

CAYMAN ISLANDS



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STATUTORY INSTRUMENTS

2004 No. 3101

**THE EXPORT OF GOODS, TRANSFER OF
TECHNOLOGY AND PROVISION OF TECHNICAL
ASSISTANCE (CONTROL) (OVERSEAS
TERRITORIES) ORDER 2004**

STATUTORY INSTRUMENTS

2004 No. 3101

OVERSEAS TERRITORIES

**The Export of Goods, Transfer of Technology and Provision of Technical
Assistance (Control) (Overseas Territories) Order 2004**

Made 16th December 2004

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 16(5) of the Export Control Act 2002[1], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation

1. This Order may be cited as the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004.

Extent and interpretation

2. (1) This Order shall extend to the territories listed in Schedule 1.
- (2) In the application of this Order to any of the said territories -
- (a) "the Territory" means that territory;
 - (b) any reference to "the Governor" means the Governor or other officer administering the Government of that territory; and
 - (c) any reference to the official gazette of a Territory includes a reference to any form in which official information is normally made available in that Territory.

(3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to the sums expressed in sterling in Schedule 2 or, as applicable, in Schedule 4.

Extension of Order to territories

3. The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003[2] (the "UK Order"), as modified in Schedule 2, extends to the territories listed in Schedule 1.

Guidance about the exercise of functions under this Order

4. Section 9 of the Export Control Act 2002 (guidance about the exercise of functions under control orders), as modified in Schedule 3, extends to the territories listed in Schedule 1.

Application to the Sovereign Base Areas of Akrotiri and Dhekelia of provisions relating to penalties for offences and proceedings

5. Schedule 4 shall have effect for the application of articles 16, 17, 18 and 19 of the UK Order, as modified in Schedule 2, to the Sovereign Base Areas of Akrotiri and Dhekelia.

Duty to make available Schedules

6. The Governor shall make available to persons in the Territory, in such manner as he may think fit, the provisions of Schedules 1, 2 and 3, and Part 1 of Schedule 4, to the UK Order as from time to time in force in the law of the United Kingdom.

European Community matters

7. (1) The Governor shall make available to persons in the Territory, in such manner as he may think fit -

- (a) the text of Council Regulation (EC) No. 1334/2000 of 22nd June 2000[3], together with the text of any amending Council Regulations, whether those Regulations were made before or after the coming into force of this Order in the Territory;
- (b) a list of those countries which are for the time being Member States of the European Community; and
- (c) a list of the competent authorities empowered by each member state to authorise exports under Council Regulation (EC) No. 1334/2000 of 22nd June 2000.

(2) A certificate given by or on behalf of the Governor in pursuance of sub-paragraph (1)(a), (b) or (c), or as to whether a place is within or outside the European Community, shall be conclusive evidence of the matters stated therein for the purposes of this Order, and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Exercise of powers of the Governor

8. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

A.K. Galloway

Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

Bermuda

Cayman Islands

Falklands Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena and Dependencies

South Georgia and the South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 3

PROVISIONS OF THE EXPORT OF GOODS, TRANSFER OF TECHNOLOGY AND PROVISION OF TECHNICAL ASSISTANCE (CONTROL) ORDER 2003 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Commencement

1. This Order shall be extended to each Territory listed in Schedule 1 on such day as the Governor may by order, published in the official gazette of the Territory, appoint.

Interpretation

2. (1) In this Order the following expressions have the meanings given to them below, save where an expression is also defined in a Schedule where it has, for the purposes of that Schedule, that meaning -

"the Act" means the Export Control Act 2002[4];

"aircraft" means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

"competent authority" means in respect of any territory to which this Order applies, the Governor, in respect of the United Kingdom, the Secretary of State, and, in respect of any other Member State, any authority empowered by that Member State to grant "exportation" or "transfer" authorisation under "the Regulation";

"country" includes territory;

"customs authorities" means the authorities which, under the law of the territory, have responsibility for the control of imports and exports;

"dual-use" in relation to "goods" or "technology", means "goods" or "technology" which can be used for both civil and military purposes,

and includes any "goods" or "technology" which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

"the European Community" means the customs territory of the European Community as defined in article 3(3) of Council Regulation (EEC) No 2913/92 of 12th November 1992[5];

"exportation" includes "shipment" as "stores" and, unless the context otherwise requires, means exportation from the Territory to any destination outside the Territory, except "export" in relation to the exportation from the Territory of "dual-use" "goods", "software" and "technology" which has the same meaning that it would have in article 2(b) of "the Regulation" if the Territory were a Member State of the European Community;

