



## CUSTOMS AND EXCISE ACT 1993

### DUAL-USE ITEMS (EXPORT CONTROL) (APPLICATION) ORDER 2002

*Approved by Tynwald*

21st May 2002

*Coming into operation*

1 June 2002

In exercise of the powers conferred on the Treasury by section 1 of the Customs and Excise Act 1993<sup>(a)</sup>, and of all other powers enabling it in that behalf, the following Order is hereby made:-

#### **Citation and commencement**

1. This Order may be cited as the Dual-Use Items (Export Control) (Application) Order 2002 and shall come into operation on 1 June 2002.

#### **Application of Community Instruments**

2. (1) Subject to paragraph (2) and to the exceptions, adaptations and modifications set out in Schedule 1, the following Council Regulations shall apply to the Island, as part of the law of the Island -

- (a) Council Regulation (EC) Number 1334/2000<sup>(b)</sup>;
- (b) Council Regulation (EC) Number 2889/2000<sup>(c)</sup>;
- (c) Council Regulation (EC) Number 458/2001<sup>(d)</sup>; and
- (d) Council Regulation (EC) Number 2432/2001<sup>(e)</sup>.

(2) This article does not apply in respect of provisions of Regulations which apply as part of the law of the Island under section 2(1) of the European Communities (Isle of Man) Act 1973<sup>(f)</sup>.

#### **Application of Dual-Use Items (Export Control) Regulations**

3. The Dual-Use Items (Export Control) Regulations 2000<sup>(g)</sup> shall apply to the Island, as part of the law of the Island, subject to the exceptions, adaptations and modifications set out in Schedule 2.

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(a) 1993 c.7.  
(b) OJ L.159, 30.6.2000, p.1.  
(c) OJ L.336, 30.12.2000, p.14.  
(d) OJ L.65, 7.3.2001, p.19.  
(e) OJ L.338, 20.12.2001, p.1.  
(f) 1973 c.14.  
(g) S.I. 2000 No. 2620.

## Revocation

4. (1) The following Orders are hereby revoked -
- (a) European Communities (Control of Exports of Dual-Use Items and Technology) (Application) Order 2000<sup>(h)</sup>;
  - (b) European Communities (Control of Exports of Dual-Use Items and Technology) (Application) (Amendment) Order 2001<sup>(i)</sup>;
  - (c) European Communities (Control of Exports of Dual-Use Items and Technology) (Application) (Amendment) (No. 2) Order 2001<sup>(j)</sup>; and
  - (d) Export of Goods (Federal Republic of Yugoslavia) (Control) Order 1998 (Application) Order 1998<sup>(k)</sup>
- (2) The following Regulations are hereby revoked -
- (a) Dual-Use Items (Export Control) Regulations 2000<sup>(l)</sup>;
  - (b) Dual-Use Items (Export Control) (Amendment) Regulations 2001<sup>(m)</sup>; and
  - (c) Dual-Use Items (Export Control) (Amendment) (No. 2) Regulations 2001<sup>(n)</sup>.

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<sup>(h)</sup> S.D. No. 807/00.

<sup>(i)</sup> S.D. No. 161/01.

<sup>(j)</sup> S.D. No. 450/01.

<sup>(k)</sup> S.D. No. 462/98.

<sup>(l)</sup> S.D. No. 808/00.

<sup>(m)</sup> S.D. No. 111/01.

<sup>(n)</sup> S.D. No. 403/01.

## SCHEDULE 1

### Exceptions, adaptations and modifications subject to which the Community Instruments applied by article 2 shall have effect in the Island

1. Modifications subject to which Council Regulation (EC) Number 1334/2000 shall have effect in the Island -
  - (a) Throughout the Instrument, reference to "Member State", "Member States", "the Community", and the "territory of the Community" shall be construed as including the Island.
  - (b) Throughout the Instrument, references to the date of entry into force shall be construed as a reference to the date on which this Order comes into operation.
  - (c) Omit Article 24.
2. Modification subject to which Council Regulation (EC) Number 2889/2000 shall have effect in the Island -

Omit Article 2.
3. Modification subject to which Council Regulation (EC) Number 458/2001 shall have effect in the Island -

Omit Article 2.
4. Modification subject to which Council Regulation (EC) Number 2432/2001 shall have effect in the Island -

Omit Article 2.

SCHEDULE 2

**Exceptions, adaptations and modifications subject to which the Dual-Use Items (Export Control) Regulations (S.I. 2000 No. 2620) shall have effect in the Island**

<u>Provision</u>	<u>Subject matter</u>	<u>Exceptions, adaptations and modifications</u>
Regulation 1	Citation, commencement and revocation	(a) in paragraph (1), omit the words from “and shall” onwards; (b) omit paragraph (2).
Regulation 2	Interpretation	(a) omit the definition of “the Commissioners”; (b) in the definition of “competent authority” - (i) immediately after “means”, insert “the Treasury”; (ii) for “another Member State” substitute “a member State”. (c) in the definitions of - (i) “export”, (ii) “import” and “export” in relation to a vessel, submersible vehicle or aircraft, and (iii) “items in transit”, immediately before “United Kingdom” insert “Island and” (d) in the definition of “items in transit” - (i) for “another Member State” substitute “a member State”; (ii) in paragraph (b), omit the word “other”. (e) in the definition of “proper” for “1979” substitute “1986”.

<u>Provision</u>	<u>Subject matter</u>	<u>Exceptions, adaptations and modifications</u>
Regulation 2	Interpretation	(f) for the definition of “the Regulation”, substitute the following -  ““the Regulation” means Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology, as amended by the Council Regulations listed in Schedule 1A;”.
Regulation 3	Granting and revocation etc. of licences	(a) For “Secretary of State”, on the three occasions it occurs, substitute “Treasury”.  (b) After paragraph (2) insert -  “(3) A licence issued by the Secretary of State for Trade and Industry shall be deemed to be a licence issued by the Treasury.”.
Regulation 4	Exports of dual-use items	(a) for “Secretary of State”, on the three occasions it occurs, substitute “Treasury”;  (b) for “United Kingdom”, on both occasions it occurs, substitute “Island.”
Regulation 5	Exceptions	For “United Kingdom” substitute “Island”.
Regulation 6	Customs and Excise powers	(a) for “United Kingdom”, wherever it occurs, substitute “Island”;  (b) in paragraph (2)(c), omit the words “other than the United Kingdom but not in the United Kingdom”;  (c) for “Secretary of State”, wherever it occurs, substitute “Treasury”;  (d) in paragraph (5) -  (i) for “Commissioners” substitute “Treasury”,  (ii) for “they may allow proof to their” substitute “it may allow proof to its”, and  (ii) for “level 4 on the standard scale” substitute “£2,500”.

