

# Export Control Bill

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[AS AMENDED IN STANDING COMMITTEE B]

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Schedule – Purposes for making orders under section 1(1) or 2(1)

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# B I L L

[AS AMENDED IN STANDING COMMITTEE B]

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.

**B**E 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. 5
- (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) An order under this section may make provision in connection with any controls that may be imposed by a directly applicable Community provision on the exportation of goods. 10
- (5) 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. 15

## 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 – 5
- (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); 10
  - (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 15
  - (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. 20
- (4) An order under this section may make provision in connection with any controls that may be imposed by a directly applicable Community provision on the transfer of technology.
- (5) In this Act – 25
- “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;
  - “technology” means information (including information comprised in software) that is capable of use in connection with – 30
    - (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 Purposes of orders under section 1(1) or 2(1) 35

- (1) The Schedule specifies the purposes for which an order imposing export controls or transfer controls may be made.
- (2) Subsection (1) does not apply to the imposition of export controls or transfer controls if the order imposing them provides – 40
- (a) for the order to expire, or
  - (b) for the provision imposing them to cease to have effect,
- no later than the end of the period of 12 months beginning with the day on which the order is made.
- (3) Subsection (1) only applies to an order under section 1(1) which – 45
- (a) revokes or amends provisions of an earlier order, or

- (b) re-enacts (with or without modifications) provisions of an earlier order which are being revoked by the order,  
if and to the extent that the order either strengthens the export controls on goods which are already subject to such controls or imposes export controls in relation to goods which are not subject to such controls. 5
- (4) Subsection (1) only applies to an order under section 2(1) which—  
(a) revokes or amends provisions of an earlier order, or  
(b) re-enacts (with or without modifications) provisions of an earlier order which are being revoked by the order,  
if and to the extent that the order either strengthens the transfer controls imposed in relation to technology which is already subject to such controls or imposes transfer controls in relation to technology which is not subject to such controls. 10
- (5) In subsections (3) and (4) “provisions of an earlier order” does not include provisions which are made by virtue of subsection (2). 15
- (6) The matters to which regard must be had in exercising a relevant licensing function in relation to any goods or technology include, among other things, any possible consequences of their exportation or transfer that are of a kind mentioned in the Table in paragraph 4 of the Schedule.
- (7) Otherwise, nothing in that paragraph shall be taken as limiting— 20  
(a) the reasons which may justify a decision to grant or refuse a licence or to exercise any other relevant licensing function in any particular way; or  
(b) the matters to which regard may be had in the exercise of any such function. 25
- (8) For the purposes of subsections (6) and (7) “relevant licensing function” means a licensing function conferred by an order under section 1(1) or 2(1) in connection with export controls or transfer controls imposed by virtue of paragraph 4 of the Schedule.
- (9) Subsections (6) to (8) have effect without prejudice to any provision of the order conferring the function concerned which deals with the exercise of that function. 30
- 4 Controls on provision of technical assistance overseas**
- (1) The Secretary of State may by order make provision for or in connection with the imposition of controls prohibiting or regulating participation in the provision outside the United Kingdom of technical assistance of any description. 35
- (2) In this section “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 controlled goods or controlled technology. 40
- (3) For the purposes of this section 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. 45

- (4) An order under this section may make provision in connection with any controls that may be imposed by a directly applicable Community provision on participation in the provision of services connected with the development, production or use of goods or technology of any description.
- (5) Controls may be imposed under this section 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. 5

## 5 Controls on trade in controlled goods

- (1) The Secretary of State may by order make provision for or in connection with the imposition of trade controls in relation to controlled goods of any description. 10
- (2) For this purpose “trade controls”, in relation to any controlled 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. 15
- (3) An order under this section may 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. 20
- (4) 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. 25
- (5) For the purposes of this section (without prejudice to the generality of subsection (2)(c))—
- (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— 30
    - (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.
- (6) 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. 35

## 6 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— 40
- (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; 45

- (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; 5
  - (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). 10
- (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; 15
  - (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 20
  - (e) make different provision for different circumstances.

## 7 Guidance

- (1) The Secretary of State may issue guidance about –
- (a) the manner in which any licensing or other function conferred on a person by an order under section 1, 2, 4 or 5 ought to be exercised; 25
  - (b) the reasons which may be regarded as justifying any decision falling to be taken in the exercise of any such function; or
  - (c) the matters to which regard ought to be had in the exercise of any such function.
- (2) Any person exercising a licensing or other function under such an order shall have regard to any guidance published under this section which relates to that function. 30
- (3) A copy of any guidance issued under this section shall be laid before Parliament and published in such manner as the Secretary of State may think fit. 35
- (4) The consolidated criteria relating to export licensing decisions announced to Parliament by the Secretary of State on 26th October 2000, and any other published guidance relating to export licensing which is capable of applying in relation to the exercise of functions under an order under section 1 or 2, shall (until withdrawn or varied under this section) be treated as guidance under this section. 40