"exporter" and other cognate expressions shall be construed accordingly;

"goods" means tangible goods, both used and unused and includes any goods on which "software" or "technology" is recorded;

"goods in transit" means any "goods" imported into the Territory (which for this purpose shall be treated as a Member State of the European Community) for "transit or transshipment";

"importation" and "exportation" in relation to a "vessel", "vehicle", submersible vehicle or "aircraft" include the taking into or out of the Territory of the "vessel", "vehicle", submersible vehicle or "aircraft", notwithstanding that the "vessel", "vehicle", 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;

"microprogramme" means a sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register;

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

"programme" means a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer;

"in the public domain" means available without restriction upon further dissemination (no account being taken of restrictions arising solely from copyright);

"the Regulation" means Council Regulation (EC) No. 1334/2000 of 22nd June 2000[6] as amended from time to time (whether the amendments were made before or after the coming into force of this Order in the Territory);

"any relevant use" means 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;

"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;

"shipment" (and cognate expressions) and "stores" have the same meanings as in the laws of the Territory relating to customs and excise;

"software" means one or more "programmes" or "microprogrammes" fixed in any tangible medium of expression;

"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;

"technical assistance" means any technical support related to repairs, development, manufacture, assembly, testing, "use", maintenance or any other technical service;

"technology" means information (including but not limited to information comprised in software and documents such as blueprints, manuals, diagrams and designs) that is capable of use in connection with the development, production or use of any goods;

"transfer", in relation to any "software" or "technology", means the "transfer by any electronic means" or "transfer by non-electronic

means" (or any combination of electronic and non-electronic means)
from a person or place within the Territory;

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

"transfer by any electronic means", in relation to any "software" or
"technology", means a transmission of "software" or "technology" by
facsimile, telephone or other electronic media (except that oral
transmission of "technology" by telephone is included only where the
"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);

"transfer by any non-electronic means", in relation to any "software"
or "technology", means a disclosure of "software" or "technology" by
any means (or combination of means), including oral communication,
other than as the "exportation" of "goods" or the "transfer by any
electronic means";

"transit or transshipment" means transit through the Territory or
transshipment with a view to re-exportation of the "goods" in question
or transshipment of those "goods" for use as "stores";

"United Kingdom person" means a United Kingdom national or a body
incorporated or constituted under the law of the Territory; and for the
purposes of this definition, a United Kingdom national is an individual
who is ordinarily resident in the Territory and is a British citizen, a
British overseas territories citizen, a British National (Overseas), a
British Overseas citizen, a person who under the British Nationality
Act 1981[7] is a British subject or a British protected person within the
meaning of that Act;

"vehicle" includes a railway carriage; and

"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 this Order to time after an event is a reference to a period of that length of time beginning on the day after that event.

(3) Except where this Order otherwise provides, expressions used in the Regulation which are also used in this Order have the same meaning in this Order as they have in the Regulation.

PART I

CONTROL ON THE EXPORT OF GOODS

Export of military and certain other goods

3. (1) Subject to the provisions of this Order, goods of a description specified in Schedule 1 to the UK Order are prohibited to be exported to any destination.

(2) Sub-paragraph (1) does not prohibit the exportation of any goods in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

(3) Subject to the provisions of this Order, or any contrary provisions in a licence, a licence granted by the Governor in relation to any goods specified in Schedule 1 to the UK Order shall also authorise the exportation or transfer of the minimum technology required for the installation, operation, maintenance and repair of the goods to the same destination as the goods.

Export of dual-use goods and end-use control

4. (1) Subject to the provisions of this Order, goods of a description specified in Schedule 2 to the UK Order are prohibited to be exported to the destinations specified in that Schedule as being prohibited destinations in relation to those goods.

(2) Subject to the provisions of this Order, articles 3 and 4 of the Regulation shall have effect in the Territory so as to prohibit the exportation of dual-use goods to any destination outside the European Community as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory.

(3) Subject to the provisions of this Order -

- (a) goods specified in Annex I but not in Annex IV to the Regulation;

- (b) goods of a description specified in Schedule 2 to the UK Order;
or
- (c) goods not specified in Annex I to the Regulation or Schedule 2 to the UK Order but for the exportation of which from the Territory or the European Community an authorisation is, or in accordance with sub-paragraph (2) would be, required pursuant to:
 - (i) article 4(1) of the Regulation; or
 - (ii) article 4(2), (3) or (4) of the Regulation,

are prohibited to be exported to any destination in any Member State where the exporter knows at the time of exportation that the final destination of such goods is outside the Territory or the European Community and no processing or working is to be performed on those goods in any Member State to which they are to be exported.