<u>Provision</u>	<u>Subject matter</u>	<u>Exceptions, adaptations and modifications</u>
Regulation 7	Misleading applications for licences etc.	For "Secretary of State", on both occasions it occurs, substitute "Treasury".
Regulation 8	Failure to comply with licence conditions	<p>(a) in paragraph (1)(a)(i) and sub-paragraph (3)(c), immediately before "United Kingdom" insert "Island and";</p> <p>(b) for "Secretary of State", wherever occurring, substitute "Treasury";</p> <p>(c) in paragraph (1)(a)(iii), for "United Kingdom" substitute "Island";</p> <p>(d) in paragraph (2) -</p> <p>(i) for "the statutory maximum" substitute "£5,000", and</p> <p>(ii) for "indictment" substitute "information";</p> <p>(e) in paragraph (8)(c), immediately before "United Kingdom" insert "Island and".</p>
Regulation 9	Registration with the Treasury and provision of information	<p>(a) in the title, for "Secretary of State" substitute "Treasury";</p> <p>(b) immediately before "United Kingdom", on each occasion it occurs, insert "Island and";</p> <p>(c) for "Secretary of State", wherever occurring, substitute "Treasury";</p> <p>(d) for the address in paragraph (5) substitute the following - "Customs and Excise, Custom House, Douglas, Isle of Man, IM99 1AG."</p>
Regulation 10	Record keeping and inspection	<p>(a) in paragraph (1) -</p> <p>(i) for "United Kingdom", on the first occasion it occurs, substitute "Island", and</p> <p>(ii) immediately before "United Kingdom", on the second occasion it occurs, insert "Island and";</p>

<u>Provision</u>	<u>Subject matter</u>	<u>Exceptions, adaptations and modifications</u>
Regulation 10	Record keeping and inspection	(b) for "Secretary of State or the Commissioners", on each occasion it occurs, substitute "Treasury".
Regulation 11	Penalties for failure to comply with	(a) in paragraph (1), for "section 68(2) of the Customs and Excise Management Act 1979" substitute "section 69(2) of the Customs and Excise Management Act 1986"; (b) for "indictment", on both occasions it occurs, substitute "information"; (c) for "the statutory maximum", on both occasions it occurs, substitute "£5,000"; (d) in paragraph (4), for "level 3 on the standard scale" substitute "£1,000"; (e) in paragraph (5), for "In England and Wales" to "1984" substitute the following - "Section 27(2) of the Police Powers and Procedures Act 1998"; (f) omit paragraph (6).
Regulation 12	Application of the Customs and Excise Management Act 1986	(a) in the title, for "1979" substitute "1986"; (b) in paragraph (1), for "138" and "1979" substitute "145" and "1986" respectively; (c) in paragraph (2), for "145 to 148 and 150 to 155" substitute "152 to 155 and 157 to 162"; (d) omit paragraph (3); (e) in paragraph (4), for "Commissioners" substitute "Treasury"; (f) in paragraph (5), for "section 1" substitute "section 184"
Regulation 14	Transitional	Omit.

<u>Provision</u>	<u>Subject matter</u>	<u>Exceptions, adaptations and modifications</u>
Schedule 1	Regulations revoked	Omit.
Schedule 1A	Amendments to Council Regulation (EC) No. 1334/2000	<p>Immediately after Schedule 1 insert the following -</p> <p>“Regulation 2</p> <p style="text-align: center;"><b>SCHEDULE 1A</b></p> <p>Council Regulation (EC) No. 2889/2000 of 22 December 2000</p> <p>Council Regulation (EC) No. 458/2001 of 6 March 2001</p> <p>Council Regulation (EC) No. 2432/2001 of 20 November 2001.”.</p> <p>(a) In Category 1, omit the entries for “1C950” and “1E950”.</p> <p>(b) in Category 8, for the entry for “8A990” substitute the following -</p> <p>“8A990 The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.</p> <p>Vessels and inflatable craft and related equipment and components, as follows, other than those specified in Annex I:</p> <p>a. Marine vessels (surface or underwater) and inflatable craft;</p> <p>b. Equipment and components designed for vessels or inflatable craft specified in 8A990a as follows:</p> <p>(1) Hull and keel structures and components;</p> <p>(2) Propulsive engines designed or modified for marine use and specially designed components therefor;</p> <p>(3) Marine radar, sonar and speed log equipment, and specially designed components therefor.”;</p>
Schedule 2	Prohibited items	



Provision

Subject matter

Exceptions, adaptations and modifications

Schedule 2

Prohibited items

(c) in Category 9, for the entry for “9A990” substitute the following

“9A990 The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

Aircraft and related equipment and components, as follows, other than those specified in Annex I:

- a. Aircraft having a maximum all-up weight of 390 kg or more;
- b. Equipment and components designed for aircraft specified in 9A990a as follows:
  - (1) Airframe structures and components;
  - (2) Aeroengines and specially designed components therefor;
  - (3) Avionics and navigation equipment and specially designed components therefor; and
  - (4) Landing gear and specially designed components therefor, and aircraft tyres.”.

(d) in Category 9, in the entries for both “9E990” and “9E991” add the following -

“except technical data, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable items that are necessary for the continuing airworthiness and safe operation of civil “aircraft”.”.

Provision

Subject matter

Exceptions, adaptations and modifications

Schedule 3

Items in relation to which the requirement in regulation 9(3) does not apply

- (a) in paragraph (3), omit the word “and”;
- (b) add new paragraphs (5) to (8) as follows -
  - “(5) Subject to (7) any cryptography development software in entry 5D002 of Annex I, other than software having the characteristics, or performing or simulating the functions, of equipment designed or modified to perform cryptanalytic functions;
  - (6) Subject to (7) any cryptography development technology in entry 5E002, other than technology for the development, production or use of:
    - (a) equipment designed or modified to perform cryptanalytic functions, or
    - (b) software having the characteristics, or performing or simulating the functions, of equipment designed or modified to perform cryptanalytic functions;
  - (7) The provisions in paragraphs (5) and (6) are limited to cases in which the item is for use by the exporter, or by any subsidiary or parent undertaking of the exporter, or by a business or academic collaborator of the exporter, in his or their own commercial cryptographic product development activities but only insofar as they are activities pursuant to the agreement establishing the collaboration; and
  - (8) In paragraph (7) “business or academic collaborator” and “parent undertaking” and “subsidiary undertaking” shall have the following meanings:

Provision

Subject matter

Exceptions, adaptations and modifications

Schedule 3

Items in relation to which the requirement in regulation 9(3) does not apply

- (a) “business or academic collaborator” means a person who is either working by way of business in research and development of cryptography or cryptographic products or is teaching, or undertaking research as a member of or at a university or institution of higher education into, cryptography or cryptographic products and with whom an exporter has previously entered into an agreement for the carrying out of work comprising or related to research into or development of cryptography or cryptographic products;
- (b) “parent undertaking” and “subsidiary undertaking” have the meanings assigned by sections 258 and 259 of the Companies Act 1985<sup>(o)</sup> of Parliament (as substituted by sections 21 and 22 of the Companies Act 1989<sup>(p)</sup> of Parliament).”.


