

Export Control Act 2002

2002 Chapter 28 - *continued*

An Act to make provision enabling controls to be imposed on the exportation of goods, the transfer of technology, the provision of technical assistance overseas and activities connected with trade in controlled goods; and for connected purposes.

[24th July 2002]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1 Export controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of export controls in relation to goods of any description.

(2) For this purpose "export controls", in relation to any goods, means the prohibition or regulation of their exportation from the United Kingdom or their shipment as stores.

(3) Goods may be described in the order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put.

(4) The power to impose export controls is subject to section 5.

(5) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community provision on the exportation of goods.

(6) For the avoidance of doubt, export controls may be imposed in relation to the removal from the United Kingdom of vehicles, vessels and aircraft (as an

exportation of goods), whether or not they are moving under their own power or carrying goods or passengers.

2 Transfer Controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of transfer controls in relation to technology of any description.

(2) For this purpose "transfer controls", in relation to any technology, means the prohibition or regulation of its transfer-

(a) by a person or from a place within the United Kingdom to a person or place outside the United Kingdom;

(b) by a person or from a place outside the United Kingdom to a person who, or a place which, is also outside the United Kingdom (but only where the transfer is by, or within the control of, a United Kingdom person);

(c) by a person or from a place within the United Kingdom to a person who, or a place which, is also within the United Kingdom (but only where there is reason to believe that the technology may be used outside the United Kingdom); or

(d) by a person or from a place outside the United Kingdom to a person or place within the United Kingdom (but only where the transfer is by, or within the control of, a United Kingdom person and there is reason to believe that the technology may be used outside the United Kingdom).

(3) Technology may be described in the order wholly or partly by reference to the uses to which it may be put.

(4) The power to impose transfer controls is subject to section 5.

(5) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community

provision on the transfer of technology.

(6) In this Act-

"transfer", in relation to any technology, means a transfer by any means (or combination of means), including oral communication and the transfer of goods on which the technology is recorded or from which it can be derived, other than the exportation of such goods; and

"technology" means information (including information comprised in software) that is capable of use in connection with-

(a) the development, production or use of any goods or software;

(b) the development of, or the carrying out of, an industrial or commercial activity or an activity of any other kind whatsoever.

3 Technical assistance controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of technical assistance controls in relation to technical assistance of any description.

(2) For this purpose-

"technical assistance controls", in relation to any technical assistance, means the prohibition or regulation of participation in the provision outside the United Kingdom of that technical assistance; and

"technical assistance" means services which are provided or used, or which are capable of being used, in connection with the development, production or use of any goods or technology.

(3) Technical assistance may be described in the order wholly or partly by reference to the uses to which it (or the goods or technology in question) may be put.

(4) The power to impose technical assistance controls-

(a) shall only be exercised for the purpose of imposing controls corresponding to or connected with-

(i) any export controls or transfer controls imposed under section 1 or 2; or

(ii) any controls imposed by a directly applicable Community provision on the exportation of goods or the transfer of technology; and

(b) is subject to section 5.

(5) For the purposes of subsection (1) a person participates in the provision of technical assistance outside the United Kingdom if-

(a) he provides technical assistance outside the United Kingdom or agrees to do so; or

(b) he makes arrangements under which another person provides technical assistance outside the United Kingdom or agrees to do so.

(6) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community provision on participation in the provision of technical assistance.

(7) Technical assistance controls may be imposed on acts done outside the United Kingdom, but only if they are done by a person who is, or is acting under the control of, a United Kingdom person.

4 Trade controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of trade controls in relation to goods of any description.

(2) For this purpose "trade controls", in relation to any goods, means the prohibition or regulation of-

(a) their acquisition or disposal;

(b) their movement; or

(c) activities which facilitate or are otherwise connected with their acquisition, disposal or movement.

(3) Goods may be described in the order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put.

(4) The power to impose trade controls-

(a) shall only be exercised for the purpose of imposing controls corresponding to or connected with-

(i) any export controls or transfer controls imposed under section 1 or 2; or

(ii) any controls imposed by a directly applicable Community provision on the exportation of goods or the transfer of technology; and

(b) is subject to section 5.

(5) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community provision on, or on activities which facilitate or are otherwise connected with, the acquisition, disposal or movement of goods.