(4) Subject to the provisions of this Order, dual-use goods not listed in Annex I to the Regulation, which the exporter has grounds for suspecting are or may be intended, in their entirety or in part, for any relevant use, are prohibited to be exported to any destination outside the Territory or the European Community, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.

(5) Subject to the provisions of this Order, goods of a description specified in Annex I to the Regulation, which are goods in transit, are prohibited to be exported to any destination.

(6) Subject to the provisions of this Order, sub-paragraphs (1), (2), (3), (4) and (5) do not prohibit the exportation of any goods in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

End-use control and goods in transit

5. (1) Subject to the provisions of this Order, goods which are goods in transit are prohibited to be exported to any destination where -

- (a) the exporter (or, if the exporter is not within the Territory, any agent of the exporter within the Territory concerned in the exportation or intended exportation) has been informed by a competent authority that such goods are or may be intended, in their entirety or in part, for any relevant use; or
- (b) the exporter is aware that such goods are intended, in their entirety or in part, for any relevant use; or

- (c) the exporter has grounds for suspecting that such goods are or may be intended, in their entirety or in part, for any relevant use, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.

(2) Subject to the provisions of this Order, sub-paragraph (1) does not prohibit the exportation of any goods in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

PART II

CONTROLS ON THE TRANSFER OF TECHNOLOGY

Electronic transfer of controlled military and certain other technology

6. (1) Subject to the provisions of this Order, no person shall transfer by any electronic means to a person or place outside the Territory any software or technology of a description specified in Schedule 1 to the UK Order.

(2) Subject to the provisions of this Order, sub-paragraph (1) does not prohibit the transfer of any software or technology of a description specified in Schedule 1 to the UK Order in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

Electronic transfer of controlled dual-use technology and software and end-use controls

7. (1) Subject to the provisions of this Order, no person shall transfer by any electronic means any dual-use software or technology of a description specified in Schedule 2 to the UK Order, where the transfer is to a person or place in any destination specified in that Schedule as being a prohibited destination in relation to that software or technology.

(2) Subject to the provisions of this Order, articles 3 and 4 of the Regulation shall have effect in the Territory so as to prohibit the transfer by electronic means of any dual-use technology or software to a person or place outside the European Community as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory.

(3) Subject to the provisions of this Order, no person shall transfer by any electronic means to a person or place in any Member State any dual-use software or technology that is either -

- (a) specified in Annex I but not in Annex IV to the Regulation;
- (b) specified in Schedule 2 to the UK Order; or
- (c) not specified in Annex I to the Regulation or Schedule 2 to the UK Order but for the transfer of which from the Territory or the European Community an authorisation is, or in accordance with sub-paragraph (2) would be, required pursuant to -
 - (i) article 4(1) of the Regulation; or
 - (ii) article 4(2), (3) or (4) of the Regulation,

if he knows at the time of the transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in any Member State to which it is to be transferred.

(4) Subject to the provisions of this Order, no person shall transfer by any electronic means any dual-use software or technology not listed in Annex I to the Regulation to a person or place not within the Territory or the European Community where he has grounds for suspecting that such software or technology is or may be intended, in its entirety or in part, for any relevant use, unless he has made all reasonable enquiries as to its proposed use and is satisfied that it will not be so used.

(5) Subject to the provisions of this Order, sub-paragraphs (1), (2), (3) and (4) do not prohibit the transfer of any dual-use software or technology in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

Electronic transfer of all software and technology and end-use controls

8. (1) Subject to the provisions of this Order, no person shall transfer by any electronic means any software or technology to a person or place within the Territory, where -

- (a) he has been informed by the Governor or the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used otherwise than within the Territory or the European Community.

(2) Subject to the provisions of this Order and where sub-paragraph (3) applies, no United Kingdom person shall transfer by any electronic means any

software or technology from any place not within the Territory or the European Community to -

- (a) a person or place not within the Territory or the European Community; or
- (b) a person or place within the Territory or any Member State if he knows at the time of transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in the Territory or in any Member State to which it is to be transferred.