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<sup>(o)</sup> 1985 c.6 of Parliament.

<sup>(p)</sup> 1989 c.40 of Parliament.

Made this 10<sup>th</sup> day of April

2002

  
Minister for the Treasury

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

This Order revokes and replaces the orders which previously applied Council Regulations, and the implementing regulations made under the European Communities (Isle of Man) Act 1973, which were concerned with export controls on dual-use items.

The Customs and Excise Etc. (Amendment) Act 2001<sup>(q)</sup> amended the Customs and Excise Act 1993<sup>(r)</sup>, allowing the Treasury to use that Act to apply instruments which contained controls relating to intangible exports, that is the export of items by electronic means. Formerly the Act did not permit this, hence the use of the 1973 Act to apply the necessary Regulations etc.

This Order -

- (a) applies the 4 relevant Council Regulations, insofar as they do not apply automatically under section 2(1) of the 1973 Act;
- (b) applies the relevant Dual-Use Items (Export Control) Regulations 2000<sup>(v)</sup>, with all amendments to date;
- (c) revokes the application orders formerly used to apply the Council Regulations; and
- (d) revokes the implementing regulations, and amendment regulations, made under the 1973 Act.

The new amendments made to the Dual-Use (Export Control) Regulations 2000 in their application to the Island by this Order, and which were not present in the regulations being revoked by the Order, have the following effects -

- (a) extending the definition of "the Regulation" to include amendments to the original Council Regulation by Council Regulations (EC) 2889/2000 and 458/2001;
- (b) removing the general prohibition on exports of all items that relate to marine, aircraft, space vehicles, propulsion systems and related equipment to Iran and Iraq - narrowing the prohibition so as to apply only to those items that are essential to the operational use of an aircraft or vessel;
- (c) extending the items for which a notification under regulation 9(3) is not required. Consequently, Part 1 of Schedule 3 to the Regulations is extended with qualifications to cryptography development software and technology; and
- (d) entries 1C950 and 1E950, relating to the general prohibition on exportation of certain chemicals and technology to produce them, are deleted as now being redundant.

The Order also revokes the redundant Export of Goods (Federal Republic of Yugoslavia) (Control) Order 1998 (Application) Order 1998.

<sup>(q)</sup> 2001 c.31.  
<sup>(r)</sup> 1993 c.7.  
<sup>(v)</sup> S.I. 2000 No. 2620.

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STATUTORY INSTRUMENTS

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2000 No. 2620

**CUSTOMS AND EXCISE**  
**The Dual-Use Items (Export Control) Regulations 2000**

<i>Made</i>	<i>20th September 2000</i>
<i>Laid before Parliament</i>	<i>25th September 2000</i>
<i>Coming into force</i>	<i>28th September 2000</i>

The Secretary of State, being a Minister designated<sup>1</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>2</sup> in relation to the control of the export of goods and measures relating to trade in dual-use items, including the transmission of software and technology in intangible form, in the exercise of the powers conferred on him by that section, hereby makes the following Regulations:

**Citation, commencement and revocation**

1. (1) These Regulations may be cited as the Dual-Use Items (Export Control) Regulations 2000 ~~and shall come into force on 28th September 2000.~~

(2) ~~Subject to regulation 14, the Regulations specified in Schedule 1 are revoked.~~

**Interpretation**

2. (1) In these Regulations:

"the 1994 Order" means the Export of Goods (Control) Order 1994<sup>3</sup>;

~~"the Commissioners" means the Commissioners of Customs and Excise;~~

"the Community General Export Authorisation" means the export authorisation constituted by Article 6(1) and Annex II;

"Community Licence" means an authorisation granted (whether before or after commencement of these Regulations) under the Regulation or Council Regulation (EC) No. 3381/94 of 19th December 1994<sup>4</sup> by a competent authority for the export of dual-use items from the European Community;

"competent authority" means, *the Treasury, the Secretary of State* or any authority empowered by ~~another Member State~~ *a member State* to grant export authorisations for dual-use items under the Regulation;

"country" includes territory;

"export", unless the context otherwise requires, means export from the *Island and United Kingdom*, including -

- (a) export to a destination within the customs territory of the European Community, and
- (b) the transmission of software or technology by fax, telephone or other electronic media (except that oral transmission of technology by telephone is included only where the

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<sup>1</sup> S.I. 1983/1706 and 2000/1813.

<sup>2</sup> 1972 c.68.

<sup>3</sup> S.I. 1994/1191 as amended by S.I. 1994/1632 and 2711, 1997/323, 1008, 2464 and 2758, 1999/63, 335, 1777, 2610 and 3411, 2000/109 and 1239.

<sup>4</sup> O.J. No. L367, 31.12.94, p.1.

technology is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if it had been so read);

and "exporter" and other cognate expressions shall be construed accordingly (except that where the export is to a destination outside the customs territory of the European Community, "exporter" has the same meaning as in the definition in Article 2(c), to the extent that that definition applies);

"import" and "export" in relation to a vessel, submersible vehicle or aircraft includes the taking into or out of the *Island and United Kingdom* of the vessel, submersible vehicle or aircraft notwithstanding that the vessel, submersible vehicle or aircraft is conveying goods or passengers, and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"items" means both used and unused items;

"items in transit" means -

- (a) items which only pass through the territory of the Community within the meaning of Article 3(4), and
- (b) items being exported to ~~another Member State~~ *a member State* which are not being transferred from the *Island and United Kingdom* to that ~~other~~ Member State within the meaning of Article 21;

"normal commercial journey" means a journey providing transport services in the ordinary course of business;

"proper" has the same meaning as in the Customs and Excise Management Act 1979<sup>5</sup> 1986;

"the Regulation" means Council Regulation (EC) No. 1334/2000 of 22nd June 2000 setting up a Community regime for the control of exports of dual-use items and technology<sup>6</sup>, as amended by the Council Regulations listed in Schedule 1A;

"scheduled journey" means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such manner that its benefits are available to members of the public from time to time seeking to take advantage of it;

"surface effect vehicle" means any air cushion vehicle (whether side wall or skirted) and any vehicle using the wing-in-ground effect for positive lift;

"vessel" includes any ship, surface effect vehicle, vessel of small waterplane area or hydrofoil, and the hull or part of the hull of a vessel.