(6) For the purposes of this section-

(a) a person acquires goods if he buys, hires or borrows them or accepts them as a gift; and

(b) a person disposes of goods if he sells, lets on hire, lends or gives them.

(7) For the purposes of this section-

(a) the making of an agreement with another to acquire, dispose of or move goods, and

(b) the making of arrangements under which another person-

(i) acquires, disposes of or moves goods; or

(ii) agrees with a third person to acquire, dispose of or move goods,

are activities which facilitate the acquisition, disposal or movement of the goods.

(8) Trade controls may be imposed on acts done outside the United Kingdom and the Isle of Man, but

only if they are done by a person who is, or is acting under the control of, a United Kingdom person.

5 General restriction on control powers

(1) Subject to section 6, the power to impose export controls, transfer controls, technical assistance controls or trade controls may only be exercised where authorised by this section.

(2) Controls of any kind may be imposed for the purpose of giving effect to any Community provision or other international obligation of the United Kingdom.

(3) In subsection (2) "international obligation" includes an obligation relating to a joint action or common position adopted, or a decision taken, by the Council under Title V of the Treaty on European Union (provisions on a common foreign and security policy).

(4) Export controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.

(5) Transfer controls may be imposed in relation to any description of technology within one or more of the categories specified in the Schedule for such controls.

(6) Technical assistance controls may be imposed in relation to any description of technical assistance within one or more of the categories specified in the Schedule for such controls.

(7) Trade controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.

6 Exceptions from the general restriction

(1) Section 5 does not apply to the power to impose any controls if the control order which imposes them provides for its expiry no later than the end of the period of 12 months beginning with the day on which

it is made.

(2) Section 5 does not apply in relation to provisions of a control order which-

- (a) amend an earlier control order; or
- (b) revoke and re-enact (with or without modifications) provisions of an earlier control order,

unless they impose new controls or strengthen the controls previously imposed.

(3) In subsection (2) "an earlier control order" does not include an order made by virtue of subsection (1).

7 Control powers: supplementary

(1) An order under any of the preceding provisions of this Act may (without prejudice to the generality of the power under which it is made) make provision-

- (a) for an activity to be prohibited unless authorised by a licence granted by a person specified in the order;
- (b) creating exceptions from any provision of the order;
- (c) requiring persons to keep (and produce) records;
- (d) requiring persons to provide information to any person specified in the order;
- (e) about the purposes for which information held in connection with anything done under or by virtue of the order may be used;
- (f) about the persons to whom any such information may be disclosed;
- (g) creating indictable offences, summary offences or offences triable either way (subject to the limitation that no offence so created shall be punishable on indictment with imprisonment for a term exceeding 10 years); and
- (h) for the enforcement of the order (including provision as to the powers and duties of any person who is to enforce it).

(2) Such an order may-

- (a) make provision binding the Crown;
- (b) amend, repeal or revoke, or apply (with or without modifications) provisions of any Act or subordinate legislation;
- (c) provide for any reference in the order to a document (including a technical list by reference to which any Community provision or international obligation operates) to take effect as a reference to that document as revised or re-issued from time to time;
- (d) make incidental, supplementary and transitional provision; and
- (e) make different provision for different cases and different circumstances.

8 Protection of certain freedoms

(1) The Secretary of State may not make a control order which has the effect of prohibiting or regulating any of the following activities-

- (a) the communication of information in the ordinary course of scientific research;
- (b) the making of information generally available to the public; or
- (c) the communication of information that is generally available to the public,

unless the interference by the order in the freedom to carry on the activity in question is necessary (and no more than is necessary).

(2) The question whether any such interference is necessary shall be determined by the Secretary of State by reference to the circumstances prevailing at the time the order is made and having considered the reasons for seeking to control the activity in question and the need to respect the freedom to carry on that activity.

9 Guidance about the exercise of functions under control orders

(1) This section applies to licensing powers and other functions conferred by a control order on any person in connection with controls imposed under this

Act.

(2) The Secretary of State may give guidance about any matter relating to the exercise of any licensing power or other function to which this section applies.

(3) But the Secretary of State must give guidance about the general principles to be followed when exercising licensing powers to which this section applies.

(4) The guidance required by subsection (3) must include guidance about the consideration (if any) to be given, when exercising such powers, to-

(a) issues relating to sustainable development;
and

(b) issues relating to any possible consequences of the activity being controlled that are of a kind mentioned in the Table in paragraph 3 of the Schedule;

but this subsection does not restrict the matters which may be addressed in guidance.