(3) This sub-paragraph applies where -

- (a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(4) Subject to the provisions of this Order, no United Kingdom person shall transfer by any electronic means any software or technology from any place not within the Territory or the European Community to a person or place within the Territory or the European Community where -

- (a) he has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used otherwise than within the Territory or the European Community.

(5) For the purposes of sub-paragraphs (1) and (4) a person has reason to believe that software or technology may be used otherwise than within the Territory or the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Governor or the Secretary of State that it may be or is intended to be so used.

(6) Nothing in sub-paragraph (1), (2) or (4) shall be taken to prohibit the transfer of any software or technology in the public domain.

(7) Sub-paragraphs (1), (2) and (4) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted

under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

Non-electronic transfer of all software and technology and end-use controls

9. (1) Subject to the provisions of this Order, and where sub-paragraph (2) applies, no person ('the person concerned') shall transfer by any non-electronic means any software or technology to -

- (a) a person or place not within the Territory or the European Community; or
- (b) a person or place within the Territory or any Member State if he knows at the time of transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in the Territory or any Member State to which it is to be transferred.

(2) This sub-paragraph applies where -

- (a) the person concerned has been informed by the Governor or the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the person concerned is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(3) Subject to the provisions of this Order, articles 3 and 4 of the Regulation shall have effect in the Territory so as to prohibit the transfer by any non-electronic means of dual-use software and technology to any person or place not within the territory or the European Community as if the Territory were a Member State of the European Community and the Regulation were a law of the Territory.

(4) Subject to the provisions of this Order, no person shall transfer by any non-electronic means any software or technology to a person or place within the Territory where -

- (a) he has been informed by the Governor or the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used otherwise than within the Territory or the European Community.

(5) Subject to the provisions of this Order and where sub-paragraph (6) applies, no United Kingdom person shall transfer by any non-electronic means any software or technology from any place not within the Territory or the European Community to -

- (a) a person or place not within the Territory or the European Community; or
- (b) a person or place within the Territory or any Member State if he knows at the time of transfer that such software or technology is intended for use otherwise than within the Territory or the European Community and no processing or working is to be performed on that software or technology in the Territory or the Member State to which it is to be transferred.

(6) This sub-paragraph applies where -

- (a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or
- (b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(7) For the purposes of sub-paragraph (4) a person has reason to believe that software or technology may be used otherwise than within the Territory or the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Governor or the Secretary of State that it may be or is intended to be so used.

(8) Nothing in sub-paragraph (1), (3), (4) or (5) shall be taken to prohibit the transfer of any software or technology in the public domain.

(9) Sub-paragraphs (1), (3), (4) and (5) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

PART III

CONTROL ON THE PROVISIONS OF TECHNICAL ASSISTANCE

End-use control on technical assistance

10. (1) Subject to sub-paragraphs (3) and (4), no person shall directly or indirectly provide to a person or place not within the Territory or the European

Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which -

- (a) he has been informed by the Governor is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware is intended, in its entirety or in part, for any relevant use.

(2) Subject to sub-paragraphs (3) and (4), no United Kingdom person shall directly or indirectly provide from a place not within the Territory or the European Community to any person or place not within the Territory or the European Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which -

- (a) he has been informed by the Governor is or may be intended, in its entirety or in part, for any relevant use; or
- (b) he is aware is intended, in its entirety or in part, for any relevant use.

(3) For the purposes of sub-paragraphs (1) and (2) -

- (a) a person directly provides technical assistance if in particular he provides technical assistance or agrees to do so; and
- (b) a person indirectly provides technical assistance if in particular he makes arrangements under which another person provides technical assistance or agrees to do so.

(4) Sub-paragraphs (1) and (2) do not prohibit the provision of any technical assistance in relation to which a licence in writing has been granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

PART IV

EXCEPTIONS TO THE CONTROLS IN PARTS I, II AND III

Aircraft, vessels, firearms and ammunition and goods transit

11. (1) Nothing in paragraph 4 shall be taken to prohibit the exportation of any aircraft the immediately preceding importation of which was on a scheduled journey and which is intended for further scheduled journeys.

(2) Nothing in paragraph 3 shall be taken to prohibit the exportation of any aircraft which is being exported (except to Iran or a country or destination specified in Schedule 3 to the UK Order) after temporary importation into the Territory provided there has been no change of ownership or registration since

such importation and that no goods of a description specified in Schedule 1 to the UK Order have been incorporated into the aircraft since such importation other than by way of replacement for a component essential for the departure of the aircraft.

(3) Nothing in paragraph 4 shall be taken to prohibit the exportation of any aircraft on a scheduled journey.