(2) Any reference in these Regulations to time after an event is a reference to a period of that length of time beginning on the day after that event.

(3) In these Regulations, except where the context otherwise requires, any reference to:

- (a) a numbered regulation or Schedule is to the regulation in or Schedule to these Regulations which is so numbered;
- (b) a numbered paragraph or sub-paragraph is to the paragraph or sub-paragraph which is so numbered in the regulation, Schedule or paragraph where the reference occurs.

(4) Except where these Regulations otherwise provide, expressions used in the Regulation which are also used in these Regulations have the same meaning in these Regulations as they have in the Regulation.

<sup>5</sup> 1979 c.2.

<sup>6</sup> O.J. No. L159, 30.6.00, p.1.

### Granting and revocation etc. of licences

3. (1) The ~~Secretary of State~~ *Treasury* may grant licences and Community Licences.

(2) Any licence or Community Licence granted by the ~~Secretary of State~~ *Treasury* in pursuance of these Regulations or having effect as if so granted may be:

- (a) either general or individual;
- (b) limited so as to expire on a specified date unless renewed;
- (c) subject to or without conditions, and any such condition may require or prohibit any act before or after the export of items under that licence or Community Licence;
- (d) varied or revoked by the ~~Secretary of State~~ *Treasury*.

(3) *A licence issued by the Secretary of State for Trade and Industry shall be deemed to be a licence issued by the Treasury.*

### Exports of dual-use items

4. (1) Subject to Article 6(1), a Community Licence is the authorisation required by:

- (a) Article 3(1) for the export from the European Community of any item listed in Annex I; and
- (b) paragraphs 1, 2 and 3 of Article 4 for the export from the European Community, in the circumstances respectively described in those paragraphs, of dual-use items not listed in Annex I.

(2) A licence granted by the ~~Secretary of State~~ *Treasury* is the authorisation required by Article 21(1) for the export to ~~another~~ a Member State of items listed in Annex IV.

(3) Subject to the provisions of these Regulations:

- (a) no person shall export any items specified in Schedule 2 contrary to a prohibition set out in that Schedule;
- (b) no person shall make to any destination any export consisting of the transmission by fax, telephone or other electronic media of dual-use items in the form of software or technology which are items in transit and which -
  - (i) that person (or, if that person is not within the ~~United Kingdom~~ *Island*, any agent of that person within the ~~United Kingdom~~ *Island* concerned in the export or intended export) has been informed by a competent authority are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons, or
  - (ii) that person is aware are intended, in their entirety or in part, for any of the uses referred to in sub-paragraph (i), or
  - (iii) that person has grounds for suspecting are or may be intended, in their entirety or in part, for any of the uses referred to in sub-paragraph (i), unless that person has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used;

- (c) no person shall export to any destination not in a Member State any dual-use items which that person has grounds for suspecting are or may be intended, in their entirety or in part, for any of the uses referred to in sub-paragraph (b)(i), unless that person has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used; and
- (d) no person shall export to a destination in a Member State -
  - (i) any items listed in Annex I but not in Annex IV,
  - (ii) any items specified in Schedule 2, or
  - (iii) any dual-use items not listed in Annex I and not specified in Schedule 2 but for the export of which from the European Community an authorisation is required in accordance with Article 4(1), (2) or (3) or under Article 4(4),

if that person knows at the time of export that the final destination of those items is outside the European Community and no processing or working is to be performed on those items in any Member State to which they are to be exported.

(4) Subject to the provisions of these Regulations, paragraph (3) does not prohibit the export of any items in relation to which a licence in writing has been granted by the ~~Secretary of State~~ *Treasury*, provided that all conditions attaching to the licence are complied with.

(5) No person shall make any export consisting of the transmission by fax, telephone or other electronic media of dual-use items in the form of software or technology -

- (a) to any destination not in a Member State, if the export is contrary to the restriction imposed by Article 3(1);
- (b) to any destination in a Member State, if the export is contrary to the restriction imposed by Article 21(1).

(6) Subject to the provisions of these Regulations:

- (a) paragraph (5)(a) does not prohibit the export of any items under the authority of the Community General Export Authorisation, or in relation to which a licence in writing has been granted by the Secretary of State or a Community Licence has been granted by any competent authority, provided that all conditions applying to that Authorisation or attaching to the licence or Community Licence are complied with; and
- (b) paragraph (5)(b) does not prohibit the export of any items 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.

#### Exceptions

- 5. (1) Nothing in these Regulations prohibits the export of:
  - (a) any aircraft on a scheduled journey;
  - (b) any aircraft the immediately preceding import of which was on a scheduled journey and which is intended for further scheduled journeys;
  - (c) any vessel which is departing temporarily from the ~~United Kingdom~~ *Island* on trials;
  - (d) any vessel proceeding on a normal commercial journey.
- (2) Paragraphs (a) and (d) of Regulation 4(3) do not apply in respect of items in transit.



## Customs and Excise powers

6. (1) Any dual-use items not listed in Annex I, in relation to which a Community Licence has not been granted and which are brought to any place in the ~~United Kingdom~~ *Island* for the purpose of being exported to a destination outside the European Community, not being items which only pass through the territory of the Community within the meaning of Article 3(4), 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 export brought to its attention) might inform the exporter as provided in Article 4(1), (2) or (3).

(2) Where -

- (a) a Community Licence has been granted by a competent authority in ~~another~~ a Member State for the export of any items to any destination outside the European Community,
- (b) the export of any items is authorised by the Community General Export Authorisation, or
- (c) items, of which the exporter (within the meaning of the Regulation) is established in a Member State ~~other than the United Kingdom but not in the United Kingdom~~, are or have been detained under paragraph (1),

the ~~Secretary of State~~ *Treasury* may give notice to the proper officer of Customs and Excise that he considers that export of the items would be contrary to the essential foreign policy or security interests, or to the fulfilment of the international obligations or commitments, of the United Kingdom; and in such a case the export is prohibited notwithstanding, in a case within sub-paragraph (a) the grant of the Community Licence, or in a case within sub-paragraph (b) the Community General Export Authorisation.

(3) In the case of an export which includes the transmission of software or technology by fax, telephone or other electronic media, the ~~Secretary of State~~ *Treasury* shall send a copy of any notice given under paragraph (2) to the exporter (or, if the exporter is not within the ~~United Kingdom~~ *Island*, any agent of the exporter within the United Kingdom concerned in the export or intended export) at the address stated in the particulars given under regulation 9(1) or (2), or if no such particulars have been given:

- (a) if the exporter or agent is a body corporate, at the address of its registered or principal office in the ~~United Kingdom~~ *Island*; or
- (b) in any other case, at the usual or last known address in the ~~United Kingdom~~ *Island* of the exporter or agent (whether of the exporter's or agent's residence or a place where the exporter or agent carries on business).