(5) Any person exercising a licensing power or other function to which this section applies shall have regard to any guidance which relates to that power or other function.

(6) A copy of any guidance shall be laid before Parliament and published in such manner as the Secretary of State may think fit.

(7) In this section "guidance" means guidance stating that it is given under this section.

(8) The consolidated criteria relating to export licensing decisions announced to Parliament by the Secretary of State on 26th October 2000 shall (until withdrawn or varied under this section) be treated as guidance which-

(a) is given and published under this section;
and

(b) fulfils the duty imposed by subsection (3) in respect of any export controls and transfer

controls which may be imposed in relation to goods or technology of a description falling within paragraph 1 or 2 of the Schedule.

10 Annual reports

(1) The Secretary of State shall lay before Parliament in respect of each year-

(a) a report on the operation during the year of any order under section 1 so far as relating to the export of objects of cultural interest; and

(b) a report on other matters relating to the operation of this Act (and any order made under it) during the year.

(2) A report required by subsection (1) shall be laid as soon as practicable after the end of the year to which it relates.

11 Interpretation

(1) In this Act-

"Community provision" means a provision of a directive or regulation (within the meaning of Article 249 of the Treaty establishing the European Community);

"control order" means an order under section 1(1), 2(1), 3(1) or 4(1);

"export controls" has the meaning given in section 1(2);

"objects of cultural interest" includes objects of historical or scientific interest;

"place" includes a vehicle, vessel or aircraft;

"technical assistance" and "technical assistance controls" have the meanings given in section 3(2);

"technology" has the meaning given in section 2(6);

"trade controls" has the meaning given in section 4(2);

"transfer" has the meaning given in section 2(6);

"transfer controls" has the meaning given in section 2(2); and

"United Kingdom person" means a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom.

(2) For the purposes of the definition of "United Kingdom person" a United Kingdom national is an individual who is-

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or

(c) a British protected person within the meaning of that Act.

(3) The removal of goods to the Isle of Man shall not be regarded for the purposes of this Act as an exportation of those goods.

(4) This Act, so far as it relates to the imposition of export controls, is an Act relating to customs for the purposes of the definition of "the customs and excise Acts" in section 1 of the Customs and Excise Management Act 1979 (c. 2).

12 Power to modify the Schedule

(1) The Secretary of State may by order modify the provisions of the Schedule.

(2) An order under this section may make transitional provision in connection with any modification made by the order.

13 Orders

(1) The power to make an order under this Act is exercisable by statutory instrument.

(2) A statutory instrument containing a control order made by virtue of section 6(1) shall be laid before Parliament after being made but, unless it is approved by a resolution of each House before the end of the period of 40 days beginning with the day on which it is made, shall cease to have effect at the end of that period.

(3) In reckoning that period no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

(4) A statutory instrument containing an order under section 12 shall not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(5) A statutory instrument containing-

(a) an order under section 1, 2, 3 or 4 which is not made by virtue of section 6(1); or

(b) an order under section 16(3),

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

14 Financial provision

There shall be paid out of money provided by Parliament-

(a) any expenses of a government department incurred in consequence of this Act; and

(b) any increase attributable to this Act in the sums payable out of such money under any other Act.

15 Consequential repeals

(1) The following provisions of the Import, Export and Customs Powers (Defence) Act 1939 (c. 69) (which are concerned with the exportation of goods and related matters) are repealed.

(2) In section 1 (control of importation and exportation)-

(a) in subsection (1), the words "or exportation from" and the words from "or the carriage" to "stores";

(b) in subsection (3), the words from "exportation" to "coastwise"; and

(c) in subsection (4), the words "or out of" and

"or exportation".

(3) In section 3 (application and extension of law of prohibited goods)-

(a) in subsection (1), in paragraph (a), the words from "exported" to "stores", paragraph (b) (and the word "or" preceding it) and, in the words following paragraph (b), the words from "and the exporter" to the end;

(b) subsection (2); and

(c) in subsection (3), the words from "exported" (in the first place it appears) to "shipped" (in the second place it appears) and the words from "exportation" to "may be".

(4) In section 7 (provisions as to ultimate destination of goods), subsections (1) and (2).