(4) Nothing in paragraph 3 or 4 shall be taken to prohibit the exportation of any aircraft which is departing temporarily from the Territory on trials.

(5) Nothing in paragraph 3 or 4 shall be taken to prohibit the exportation of any vessel which is departing temporarily from the Territory on trials.

(6) Nothing in paragraph 3 shall be taken to prohibit the exportation of any vessel registered or constructed outside the Territory which is being exported (except to Iran or a country or destination specified in Schedule 3 to the UK Order) after temporary importation into the Territory provided that no goods of a description specified in Schedule 1 to the UK Order have been incorporated into the vessel since such importation other than by way of replacement for a component essential for the departure of the vessel.

(7) Nothing in paragraph 4 shall be taken to prohibit the exportation of any vessel proceeding on a normal commercial journey.

(8) [omitted]

(9) Nothing in paragraph 3 shall be taken to prohibit the exportation of any firearm authorised to be possessed or, as the case may be, purchased or acquired by a valid certificate, licence or other authority under the law of the Territory, related ammunition and sight using non-electronic image enhancement for use therewith -

- (a) to any destination in a Member State by the holder of a certificate, licence or other authority in respect of that firearm granted under the law of the Territory, or
- (b) to any other destination other than to Iran or a country or destination specified in Schedule 3 to the UK Order,

provided that the firearm, related ammunition and sight using non-electronic image enhancement form part of the personal effects of the holder of the authority and, in a case to which sub-paragraph (b) applies, the authority is produced by the holder, or his duly authorised agent, with the firearm and ammunition to the customs authorities at the place of exportation.

(10) Subject to paragraph 5 and sub-paragraph (11) below, nothing in paragraph 3, 4(1), 4(2), 4(3)(a), (b), (c)(ii) or (5) shall be taken to prohibit the exportation of any goods which are goods in transit provided that the conditions in sub-paragraph (12) below are met.

(11) Sub-paragraph (10) does not apply to -

- (a) anti-personnel landmines;
- (b) any goods falling within paragraph c. or g. of entry PL5001 in Part I of Schedule 1 to the UK Order;
- (c) components specially designed for goods falling within sub-paragraph (a);
- (d) equipment, software or technology falling within entry ML18, ML21 or ML22 in Part 1 of Schedule 1 to the UK Order specifically related to goods falling within sub-paragraph (a) or (b);
- (e) any goods being exported to Iran or North Korea; or
- (f) any goods of a description specified in Schedule 1 to the UK Order being exported to any country or destination specified in Schedule 3 to the UK Order.

(12) The conditions are that -

- (a) the goods remain on board a vessel or aircraft for the entire period that they remain in the Territory or are goods on a through bill of lading or through air waybill and in any event are exported within 30 days of their importation;
- (b) the destination of those goods following exportation from the Territory has been determined in the country from which they were originally exported prior to their original exportation in connection with the transaction which has given rise to transit or transshipment and has not been changed prior to their exportation from the Territory, or the goods are being returned to that country; and
- (c) the goods in question were exported from that country in accordance with any laws or regulations relating to the exportation of goods applying therein at the time of exportation of those goods.

PART V

LICENCES

Licences

- 12.** (1) The Governor may grant licences.
- (2) [omitted]
- (3) [omitted]
- (4) Any licence granted or issued by the Governor in pursuance of this Order may be
- (a) either general or individual;
 - (b) limited so as to expire on a specified date unless renewed; and
 - (c) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised under that licence.
- (5) Any licence granted under this Order may be amended, suspended or revoked by the Governor at any time and in such circumstances and on such terms as he thinks fit by serving notice to that effect on the holder of the licence.

Registration with the Governor

- 13.** (1) Not later than 30 days after any person first does any act under the authority of -
- (a) any general licence granted by the Governor that does not provide otherwise,
 - (b) any individual licence granted under paragraph 4 or 5 by the Governor that does not provide otherwise,

the person in question shall give to the Governor written notice of his name and the address at which copies of the records referred to in paragraph 14(1) may be inspected by any person authorised by the Governor or the customs authorities under paragraph 14(4).

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

Record keeping and inspection

14. (1) Any person acting under the authority of any general licence granted under this Order shall keep detailed registers or records.