## 8 Annual reports

The Secretary of State shall, as soon as practicable after the end of 2002 and each subsequent year, lay before each House of Parliament a report on the operation during that year of this Act and any order under section 1, 2, 4 or 5. 45

## 9 Interpretation

- (1) In this Act—
- “British overseas territory” means a territory listed in Schedule 6 to the British Nationality Act 1981 (c. 61);
  - “Community provision” means a provision of a directive or regulation (within the meaning of Article 249 of the Treaty establishing the European Community); 5
  - “export controls” has the meaning given in section 1(2);
  - “place” includes a vehicle, vessel or aircraft;
  - “technology” has the meaning given in section 2(5); 10
  - “transfer” has the meaning given in section 2(5);
  - “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. 15
- (2) For the purposes of this Act goods are “controlled goods” if their exportation from the United Kingdom would be subject to export controls or controls referred to in section 1(4).
- (3) In determining whether goods located outside the United Kingdom are controlled goods it is to be assumed that all other circumstances relating to the goods (or their subsequent use) are unchanged. 20
- (4) For the purposes of this Act technology is “controlled technology” if its transfer by a person or from a place within the United Kingdom to a person or place outside the United Kingdom would be subject to transfer controls or controls referred to in section 2(4). 25
- (5) In determining whether technology held by a person or at a place outside the United Kingdom is controlled technology it is to be assumed that all other circumstances relating to the technology (or its subsequent use) are unchanged.
- (6) For the purposes of the definition of “United Kingdom person” a United Kingdom national is an individual who is— 30
- (a) a British citizen, a British Dependent Territories Citizen, a British National (Overseas) or a British Overseas citizen;
  - (b) a person who under the British Nationality Act 1981 is a British subject; or 35
  - (c) a British protected person within the meaning of that Act.
- (7) 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.
- (8) 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). 40

## 10 Power to modify the Schedule

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

**11 Orders**

- (1) The power to make an order under this Act is exercisable by statutory instrument.
- (2) A statutory instrument containing an order under section 1 or 2 which contains any provision made by virtue of section 3(2) 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. 5
- (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. 10
- (4) A statutory instrument containing an order under section 10 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 – 15
- (a) an order under section 1 or 2 which does not contain any provision made by virtue of section 3(2); or
  - (b) an order under section 4, 5 or 14(3),
- shall be subject to annulment in pursuance of a resolution of either House of Parliament. 20

**12 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. 25

**13 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. 30
- (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”. 35
- (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; 40
  - (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”.



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- (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.

#### **14 Short title, etc**

- (1) This Act may be cited as the Export Control Act 2001. 5
- (2) This Act (apart from this section and section 11(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. 10
- (4) This Act (apart from any repeals which extend there by virtue of section 13(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. 15
- (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)). 20

## SCHEDULE

### PURPOSES FOR MAKING ORDERS UNDER SECTION 1(1) OR 2(1)

- 1 The purposes for which an order imposing export controls or transfer controls (“an order”) may be made are as follows.
- 2 An order may be made for the purpose of giving effect to any Community provision. 5
- 3 An order may be made for the purpose of giving effect to—
- (a) any obligation of the United Kingdom 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); or 10
  - (b) any other international obligation of the United Kingdom.
- 4 (1) An order may be made for the purpose of prohibiting or regulating the exportation of goods which are, or the transfer of technology which is, of a description to which this paragraph applies. 15
- (2) This paragraph applies to goods of any description if it appears to the Secretary of State when the order is made that there is a risk that exportation of goods of that description might have any of the consequences mentioned in the following Table.
- (3) The reference in sub-paragraph (2) to consequences of the exportation of goods includes a reference to consequences relating to the use of information recorded on or derived from the goods. 20
- (4) This paragraph applies to technology of any description if it appears to the Secretary of State when the order is made that there is a risk that transfer of technology of that description might have any of the consequences mentioned in the following Table. 25
- (5) The Table referred to above is as follows—

### CONSEQUENCES OF EXPORTATION OR TRANSFER

#### *National security of the United Kingdom and other countries*

- A An adverse effect on— 30
- (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* 35

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

*Weapons of mass destruction*

- C Use of the goods or technology anywhere in the world in connection with the development, production or use of weapons of mass destruction.

*Breaches of international law and human rights*

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- D Use of the goods or technology anywhere in the world to carry out or facilitate the carrying out of –
- (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.

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*Terrorism and crime*

- E Use of the goods or technology anywhere in the world to carry out or to facilitate the carrying out of acts of terrorism or serious crime anywhere in the world.

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- (6) 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.

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- 5 (1) An order may be made for the purpose of prohibiting or regulating the exportation of objects of cultural interest.
- (2) In this paragraph “objects of cultural interest” includes objects of historical or scientific interest.