(4) Any items listed in Annex I in relation to which a Community Licence has been granted which are brought to any place in the ~~United Kingdom~~ *Island* 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~~ *Treasury* 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~~ *Treasury* certifies that a request for such an extension in accordance with Article 12.4 has been received from the Member State which granted the Licence.

(5) Any exporter shall, if so required by the ~~Commissioners~~ *Treasury*, furnish within such time as ~~they may allow proof to their~~ *it may allow proof to its* satisfaction that the items exported have reached either -

- (a) a destination to which they were authorised to be exported by the Community General Export Authorisation or by a Community Licence or by a licence granted for the

purposes of these Regulations, or

- (b) a destination to which their export was not prohibited by these Regulations,

and an exporter who fails to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding ~~level 4 on the standard scale~~ £2,500 unless he proves that he did not consent to or connive at the items reaching any destination other than such a destination.

#### Misleading applications for licences etc.

7. For the purposes of obtaining any licence from the ~~Secretary of State~~ *Treasury* or any Community Licence from any competent authority no person shall -

- (a) make any statement or furnish any document or information which to that person's knowledge is false in a material particular, or
- (b) recklessly make any statement or furnish any document or information which is false in a material particular;

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

#### Failure to comply with licence conditions

8. (1) This paragraph applies to any person who:

- (a) has exported items from -
- (i) the *Island and* United Kingdom under the authority of a licence granted by the ~~Secretary of State~~ *Treasury* or of the Community General Export Authorisation,
- (ii) the European Community under the authority of a Community Licence granted by the ~~Secretary of State~~ *Treasury*, or
- (iii) the European Community under the authority of a Community Licence sought by or on behalf of a person in, or established in, the ~~United Kingdom~~ *Island*;  
and
- (b) fails to comply with any condition attaching to that licence or Community Licence or applying on use of the Community General Export Authorisation, as the case may be.

(2) Subject to paragraph (3), a person to whom paragraph (1) applies is guilty of an offence and liable:

- (a) on summary conviction to a fine not exceeding ~~the statutory maximum~~ £5,000, and
- (b) on conviction on ~~indictment~~ *information* to a fine or imprisonment for a term not exceeding 2 years, or to both.

(3) No person is guilty of an offence under paragraph (2) where:

- (a) as the case may be -
- (i) in the case of a licence the condition in question had been previously modified without that person's consent by the ~~Secretary of State~~ *Treasury*,
- (ii) in the case of a Community Licence the condition in question had been previously modified without that person's consent by the ~~Secretary of State~~ *Treasury* 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;
- (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) that person proves that the items in relation to which he has failed to comply with the condition had, at the time the condition was modified, been exported from the *Island and United Kingdom* in the case of a licence or from the European Community in the case of a Community Licence or the Community General Export Authorisation.

#### Registration with the ~~Secretary of State~~ *Treasury* and provision of information

9. (1) Not later than 30 days after -
- (a) any person first makes an export from the *Island and United Kingdom* or from the European Community under the authority of any licence or Community Licence, as the case may be, granted by the ~~Secretary of State~~ *Treasury* that does not provide otherwise, or
  - (b) any person established in the ~~United Kingdom~~ *Island* first makes an export from the *Island and United Kingdom* under the authority of the Community General Export Authorisation,

that person shall give to the ~~Secretary of State~~ *Treasury* written notice of the following particulars:

- (i) the name of the person; and
- (ii) the address at which copies of the records referred to in regulation 10 may be inspected by any person authorised by the ~~Secretary of State~~ *Treasury* ~~or the Commissioners~~ under regulation 10.

(2) A person who has given to the ~~Secretary of State~~ *Treasury* 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~~ *Treasury* written notice of the changed particulars.

(3) Not later than 30 days after the first export of any item listed in Part 2 of category 5 in Annex I but not specified in Part I of Schedule 3 from the *Island and United Kingdom* under the authority of the Community General Export Authorisation by any person, that person shall (in addition to any notice given under paragraph (1)), give to the ~~Secretary of State~~ *Treasury* in relation to that item written notice of such of the information specified in Part II of Schedule 3 as is in that person's possession and such other of that information as that person can reasonably be expected to obtain within that time.

(4) A person who has given to the ~~Secretary of State~~ *Treasury* written notice of information under paragraph (3) shall, not later than 30 days after any change in that information, give to the ~~Secretary of State~~ *Treasury* written notice of the changed information.

(5) Any notice to be given by a person under this regulation may be given by the agent of that person; and shall be sent by post or delivered to the ~~Secretary of State at the Applicant Services and Compliance Unit, Department of Trade and Industry, 4 Abbey Orchard Street, London SW1P 2HT~~ *Treasury, Customs and Excise Division, Custom House, Douglas, Isle of Man, IM99 1AG.*

#### Record keeping and inspection

10. (1) Any person established in the ~~United Kingdom~~ *Island* who exports any items from the European Community under the authority of a Community Licence, and any such person who exports any items from the *Island and United Kingdom* under the authority of the Community General Export Authorisation, shall maintain records in relation to each such export that contain the following information:

- (b) regulation 4 (5)(a) with intent to evade the restriction imposed by Article 3(1),
- (c) regulation 4 (5)(b) with intent to evade the restriction imposed by Article 21(1), or
- (d) a prohibition in regulation 6 (2)

is guilty of an offence and may be arrested, and for these purposes ~~section 68(2) of the Customs and Excise Management Act 1979~~ *section 69(2) of the Customs and Excise Management Act 1986* shall not apply.

(2) A person guilty of an offence under paragraph (1) is liable:

- (a) on conviction on ~~indictment~~ *information* to a fine or imprisonment for a term not exceeding 2 years, or to both; or
- (b) on summary conviction to a fine not exceeding ~~the statutory maximum~~ *£5,000*.

(3) Any person who fails to comply with regulation 7, 9 or 10, or Article 4(4), 9(1) or 21(5) or (7), is guilty of an offence and is liable:

- (a) on conviction on ~~indictment~~ *information* to a fine or imprisonment for a term not exceeding 2 years, or to both; or
- (b) on summary conviction to a fine not exceeding ~~the statutory maximum~~ *£5,000*.

(4) Any person who contravenes regulation 4 (5) is guilty of an offence and is liable on summary conviction to a fine not exceeding ~~level 3 on the standard scale~~ *£1,000*.