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

- (a) a description of the goods that have been exported or the software or technology that has been transferred;
- (b) the date of the exportation or transfer;
- (c) the quantity of the goods;
- (d) the name and address of the person referred to in sub-paragraph (1);
- (e) the name and address of any consignee of the goods;
- (f) in so far as it is known to the person referred to in sub-paragraph (1) the name and address of the end-user of the goods, software or technology; and
- (g) any further information required to be kept by the competent authority who has authorised the exportation or transfer.

(3) [omitted]

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

(5) [omitted]

(6) Any person authorised by the Governor or the customs authorities shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any reasonable hour to enter for the purpose of sub-paragraph (4) the premises of the address which has most recently been notified to the Governor under paragraph 13.

(7) Where the registers or records required to be maintained under this paragraph are kept in a form which is not legible the exporter or transferor shall, at the request of the person authorised by the Governor or the customs authorities, reproduce such registers or records in a legible form.

(8) [omitted]

(9) Any person who exports or transfers to any Member State any goods, software or technology listed in Part 2 of category 5 in Annex I to the Regulation but not listed in Annex IV to the Regulation shall maintain registers or records in relation to each such exportation or transfer that contain such of the information specified in Part II of Schedule 4 to the UK Order as he can reasonably be expected to obtain and such other of that information as comes into his possession. These registers or records shall be kept for at least 3 years from the end of the calendar year in which the authorised act took place, and he shall permit any such registers or records to be inspected and copied by any person authorised by the Governor or the customs authorities. Sub-paragraphs (6) and (7), and the provision in sub-paragraph (4) relating to inspection and copying, shall apply to the production of such documents or records as they apply in respect of registers or records referred to in sub-paragraph (4) or (as the case may be) in respect of entry into premises for the purpose of sub-paragraph (4).

Licence refusals etc. and appeals

15. (1) In the event that the Governor decides not to grant a licence under this Order to any person who has applied for a licence, he shall be provided with a written notification setting out the reason or reasons for the decision.

(2) In the event that the Governor decides to suspend a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) In the event that the Governor decides to revoke a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(4) Any person who has a licence application refused under this Order or who has a licence suspended or revoked under paragraph 12 shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Governor.

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

(6) Pending determination of any appeal submitted under sub-paragraph (4), any decision taken by the Governor shall continue to have effect.

PART VI

GENERAL

Offences and penalties

16. (1) Any person who contravenes a prohibition or restriction in -

- (a) paragraph 6, 7(1), 7(3)(a), 7(3)(b) or 7(3)(c)(ii); or
- (b) article 3(1), 4(2) or 4(3) of the Regulation,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5000 or the equivalent.

(2) Any person who contravenes a prohibition or restriction in -

- (a) paragraph 4(3)(c)(i), 4(4) or 5;
- (b) paragraph 7(3)(c)(i), 7(4), 8(2), 8(4), 9(1), 10(1) or 10(2);
- (c) paragraph 8(1) or 9(4); or
- (d) article 4(1) of the Regulation,

shall be guilty of an offence and may be arrested.

(3) A person guilty of an offence under sub-paragraph (2) shall be liable:

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine of any amount or to imprisonment for a term not exceeding two years, or to both.

(4) Any person knowingly concerned in the exportation of any good or the transfer of software or technology, or in the attempted exportation of any good or the attempted transfer of software or technology, with intent to evade any prohibition or restriction in -

- (a) paragraph 6, 7(1), 7(3), 7(4), 8(2), 8(4), 9(1) or 9(5);
- (b) paragraph 8(1) or 9(4); or
- (c) article 3(1), 4(1), 4(2) or 4(3) of the Regulation,

shall be guilty of an offence.

(5) Any person knowingly concerned in the provision, or attempted provision, of technical assistance related to the supply, delivery, manufacture, maintenance or use of anything, with intent to evade any prohibition or restriction in paragraph 10, shall be guilty of an offence.

(6) A person guilty of an offence under sub-paragraph (4) or (5) shall be liable:

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both.

(7) Any person who fails to comply with the requirement in article 4(4) of the Regulation shall be guilty of an offence and liable:

- (a) on summary conviction to a fine not exceeding £5000 or the equivalent;
- (b) on conviction on indictment, to a fine of any amount or to imprisonment for a term not exceeding two years, or to both.

(8) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(9) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(10) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

(11) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

Misleading applications for licences

17. (1) Where for the purpose of obtaining any licence under this Order any person either -

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or
- (b) recklessly makes any statement or furnishes any document or information which is false in a material particular,

he shall be guilty of an offence.