(5) Those repeals have the same extent as the provisions being repealed.

16 Short title, etc

(1) This Act may be cited as the Export Control Act 2002.

(2) This Act (apart from this section and section 13(1) and (5)(b) so far as they apply to orders under this section) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

(3) The Secretary of State may by order make such transitional provisions and savings as he considers appropriate in connection with the coming into force of any provision of this Act.

(4) This Act (apart from any repeals which extend there by virtue of section 15(5)) does not extend to the Isle of Man.

(5) Her Majesty may by Order in Council direct that any of the provisions of this Act, or of any order under this Act, shall extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to the Isle of Man or to any British overseas territory.

(6) This Act extends to Northern Ireland.

(7) Nothing in this Act affects Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947 (c. 44)).

SCHEDULE

CATEGORIES OF GOODS, TECHNOLOGY AND TECHNICAL ASSISTANCE

- 1 (1) Export controls and trade controls may be imposed in relation to-
 - (a) military equipment;
 - (b) goods on which military technology is recorded or from which it can be derived; or
 - (c) goods intended, designed or adapted for use in the development or production of military equipment or military technology.
- (2) Transfer controls may be imposed in relation to-
 - (a) military technology; or
 - (b) technology intended, designed or adapted for use in the development or production of military technology.
- (3) Technical assistance controls may be imposed in relation to any services connected with the development, production or use of-
 - (a) any goods falling within sub-paragraph (1)(a), (b) or (c); or
 - (b) any technology falling within sub-paragraph (2)(a) or (b).
- (4) In this paragraph (without prejudice to the generality of the terms)-

"military equipment" includes-

 - (a) firearms and other weapons (whether or not intended, designed or adapted for military use or in military use); and
 - (b) goods intended, designed or adapted for military use (whether or not in military use); and

"military technology" includes-

 - (a) technology intended, designed or adapted for military use (whether or not in military use); and
 - (b) technology intended, designed or adapted for use in connection with the development, production or use of military equipment or goods falling within sub-paragraph (1)(c).
- (5) For the purposes of sub-paragraph (4) the reference to firearms and other weapons includes a reference to-

- (a) component parts of firearms or other weapons;
 - (b) accessories for use with firearms or other weapons; and
 - (c) ammunition, missiles or projectiles of any kind which are intended, designed or adapted for use with firearms or other weapons.
- 2 (1) Export controls may be imposed in relation to any goods the exportation or use of which is capable of having a relevant consequence.
- (2) Transfer controls may be imposed in relation to any technology the transfer or use of which is capable of having such a consequence.
- (3) Technical assistance controls may be imposed in relation to any technical assistance the provision or use of which is capable of having such a consequence.
- (4) Trade controls may be imposed in relation to any goods the acquisition, disposal, movement or use of which is capable of having such a consequence.
- 3 (1) For the purposes of paragraph 2 a relevant consequence, in relation to any activity, is a consequence (direct or indirect) of a kind mentioned in the following Table.

(2) The Table referred to above is as follows-

RELEVANT CONSEQUENCES

National security of the United Kingdom and other countries

A An adverse effect on-

- (a) the national security; or
- (b) the security of members of the armed forces,

of the United Kingdom (or any dependency), any Member state or any other friendly State.

Regional stability and internal conflict

B An adverse effect on peace, security or stability in any region of the world or within any country.

Weapons of mass destruction

C The carrying out anywhere in the world of acts which facilitate the

development, production or use of weapons of mass destruction.

Breaches of international law and human rights

- D The carrying out anywhere in the world of (or of acts which facilitate)-
- (a) acts threatening international peace and security;
 - (b) acts contravening the international law of armed conflict;
 - (c) internal repression in any country;
 - (d) breaches of human rights.

Terrorism and crime

- E The carrying out anywhere in the world of (or of acts which facilitate) acts of terrorism or serious crime anywhere in the world.

(3) The question whether an activity involving goods, technology or technical assistance of any particular description is capable of having a relevant consequence is to be determined by the Secretary of State at the time the order imposing the controls is made.

(4) In this paragraph-

"country" includes a territory but does not include the United Kingdom or the Isle of Man; and

"dependency" means the Isle of Man, any of the Channel Islands or a British overseas territory.

- 4 Export controls may be imposed in relation to objects of cultural interest.