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## STATUTORY INSTRUMENTS

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# 2008 No. 3231

## The Export Control Order 2008

### [<sup>F1</sup>PART 6A

#### Provisions relating to the Protocol on Ireland/ Northern Ireland in the EU withdrawal agreement

*[<sup>F1</sup>Provisions relating to the EU defence-related products Directive*

#### Textual Amendments

**F1** Pt. 6A inserted (31.12.2020) by S.I. 2019/137, regs. 1, 4(**28B**) (as inserted by [The Export Control \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1502), regs. 2(3), 7(**9**) (as amended by [The Export Control \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2020](#) (S.I. 2020/1510), regs. 1, 2)); 2020 c. 1, Sch. 5 para. 1(1)

#### Record-keeping requirement: EU-listed military item supplier

**42B.**—(1) Article 29 (requirement to keep detailed registers or records) applies in relation to a person who acts under the authority of an individual licence to export or transfer from Northern Ireland to the EU customs territory an EU-listed military item as it applies in relation to a person who acts under the authority of a general licence granted by the Secretary of State but as if,—

- (a) in paragraph (2),—
  - (i) in the words before subparagraph (a), the reference to each act carried out under the authority referred to in paragraph (1) were a reference to the export or transfer carried out under the authority of the individual licence;
  - (ii) in subparagraphs (a) to (d) and (f) to (h), the reference to the act were a reference to the export or transfer;
  - (iii) in subparagraphs (e), (g), and (h), the reference to the person referred to in paragraph (1) were a reference to the person who acts under the authority of the individual licence; and
  - (iv) in subparagraph (i), the reference to the licence or authorisation referred to in paragraph (1) were a reference to the individual licence; and
- (b) in paragraph (3), the reference to the licence or authorisation referred to in paragraph (1) were a reference to the individual licence.

(2) Article 31 (inspection of records) applies in relation to a person who is required by virtue of paragraph (1) to keep registers or records as it applies in relation to a person who is required under article 29 to keep registers or records.

### **Offence to contravene article 42B**

**42C.**—(1) Article 38 (failure to comply with licence conditions) applies in relation to a person who, having acted under the authority of an individual licence, fails to comply with any obligation by virtue of article 42B as it applies to a person who, having acted under the authority of a licence or the general export authorisation, fails to comply with any obligation under article 29.

(2) Article 41 (application of CEMA in respect of offences) applies in relation to paragraph (1) as it applies in relation to article 38.

### **Secretary of State may certify Northern Ireland recipient undertaking**

**42D.** The Secretary of State may certify an undertaking of a Northern Ireland recipient for the purposes of Article 9(1) of the EU defence-related products Directive by granting a certificate in relation to the recipient.

### **Applying for certificate**

**42E.**—(1) A person may apply to the Secretary of State for a certificate .

(2) The applicant must provide the Secretary of State with the information necessary for the Secretary of State to assess the criteria set out in article 42G.

### **Secretary of State may grant certificate**

**42F.**—(1) The Secretary of State may grant a certificate only if the Secretary of State, in accordance with article 42G, establishes the reliability of the Northern Ireland recipient undertaking.

(2) A certificate must contain the following—

- (a) the name of the Secretary of State;
- (b) the name and address of the recipient;
- (c) a statement that the recipient conforms with the criteria set out in article 42G; and
- (d) the date of issue and the period of validity of the certificate.

(3) The period of validity of a certificate must not exceed five years.

(4) A certificate may be subject to conditions relating to—

- (a) the provision of information necessary to verify compliance by the recipient with the criteria set out in article 42G;
- (b) the suspension or revocation of the certificate.

(5) If the Secretary of State decides not to grant a certificate, the Secretary of State must provide the applicant with written notification setting out the reason for the decision.

### **Establishing reliability of Northern Ireland recipient undertaking**

**42G.**—(1) The Secretary of State, to establish the reliability of a Northern Ireland recipient undertaking, must assess the following criteria in relation to the recipient—

- (a) its capacity to observe limitations on the export of an EU-listed military item received under authorisation granted by a competent authority;
- (b) its proven experience in defence activities, in particular,—
  - (i) the record of compliance by the undertaking with export restrictions, including any relevant court decisions;
  - (ii) any authorisation held by the undertaking to produce or market an EU-listed military item;

- (iii) the employment of experienced management staff by the recipient;
- (c) its relevant industrial activity in Northern Ireland or the EU customs territory relating to an EU-listed military item, with, in particular, capacity for system or sub-system integration;
- (d) the appointment of a senior executive as the dedicated officer personally responsible for exports and transfers;
- (e) the provision of a written commitment, signed by the senior executive referred to in subparagraph (d), that—
  - (i) the undertaking will take all necessary steps to observe and enforce any specific condition of an authorisation granted by a competent authority relating to end-use and re-export of any specific component or product received;
  - (ii) the undertaking will provide to the Secretary of State, on request, detailed information concerning the end-user or end-use of the EU-listed military item exported, transferred, or received under an authorisation granted by a competent authority; and
- (f) the provision of a written description, signed by the senior executive referred to in subparagraph (d), of the internal compliance programme or export and transfer management system of the undertaking, including details of—
  - (i) the organisational, human, and technical resources allocated to the management of exports and transfers;
  - (ii) the chain of responsibility within the undertaking;
  - (iii) internal audit procedures;
  - (iv) awareness-raising
  - (v) staff-training;
  - (vi) physical and technical security arrangements;
  - (vii) record-keeping; and
  - (viii) traceability of exports and transfers.

(2) In this article, “competent authority” means an authority in a member State responsible for carrying out the obligations of that member State under the EU defence-related products Directive.

#### **Secretary of State may amend, suspend, and revoke certificate**

**42H.**—(1) Article 32 (amendment, suspension, and revocation of licences) applies in relation to a certificate as it applies in relation to a licence.

(2) The notification requirements under article 33(2) to (4) (licence refusals) apply in relation to a decision by the Secretary of State to amend, suspend, or revoke a certificate as they apply in relation to a decision by the Secretary of State to amend, suspend, or revoke a licence.

#### **Appeal of Secretary of State decision**

**42I.** Article 33(5) to (7) (licence appeals) applies in relation to a person who has a right under article 42F(5) or by virtue of article 42H(2) to a written notification in respect of a decision made by the Secretary of State as it applies in relation to a person who has a right under paragraphs (1) to (4) to a written notification in respect of a decision made by the Secretary of State.

#### **Offence relating to misleading application for certificate**

**42J.**—(1) Article 37 (misleading applications for licences) applies in relation to a misleading application for a certificate as it applies in relation to a misleading application for a licence.

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**Changes to legislation:** There are currently no known outstanding effects for the The Export Control Order 2008,  
Cross Heading: Provisions relating to the EU defence-related products Directive. (See end of Document for details)

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(2) Article 41 (application of CEMA in respect of offences) applies in relation to paragraph (1) as it applies in relation to article 37.]

**Changes to legislation:**

There are currently no known outstanding effects for the The Export Control Order 2008, Cross Heading: Provisions relating to the EU defence-related products Directive.