
STATUTORY INSTRUMENTS

2006 No. 1846

CUSTOMS

The Export of Radioactive Sources (Control) Order 2006

<i>Made</i>	- - - -	<i>7th July 2006</i>
<i>Laid before Parliament</i>		<i>12th July 2006</i>
<i>Coming into force</i>	- -	<i>1st October 2006</i>

In accordance with paragraph 2(1) of the Schedule to the Export Control Act 2002⁽¹⁾, export controls may be imposed under that Act in relation to any goods the exportation or use of which is capable of having a relevant consequence.

The Secretary of State has determined in accordance with paragraph 3(3) of that Schedule that an activity involving the goods controlled by the following Order is capable of having a relevant consequence, namely of leading to the carrying out anywhere in the world of (or of acts which facilitate) acts of terrorism or serious crime anywhere in the world.

Accordingly, the Secretary of State makes the following Order in exercise of the powers conferred by sections 1, 5, and 7 of the Act:

Citation and commencement

1. This Order may be cited as the Export of Radioactive Sources (Control) Order 2006 and shall come into force on 1st October 2006.

Interpretation

2. In this Order—

“the Act” means the Export Control Act 2002;

“the Commissioners” means the Commissioners of Her Majesty’s Revenue and Customs;

“controlled radioactive source” means a radionuclide of a description in column 1 of the Schedule to this Order with an activity level of that in the corresponding entry in column 2;

“customs and excise Acts” and “prescribed sum” have the same meanings as in section 1 of the Customs and Excise Management Act 1979⁽²⁾;

(1) 2002 c. 28.
(2) 1979 c. 2.

“exportation” means (except where the context otherwise requires) exportation from the United Kingdom to any destination outside the United Kingdom and the Isle of Man; “exporter” and other cognate expressions shall be construed accordingly;

“in transit” means imported into the United Kingdom for transit or transshipment; “transit or transshipment” means transit through the United Kingdom or transshipment with a view to re-exportation of the controlled radioactive sources in question.

Export of controlled radioactive sources

3.—(1) Subject to the provisions of this Order, the exportation of any controlled radioactive source is prohibited.

(2) Paragraph 1 does not prohibit the exportation of any controlled radioactive source in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

Transit exception to export control

4.—(1) Article 3(1) does not prohibit the exportation of any controlled radioactive source which is in transit provided that the conditions in paragraph 2 are met.

(2) The conditions are that—

- (a) the controlled radioactive source remains on board a vessel or aircraft for the entire period that it remains in the United Kingdom or is on a through bill of lading or through air waybill and in any event is exported within 30 days of its importation;
- (b) the controlled radioactive source was exported from the country from which it was originally exported in accordance with the laws or regulations relating to the exportation of goods applying therein at the time of the exportation of that source; and either
 - (i) the controlled radioactive source is being returned to the country from which it was originally exported; or
 - (ii) where it is not being returned to the country from which it was originally exported,
 - (aa) the destination of that controlled radioactive source following exportation from the United Kingdom has been determined in the country from which it was originally exported prior to its original exportation;
 - (bb) the destination was determined in connection with the transaction which has given rise to transit or transshipment; and
 - (cc) the destination has not been changed prior to its exportation from the United Kingdom.

Licences

5.—(1) A licence granted by the Secretary of State under this Order, may be—

- (a) either general or individual,
- (b) limited so as to expire on a specified date unless renewed, and
- (c) subject to, or without, conditions and any condition may require any act or omission before or after the doing of the act authorised under that licence.

(2) A licence granted under this Order may be amended, suspended or revoked by the Secretary of State at any time and in such circumstances and on such terms as he thinks fit by serving notice to that effect on the holder of the licence.

(3) For the purposes of article 3(2) of this Order, the exportation of a controlled radioactive source to any destination outside the European Community shall be regarded as being under the authority of a licence granted by the Secretary of State to, or for the benefit of, a particular person only if—

- (a) he is the person on whose behalf the exportation declaration is made; and
- (b) he is established within the European Community and either—
 - (i) he is the owner of the controlled radioactive source or has a similar right of disposal over it; or
 - (ii) if no person who is the owner of the controlled radioactive source or has a similar right of disposal over it, is established within the European Community,
 - (aa) he is a party to one or more contracts under which ownership of it or a similar right of disposal over it has passed to a person not established within the European Community; and
 - (bb) the controlled radioactive source is to be, is being or has been exported from the European Community pursuant to that contract or contracts.

Registration with Secretary of State

6.—(1) No later than 30 days after a person first does any act under the authority of any general licence granted by the Secretary of State that does not provide otherwise, that person shall give to the Secretary of State written notice of his name and the address at which copies of the records referred to in article 7(1) of this Order may be inspected.

(2) A person who has given to the Secretary of State written notice of particulars under paragraph (1) shall, not later than 30 days after any change in those particulars, give to the Secretary of State written notice of the changed particulars.

Record keeping and inspection

7.—(1) A person acting under the authority of any general licence granted under this Order shall keep registers or records.

(2) The registers or records shall contain sufficient detail as may be necessary to allow the following information, where appropriate, to be identified—

- (a) a description of the controlled radioactive source that has been exported;
- (b) the date of the exportation;
- (c) the quantity of the controlled radioactive source;
- (d) the name and address of the person referred to in paragraph (1);
- (e) the name and address of any consignee of the controlled radioactive source;
- (f) in so far as it is known to the person referred to in paragraph (1) the name and address of the end-user of the controlled radioactive source; and
- (g) any further information required to be kept by virtue of the licence.