(5) ~~In England and Wales, subsection (2) of section 24 of the Police and Criminal Evidence Act 1984<sup>7</sup> Section 27(2) of the Police Powers and Procedures Act 1998~~ applies to the offence in paragraph (1) (which is not an arrestable offence by virtue of the term of imprisonment for which a person may be sentenced in respect of it) as if it were mentioned in that subsection; and accordingly that offence is an arrestable offence within the meaning of that Act.

~~(6) — In Northern Ireland, paragraph (2) of Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>8</sup> applies to the offence in paragraph (1) (which is not an arrestable offence by virtue of the term of imprisonment for which a person may be sentenced in respect of it) as if it were mentioned in that paragraph; and accordingly that offence is an arrestable offence within the meaning of that Order.~~

#### **Application of the Customs and Excise Management Act 1979 1986**

12. (1) Section ~~138 145~~ of the Customs and Excise Management Act ~~1979<sup>9</sup>~~ *1986* (provision as to arrest of persons) applies to the arrest of any person for any offence under regulation 11(1) as it applies to the arrest of any person for any offence under the customs and excise Acts.

(2) Sections ~~145 to 148 and 150 to 155~~ *152 to 155 and 157 to 162* of that Act<sup>10</sup> (proceedings for offences, mitigation of penalties, proof and other matters) apply in relation to offences and penalties under these Regulations and proceedings for such offences as they apply in relation to offences and penalties and proceedings for offences under the customs and excise Acts.

(3) — ~~Nothing in subsections (1) to (4) of section 145 of that Act (institution of proceedings for offences~~

<sup>7</sup> 1984 c.60.

<sup>8</sup> S.I. 1989/1341 (N.I. 12).

<sup>9</sup> Section 138 was amended by the Police and Criminal Evidence Act 1984 (c.60), sections 114(1) and 119, Schedule 6 paragraph 37 and Schedule 7 Part I by the Finance Act 1988 (c.39), section 11, and by S.I. 1989/1341.

<sup>10</sup> Section 145(6) was amended by the Police and Criminal Evidence Act 1984 (c.60), section 114(1); section 146(1) was modified by S.I. 1990/2167; section 146A was inserted by the Finance Act 1989 (c.26), section 16(1) and (4); section 147(1) was repealed by the Finance Act 1989 (c.26), section 16(2) and (4), section 187(1) and Schedule 17, Part I; section 147(2) was amended by the Magistrates' Courts Act 1980 (c.43), section 154 and Schedule 7, paragraph 176; section 147(5) was repealed by the Criminal Justice Act 1982 (c.48), section 77 and Schedule 14, paragraph 42 and section 78 and Schedule 16; section 148 was extended by S.I. 1993/1813; section 151 was amended by the Magistrates' Courts Act 1980 (c.43), section 154 and Schedule 7, paragraph 177; section 153(4) was inserted by the Finance Act 1981 (c.35), section 11(1) and Schedule 8, Part I, paragraph 9; section 154(2) was modified by S.I. 1990/2167.



~~under the customs and excise Acts to be by order of the Commissioners) prevents the institution of proceedings by the Secretary of State for an offence of failing to comply with regulation 7, 8, 9 or 10.~~

(4) Where the ~~Commissioners~~ *Treasury* investigate, or propose to investigate, any matter with a view to determining -

- (a) whether there are grounds for believing that an offence under regulation 11(1)(a) for contravention of regulation 4(3)(b), 11(1)(b) or (c) or 11(4) has been committed; or
- (b) whether a person should be prosecuted for that offence,

the matter shall be treated as an assigned matter within the meaning of that Act.

(5) In this regulation, "customs and excise Acts" has the same meaning as in ~~section 1~~ *section 184* of that Act.

#### **Exclusion, modification and amendment of the Export of Goods (Control) Order 1994**

13. The 1994 Order does not apply in respect of the export of dual-use items or items specified in Schedule 2, other than the export of goods which are items in transit; and in respect of goods which are items in transit has effect as if Part III of Schedule 1 to that Order included Annex I and Schedule 2.

#### **Transitional**

14. ~~(1) Notwithstanding the revocation by regulation 1 (2) of the Regulations specified in Schedule 1:~~

- ~~(a) those Regulations shall continue to apply in relation to any export which has occurred before 28th September 2000; and~~
- ~~(b) subject to paragraph (2), any licence or Community Licence issued by the Secretary of State *Treasury* under those Regulations which has not ceased to have effect before 28th September 2000 shall continue to have effect until the same date as it would have had effect if those Regulations had not been revoked, but shall be deemed on and after 28th September 2000 to have been issued under these Regulations.~~

~~(2) Any licence or Community Licence issued by the Secretary of State *Treasury* under the Regulations specified in Schedule 1 shall cease to have effect at the end of 27th September 2000 so far as, but for this paragraph, it would relate to an export for which an authorisation is not required by the Regulation and which:~~

- ~~(a) occurs after that date; and~~
- ~~(b) is not prohibited (other than under the authority of a licence or Community Licence or of the Community General Export Authorisation) by these Regulations.~~

~~(3) Any licence or Community Licence which continues to have effect under paragraph (1)(b) and which authorises the export of goods comprising or including software or technology shall be deemed on and after 28th September 2000 to authorise, to the same extent, the transmission of that software or technology by fax, telephone or other electronic media.~~

Stephen Byers  
Secretary of State for Trade and Industry

20th September 2000

## **SCHEDULE 1**

Regulations 1 (2), 14

### **REGULATIONS REVOKED**

~~Dual Use and Related Goods (Export Control) Regulations 1996 (S.I. 1996/2721).~~

~~Dual Use and Related Goods (Export Control) (Amendment) Regulations 1997 (S.I. 1997/324).~~

~~Dual Use and Related Goods (Export Control) (Amendment No. 3) Regulations 1997 (S.I. 1997/1694).~~

~~Dual Use and Related Goods (Export Control) (Amendment No. 4) Regulations 1997 (S.I. 1997/2759).~~

~~Dual Use and Related Goods (Export Control) (Amendment) Regulations 1998 (S.I. 1998/272).~~

~~Dual Use and Related Goods (Export Control) (Amendment) Regulations 1999 (S.I. 1999/984).~~

~~Dual Use and Related Goods (Export Control) (Amendment No. 2) Regulations 1999 (S.I. 1999/1778).~~

~~Dual Use and Related Goods (Export Control) (Amendment No. 3) Regulations 1999 (S.I. 1999/2091).~~

~~Dual Use and Related Goods (Export Control) (Amendment) Regulations 2000 (S.I. 2000/994).~~

## **SCHEDULE 1A**

*Regulation 2*

*Council Regulation (EC) No. 2889/2000 of 22 December 2000*

*Council Regulation (EC) No. 458/2001 of 6 March 2001*

*Council Regulation (EC) No. 2432/2001 of 20 November 2001*

## **SCHEDULE 2**

Regulations 4 (3)(a), 4 (3)(d)(i), 13

### **PROHIBITED ITEMS - ANY DESTINATION**

#### **Interpretations, exclusions and definitions**

1. Where notes are included in any entry of this Schedule they are to be treated as part of the entry.
2. "Software" described by the General Software Note in Annex I is not specified in this Schedule.
3. References in this Schedule to the General Technology Note are to that Note in Annex I; and "according to the General Technology Note" means that these Regulations apply to the extent indicated in the General Technology Note.
4. For convenience only, defined terms are printed in this Schedule in quotation marks.

