2) Any goods, listed in Annex I to the Regulation in relation to which a Community 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 European Community may be detained by the proper officer of Customs and Excise 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 Community Licence was granted; or

- (b) circumstances have materially changed since the issue of the Community 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) of the Regulation has been received from the Member State which granted the Community Licence.

Application of the Customs and Excise Management Act 1979

21.—(1) It shall be the duty of the Commissioners to take such action as they consider appropriate to secure the enforcement of the provisions of this Order described in paragraph (3).

(2) It shall be the duty of the Commissioners to take such action as they consider appropriate to secure the enforcement of the Regulation in respect of the export of dual-use goods, software and technology.

(3) The provisions referred to in (1) are articles 3, 4, 5, 6, 7, 8, 9, 10, 17, 18 and 19 but excluding articles 8(1) and 9(3). Article 14 of this Order shall be enforced only insofar as the obligation relates to the powers of the Commissioners.

(4) Sections 145 to 148 and 150 to 152(b) and 153 to 155 of the Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties, proof and other matters) apply in relation to offences and penalties created under this Order and proceedings for such offences as they apply in relation to offences and penalties and proceedings for offences under the customs and excise Acts.

(5) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the Commissioners by virtue of paragraph (3) shall not be offences under the customs and excise Acts for the purposes of section 145 of the Customs and Excise Management Act 1979.

(6) In the case of any person who is guilty of any offence related to any prohibition or restriction in articles 3, 4 or 5 of this Order or in Article 3(1), 4(1), (2) (3) or 21(1) of the Regulation, sections 68(3)(b) and 170(3)(b) of the Customs and Excise Management Act 1979 shall have effect as if for the words “7 years” there were substituted the words “10 years”.

(7) Paragraph 6 does not apply in respect of prohibitions or restrictions on the exportation of firearms falling within section 5 of the Firearms Act 1968.

Use and disclosure of information

22.—(1) This article applies to information which is held by—

- (a) the Secretary of State, or
- (b) the Commissioners,

in connection with the operation of controls imposed by this Order or by any directly applicable Community provision on the exportation of goods, the transfer of technology or participation in the provision of services connected with the development, production or use of goods or technology.

(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 Act;
- (b) giving effect to any European Community 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 Act; 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 be taken to affect any power to disclose information that exists apart from this article.

(6) The information that may be disclosed by virtue of this article includes information obtained before the commencement of this Order.

Service of notices

23. Any notice to be given to the Secretary of State by a person under this Order may be given by an agent of his; and shall be sent by post or delivered to the Secretary of State at the Export Control Organisation, Department of Trade and Industry, 4 Abbey Orchard Street, London SW1P 2HT.

Revocations

24. Subject to article 25, the Regulations specified in Schedule 6 to this Order are hereby revoked.

Transitional arrangements

25. Notwithstanding the revocation of the Regulations specified in article 24—

- (a) licences issued by the Secretary of State which have not ceased to have effect before 1st May 2004 shall continue to have effect until the same date as they would have had effect if those Regulations had not been revoked, and any licence shall be deemed on and after 1st May 2004 to have been made under this Order;
- (b) the Regulations specified in article 24 shall continue to apply in relation to any export which has occurred before 1st May 2004 and to any export which takes place on or after that date in respect of which a licence has been issued before that date.