(3) The register or records referred to in paragraph (1) shall be kept for at least 3 years from the end of the calendar year in which the authorised act took place and the person referred to in paragraph (1) shall permit any such registers or records to be inspected and copied by any person authorised by the Secretary of State or the Commissioners.

(4) A person authorised by the Secretary of State or the Commissioners shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any reasonable hour to enter for the purpose of paragraph (3), the premises of the address which has most recently been notified to the Secretary of State under article 6.

(5) Where the registers or records required to be maintained under this article are kept in a form which is not legible the exporter shall at the request of the person authorised by the Secretary of State or the Commissioners, reproduce such registers or records in a legible form.

Licence refusals etc. and appeals

8.—(1) If the Secretary of State decides not to grant a licence under this Order he shall provide the person who has applied for a licence with a written notification setting out the reason or reasons for the decision.

(2) If the Secretary of State decides to suspend a licence that has been granted under this Order, he shall provide the licence holder with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) If the Secretary of State decides to revoke a licence that has been granted under this Order, he shall provide the licence holder with a written notification setting out the reason or reasons for the decision.

(4) A person who has a licence application refused under this Order or who has a licence suspended or revoked under article 5 of this Order may not later than 28 days beginning with the date of the written notification submit an appeal in writing to the Secretary of State.

(5) An appeal submitted under paragraph (4) shall specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal.

(6) Pending determination of an appeal submitted under paragraph (4), any decision taken by the Secretary of State shall continue to have effect.

Misleading applications for licences

9.—(1) Where for the purpose of obtaining any licence under this Order a 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 which may have been granted by the Secretary of State 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

10.—(1) Subject to the provisions of paragraph (3), a person who—

- (a) has done any act under the authority of a licence granted by the Secretary of State under this Order; and
- (b) fails to comply with—
 - (i) any conditions attaching to that licence;
 - (ii) any obligation under article 6; or
 - (iii) any obligation under article 7,

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 in the case of a licence—
 - (a) the condition in question has been modified by the Secretary of State;
 - (b) the alleged failure to comply would not have been a failure had the licence not been so modified; and
 - (c) the condition was modified after the doing of the act authorised by the licence.

Customs powers to require evidence of destination

11.—(1) Any person who exports any controlled radioactive source, shall, if so required by the Commissioners, provide within such time as the Commissioners may determine evidence of the destination to which the controlled radioactive source was 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.

Application of the Customs and Excise Management Act 1979

12.—(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 (2).

(2) The provisions referred to in paragraph (1) are articles 3, 9, 10 and 11 and article 7 insofar as the obligation relates to the powers of the Commissioners.

(3) 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 (2) shall not be offences under the customs and excise Acts for the purposes of section 145 of the Customs and Excise Management Act 1979.

(4) In the case of any person who is guilty of any offence related to any prohibition or restriction in article 3 of this Order 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”.

Use and disclosure of information

13.—(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 the control imposed by this Order.

(2) Information to which this article applies may be used for the purposes of, or for any purposes connected with—

- (a) 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 and includes information obtained before the commencement of this Order.

(5) Nothing in this article shall be taken to affect any power to disclose information that exists apart from this article.

Service of notices

14. 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.

7th July 2006

Malcolm Wicks
Minister of State for Energy
Department of Trade and Industry

SCHEDULE

Article 2

Controlled Radioactive Sources

<i>radionuclide</i>	<i>Controlled levels of activity (TBq)</i>
Am-241	6.E-1 to 1.27E+00
Co-60	3.E-01 and above
Cs-137	1.E+00 and above
Gd-153	1.E+01 and above
Ir-192	8.E-01 and above
Pm-147	4.E+02 and above
Se-75	2.E+00 and above
Sr-90 (Y-90)	1.E+01 and above
Tm-170	2.E+02 and above
Yb-169	3.E+00 and above

EXPLANATORY NOTE*(This note is not part of the Order)*

This Order controls the export of certain high-activity radioactive sources.

Article 3 prohibits, except under licence, the export of certain radioactive sources (“controlled radioactive sources”) of a description in Schedule 1. Article 4 excludes from the control, with limited exceptions, controlled radioactive sources in transit.

Section 68 of the Customs and Excise Management Act 1979 provides offences for the breach of the control on export. In article 12 the maximum penalty for the intentional breach of the control on export is set at 10 years, the maximum penalty permitted under section 7(1) of the Export Control Act 2002.

Articles 5, 6, 7 and 8 provide for the granting of licences, record keeping and appeals against the refusal of a licence application. Article 9 and 10 make provision in respect of misleading applications for licences and failure to comply with licence conditions. Article 11 gives to the Commissioners of Her Majesty’s Revenue and Customs the power to require evidence of the destination to which the controlled radioactive source was delivered. Article 13 sets out the purposes for which information obtained by the Secretary of State, or the Commissioners, can be disclosed.

Guidance issued pursuant to section 9 of the Export Control Act 2002 on the operation of the control introduced by this Order, and a full regulatory impact assessment of the effect it will have on the costs of business are available from <http://www.dti.gov.uk/europeanandtrade/strategic-export-control/legislation/radioactive-sources/index.html> or the Export Control Organisation helpline - Telephone (020) 7215 8070 or E-mail: ECO.help@dti.gsi.gov.uk.

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