- (2) A person guilty of an offence under sub-paragraph (1) shall be liable -
 - (a) on summary conviction to a fine not exceeding £5000 or the equivalent; or
 - (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both,

and any licence which may have been granted by the Governor in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time it was granted.

Failure to comply with licence conditions

- 18.** (1) Subject to the provisions of sub-paragraph (3), any person who -
- (a) has done any act under the authority of a licence granted by the Governor under this Order; and
 - (b) fails to comply with any conditions attaching to that licence,

shall be guilty of an offence.

- (2) A person guilty of an offence under sub-paragraph (1) shall be liable -
 - (a) on summary conviction to a fine not exceeding £5000 or the equivalent; or
 - (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both.
- (3) No person shall be guilty of an offence under sub-paragraph (1) where -
 - (a) the condition in question had been previously modified by the Governor;
 - (b) the alleged failure to comply would not have been a failure had the licence not been so modified; and
 - (c) the condition with which he failed to comply was modified after the doing of the act authorised by the licence.

Customs powers to require evidence of destination

19. (1) Any person who exports or ships any goods subject to controls by the Act shall, if so required by the customs authorities, provide within such time as they may determine evidence of the destination to which the goods were delivered and, if he fails to do so, he shall be guilty of an offence.

(2) Any person guilty of an offence under sub-paragraph (1) shall be liable on summary conviction to a fine not exceeding £5000 or the equivalent.

Customs powers

20. Goods which are brought to any place in the Territory for the purpose of being exported may be detained by the customs authorities as if they were liable to forfeiture, if and so long as they have reason to believe that the Governor (after, if necessary, having had the impending exportation brought to his attention) might inform the exporter as provided in article 4(1), (2) or (3) of the Regulation or paragraph 5.

Application of customs and excise laws

21. (1) It shall be the duty of the customs authorities to take such action as they consider appropriate to secure the enforcement of the provisions of this Order described in sub-paragraph (3).

(2) [omitted]

(3) The provisions referred to in sub-paragraph (1) are paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 17, 18 and 19 but excluding paragraphs 8(1) and 9(4). Paragraph 14 shall be enforced only insofar as the obligation relates to the powers of the customs authorities.

(4) The provisions of the laws of the Territory relating to customs and excise relating to proceedings for offences, mitigation of penalties, proof and other matters apply in relation to offences and penalties created by this Order and proceedings for such offences as they apply in relation to offences and penalties and proceedings for offences under those laws.

(5) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the customs authorities by virtue of sub-paragraph (3) shall not be offences for which, under any provision of the laws of the Territory, proceedings may only be instituted by those authorities.

(6) In any case where a person would, apart from this sub-paragraph, be guilty of -

- (a) an offence under the provisions of the laws of the Territory relating to the import or export of goods; and
- (b) a corresponding offence under this Order,

he shall not be guilty of the offence mentioned in sub-paragraph (a) of this sub-paragraph.

(7) Sub-paragraph (6) does not apply in respect of prohibitions or restrictions on the exportation of firearms falling within any description of weapons subject under the law of the Territory to a general prohibition on their possession, purchase, acquisition, manufacture, sale or transfer without the permission of the Governor.

Use and disclosure of information

22. (1) This paragraph applies to information which is held by -

- (a) the Governor, or
- (b) the customs authorities,

in connection with the operation of controls imposed by this Order on the exportation of goods, the transfer of technology or participation in the provision of services connected with the development, production or use of goods or technology.

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

- (a) the exercise of functions in relation to any control imposed by this Order or by any other order made under the Act;
- (b) giving effect to any European Community or other international obligation of the United Kingdom;
- (c) facilitating the exercise by an authority or international organisation outside the Territory of functions which correspond to functions conferred by or in connection with any activity subject to control by this Order or any other order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this paragraph unless the making of the disclosure is proportionate to the object of the disclosure.

(4) For the purposes of this paragraph "information" is any information that relates to a particular business or other activity carried on by a person.

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

(6) The information that may be disclosed by virtue of this paragraph includes information obtained before the commencement of this Order.

Service of notices

23. Any notice to be given to the Governor by a person under this Order may be given by an agent of his, and shall be sent by post or delivered to the Governor at an address specified in the official gazette of the Territory.

Repeals and revocations

24. [omitted]

Transitional arrangements

25. (1) Licences issued by the Governor of a territory to which this Order applies before the date of the coming into force of this Order in that Territory ("the relevant date") permitting anything to be done or omitted to be done for which, apart from this paragraph, a licence under this Order would be required on or after the relevant date shall continue to have effect for the period for which they were issued, and any such licence shall be deemed to have been issued under this Order.