**CATEGORY 1 -  
MATERIALS, CHEMICALS, MICROORGANISMS & TOXINS**

**1A      *Equipment, Assemblies and Components.***

**1A905**    The export of "items" specified in this entry is prohibited to any destination except to Member States.

Portable devices, other than those specified in entry PL 5001 of Part III of Schedule 1 to "the 1994 Order", designed for self-protection by the administration of an incapacitating substance, and specially designed components therefor.

**1C      *Materials.***

~~1C950~~    ~~The export of "items" specified in this entry is prohibited to any destination except to Member States.~~

~~Chemical mixtures, as follows—~~

- ~~a.      Mixtures containing one or more of the chemicals specified in entries 1C350.1, .3, .5, .11, .12, .13, .17, .18, .21, .22, .26, .27, .28, .31, .32, .33, .34, .35, .36 and .54 and entries 1C450.b.1, .b.2, .b.4, .b.5 and .b.6 of "Annex I", where the chemical constitutes more than 10% by weight of the mixture;~~
- ~~b.      Mixtures containing one or more of the chemicals specified in entries 1C350.2, .6, .7, .8, .9, .10, .14, .15, .16, .19, .20, .24, .25, .30, .37, .38, .39, .40, .41, .42, .43, .44, .45, .46, .47, .48, .49, .50, .51, .52 and .53 of "Annex I", where the chemical constitutes more than 25% by weight of the mixture;~~
- ~~c.      Mixtures containing one or both of the chemicals specified in entries 1C450.a.1 and .a.2 of "Annex I", where the chemical constitutes more than 1% by weight of the mixture;~~
- ~~d.      Mixtures containing one or more of the chemicals specified in entries 1C450.a.4, .a.5, .a.6, .a.7, .b.7, and .b.8 of "Annex I", where the chemical constitutes more than 30% by weight of the mixture;~~

~~except:~~

~~"items" which will include any of the controlled chemicals or mixtures, and which are put up for retail sale and are intended for individual personal use or consumption.~~

**1C991**    The export of "items" specified in this entry is prohibited to any destination.

Other explosives and propellants and related substances as follows:

- a.    Amatol;
- b.    Nitrocellulose (containing more than 12.5% nitrogen);
- c.    Nitroglycol;
- d.    Pentaerythritol tetranitrate (PETN);
- e.    Picryl chloride;
- f.    Trinitrophenylmethylnitramine (tetryl);
- g.    2, 4, 6-Trinitrotoluene (TNT).



**1C992** The export of "items" specified in this entry is prohibited to any destination.

Vaccines for protection against either of the following:

- a. bacillus anthracis; or
- b. botulinum toxin.

**1E** *Technology.*

~~**1E950**—The export of "items" specified in this entry is prohibited to any destination except to Member States.~~

~~"Technology" according to the "General Technology Note" for the "development" or "production" of mixtures specified in entry 1C950 of this Schedule.~~

## CATEGORY 5 - TELECOMMUNICATIONS AND INFORMATION SECURITY

**Part 1** *Telecommunications.*

**5A1** *Equipment, Assemblies and Components.*

**5A990** The export of "items" specified in this entry is prohibited to any destination in Iran or Iraq.

Tropospheric scatter communications equipment using analogue or digital modulation techniques and specially designed components therefor.

**5E990** The export of "items" specified in this entry is prohibited to any destination in Iran or Iraq.

"Technology" according to the "General Technology Note" for the "development", "production" or "use" of "items" specified in entry 5A990 of this Schedule.

## CATEGORY 8 - MARINE

**8A** *Equipment, Assemblies and Components.*

**8A990** *The export of "items" specified in this entry is prohibited to any destination in Iran or Iraq.*

*Vessels and inflatable craft and related equipment and components, as follows, other than those specified in Annex I:*

- a. *Marine vessels (surface or underwater) and inflatable craft;*
- b. *Equipment and components designed for vessels or inflatable craft specified in 8A990a as follows:*
  - (1) *Hull and keel structures and components;*
  - (2) *Propulsive engines designed or modified for marine use and specially designed components therefor;*
  - (3) *Marine radar, sonar and speed log equipment, and specially designed components therefor.*

**8D      *Software.***

**8D990**    The export of "items" specified in this entry is prohibited to any destination in Iran or Iraq.

"Software" designed for the "development", "production" or "use" of "items" specified in entry 8A990.

**8E      *Technology.***

**8E990**    The export of "items" specified in this entry is prohibited to any destination in Iran or Iraq.

"Technology" according to the "General Technology Note" for the "development", "production" or "use" of "items" specified in entry 8A990 or 8D990.

**CATEGORY 9 -  
AIRCRAFT, SPACE VEHICLES, PROPULSION SYSTEMS AND RELATED EQUIPMENT**

**9A      *Equipment, Assemblies and Components.***

**9A990**    *The export of "items" specified in this entry is prohibited to any destination in Iran or Iraq.*

*Aircraft and related equipment and components, as follows, other than those specified in Annex I:*

*a. Aircraft having a maximum all-up weight of 390 kg or more;*

*b. Equipment and components designed for aircraft specified in 9A990a as follows:*

*(1) Airframe structures and components;*

*(2) Aeroengines and specially designed components therefor;*

*(3) Avionics and navigation equipment and specially designed components therefor; and*

*(4) Landing gear and specially designed components therefor, and aircraft tyres.*

**9A991**    The export of "items" specified in this entry is prohibited to any destination in Iran or Iraq.

"Aircraft" or steerable parachutes other than those specified in entry ML10 of Part III of Schedule 1 to "the 1994 Order", having a maximum all up weight of less than 390kg.

**9E      *Technology.***

**9E990**    The export of "items" specified in this entry is prohibited to any destination in Iran or Iraq.

"Technology" according to the "General Technology Note" for the "development", "production" or "use" of "items" specified in entry 9A990 of this Schedule *except technical data, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable items that are necessary for the continuing airworthiness and safe operation of civil "aircraft"*.

**9E991**    The export of "items" specified in this entry is prohibited to any destination in Iran or Iraq.

"Technology" according to the "General Technology Note" for the "development", "production" or "use" of "items" specified in entry 9A991 of this Schedule *except technical data, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable items that are necessary for the continuing airworthiness and safe operation of civil "aircraft"*.

### SCHEDULE 3

Regulations 9 (3), 10 (7)

#### PART I

#### ITEMS IN RELATION TO WHICH THE REQUIREMENT IN REGULATION 9 (3) DOES NOT APPLY

Any item specified in entry 5A002 or 5D002 of Annex I if:

(1) it is generally available to the public by being sold, without restriction, from stock at retail selling points by means of:

- (a) over the counter transactions,
- (b) mail order transactions,
- (c) electronic transactions, or
- (d) telephone order transactions;

(2) its cryptographic functionality cannot easily be changed by the user;

(3) it is designed for installation by the user without further substantial support by the supplier; and

(4) details of it are accessible and will be provided, upon request, to the Secretary of State in order to enable him to ascertain whether the conditions in paragraphs (1) to (3) of this Part are satisfied;

(5) *Subject to (7) any cryptography development software in entry 5D002 of Annex I, other than software having the characteristics, or performing or simulating the functions, of equipment designed or modified to perform cryptanalytic functions;*

(6) *Subject to (7) any cryptography development technology in entry 5E002, other than technology for the development, production or use of:*

- (a) *equipment designed or modified to perform cryptanalytic functions, or*
- (b) *software having the characteristics, or performing or simulating the functions, of equipment designed or modified to perform cryptanalytic functions;*

(7) *The provisions in paragraphs (5) and (6) are limited to cases in which the item is for use by the exporter, or by any subsidiary or parent undertaking of the exporter, or by a business or academic collaborator of the exporter, in his or their own commercial cryptographic product development activities but only insofar as they are activities pursuant to the agreement establishing the collaboration; and*

(8) *In paragraph (7) "business or academic collaborator" and "parent undertaking" and "subsidiary undertaking" shall have the following meanings:*

- (a) *"business or academic collaborator" means a person who is either working by way of business in research and development of cryptography or cryptographic products or is teaching, or undertaking research as a member of or at a university or institution of higher education into, cryptography or cryptographic products and with whom an exporter has previously entered into an agreement for the carrying out of work comprising or related to research into or development of cryptography or cryptographic products;*
- (b) *"parent undertaking" and "subsidiary undertaking" have the meanings assigned by sections 258 and 259 of the Companies Act 1985 of Parliament (as substituted by sections 21 and 22 of the Companies Act 1989 of Parliament).*

**PART II**  
**INFORMATION TO BE KEPT IN RELATION TO CERTAIN ITEMS LISTED IN PART 2 OF**  
**CATEGORY 5 IN ANNEX I**

1. A general description of the item, such as might be contained in a product brochure.
2. Descriptions of all relevant encryption algorithms and key management schemes, and descriptions of how they are used by the item (for example, which algorithm is used for authentication, which for confidentiality and which for key exchange); and details (for example, source code) of how they are implemented (for example, how keys are generated and distributed, how key length is governed and how the algorithm and keys are called by the software).
3. Details of any measures taken to preclude user modification of the encryption algorithm, key management scheme or key length.
4. Details of pre- or post-processing of data, such as compression of plain text or packetization of encrypted data.
5. Details of programming interfaces that can be used to gain access to the cryptographic functionality of the item.
6. A list of any standards or protocols to which the item adheres.

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations consolidate the Dual-use and Related Goods (Export Control) Regulations 1996 and the various Regulations which amended them, and incorporate further amendments to give effect to certain provisions of Council Regulation (EC) No. 1334/2000 ("the new Council Regulation") on the control of exports of dual-use items and technology. The 1996 Regulations and the Regulations which amended them are revoked, but continue to have effect for any export which has occurred before 28th September 2000.

The changes of significance from the 1996 Regulations are as follows -

- (a) The Regulations apply not just to exports of goods (including software and technology) in tangible form, but also to the transmission of software and technology by fax, telephone (subject to certain limits) or other electronic means. This is reflected in the use of the word "items" rather than "goods" throughout, as in the new Council Regulation.
- (b) Provision is made for use of the Community General Export Authorisation ("CGEA") introduced by Article 6(1) of Annex II to the new Council Regulation. This operates as a general authorisation for the export of most controlled dual-use items from anywhere in the European Community to the destinations listed in Part 3 of that Annex, subject to certain exceptions set out in that Annex. Exporters established in the United Kingdom who wish to make an export from the United Kingdom under the authority of the CGEA must, on first doing so, register with the Secretary of State and then keep certain records in relation to each such export. Any exporter who wishes to export certain cryptographic items from the United Kingdom under the authority of the CGEA must give the Secretary of State written notice of certain information in accordance with regulation 9(3) of and Part II of Schedule 3 to these Regulations.
- (c) The new Council Regulation extends the circumstances in which the actual or possible end-use of dual-use items may make their export from the European Community subject to control. They now include cases where the exporter has been informed by a competent authority that the dual-use items in question are or may be intended for a military end-use in a country subject to certain types of arms embargo, or for use as parts or components of military list items which have been exported in breach of United Kingdom export controls (and exporters who are aware that dual-use items are intended for such a use must inform the

competent authorities of the country where they are established). These Regulations take up the option given by the new Council Regulation of also making exports of dual-use items from the United Kingdom to other Community Member States subject to control, where the exporter knows that the items are to be sent from another Member State out of the Community and export of the items directly out of the Community would require authorisation under the end-use controls.

- (d) Certain cryptographic items are no longer subject to control when they are exported from the United Kingdom to other Community Member States, but exporters of those items to other Member States are required to keep records containing certain information in relation to such items in accordance with regulation 10(7) and Part II of Schedule 3.
- (e) Regulation 4(3)(b) now only controls exports, for use in connection with weapons of mass destruction, of dual-use items in transit taking the form of the transmission of software or technology by fax, telephone or other electronic media. The control on goods other than dual-use goods in regulation 4(2)(b) of the 1996 Regulations is not reproduced in these Regulations, but is inserted into the Export of Goods (Control) Order 1994 by an amendment coming into force on the same date as these Regulations. It will apply to dual-use goods which are items in transit by virtue of regulation 13 of these Regulations.

A number of consequential and drafting amendments of no substance have been made.

It should be noted that the Annexes containing the lists of dual-use items subject to Community controls are now part of the Council Regulation itself, not part of a separate Council Decision as before. Copies of the issue of the Official Journal of the European Communities which contains the Council Regulation including the Annexes (O.J. No. L.159, 30.6.00) can be obtained from HMSO.