(2) The provisions of the law of the Territory in force before the relevant date shall continue to apply in relation to any export for which such a licence was required before that date which has occurred before that date and to any export which takes place on or after the relevant date in respect of which such a licence has been issued before that date.

SCHEDULE 3

Article 4

SECTION 9 OF EXPORT CONTROL ACT 2002 AS EXTENDED TO THE
OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Section 9 of the Export Control Act 2002 extends to each of the territories listed in Schedule 1, modified as follows:

" **9.** (1) This section applies to licensing powers and other functions conferred on any person by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004 in the territories to which that Order extends.

(2) The Governor shall publish in such manner as he may think fit any guidance given and published (or treated as given and published) by the Secretary of State under this section as it applies in the United Kingdom relevant to the exercise of the powers and other functions to which this section applies in the Territory, with such exceptions and modifications as appear to the Governor to be appropriate.

(3) 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.

(4) In application of this section to any of the said territories the expression "the Territory" means that territory and "the Governor" means the Governor or other person administering the Government of that territory."

SCHEDULE 4

Article 5

APPLICATION TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND
DHEKELIA OF PROVISIONS RELATING TO PENALTIES FOR OFFENCES
AND PROCEEDINGS

1. Any person who commits an offence under paragraph 16(1) or 19(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.

2. Any person who commits an offence under paragraph 16(2) of Schedule 2 shall be liable on conviction-

(1) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both;

(2) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

3. Any person who commits an offence under paragraph 16(4) or (5) of Schedule 2 shall be liable on conviction-

(1) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding ten years, or to a fine of any amount, or to both;

(2) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person who commits an offence under paragraph 16(7), 17(1) or 18(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both.

5. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

6. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the territory having jurisdiction where that person is for the time being.

8. No proceedings for an offence under this Order shall be instituted in the territory except by or with the consent of the principal public officer of the territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Export Control Act 2002, extends with modifications the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764 amended by S.I. 2004/1050, 2004/2561 and 2004/2741) (the UK Order) to the territories listed in Schedule 1. The Order establishes a new framework for the control of strategic goods, software and technology. This Order brings together controls on the export or transfer of military and dual-use goods, software and technology, controls on goods, software and technology related to weapons of mass destruction (WMD) and the provision of WMD-related technical assistance. The controls in this Order apply to persons in the territories listed in Schedule 1 and in respect of certain provisions, to United Kingdom persons ordinarily resident in those territories anywhere in the world.

This Order gives effect in the territories to Council Regulation (EC) No. 1334/2000 of 22 June 2000 (O.J. No. L 159, 30.06.2000 p.1.) setting up a regime for the control of exports of dual-use items and technology (the Regulation), as if the territories were part of the European Community. Military and para-military goods, software and technology whose export or transfer is controlled are specified in Schedule 1 to the UK Order. Dual-use goods, software and technology, the export or transfer of which are controlled, in addition to those set out in the Annexes to the Regulation, are specified in Schedule 2 to the UK Order.

This Order imposes WMD end-use controls on "any relevant use" in connection with WMD. A relevant use is any 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.

The Order also introduces controls on:

- (a) the transfer by electronic means of listed military technology in Schedule 1 to the UK Order. Electronic transfer includes transfers by fax, e-mail or telephone;
- (b) the transfer by any means of technology intended for use in connection with WMD or a related missile programme. This supplements the end-use controls on the physical export of goods, software and technology and the electronic transfer of technology contained in the Regulation. This control will apply to anyone in the territories or any United Kingdom person ordinarily resident in a territory wherever located who communicates technology which the provider knows, or has been informed by a competent authority, is or might be intended for use outside the European Community and the territories in connection with WMD or missiles capable of delivering WMD; and
- (c) the provision of technical assistance in relation to WMD. This control will apply to anyone in the territories or any United Kingdom person ordinarily resident in a territory wherever located who provides or facilitates the provision of technical assistance outside the territories where he knows, or is informed by a competent authority, that it is or may be intended for use in connection with WMD or missiles capable of delivering WMD. This control, together with the WMD transfer controls, implements the European Joint Action of 22 June 2000 concerning the control of technical assistance related to certain military end-uses (2000/401/CFSP).

The UK Order, as extended to the territories, is divided into six parts:

Part I deals with controls on the export of military goods, dual-use goods and goods in transit with a WMD end-use;

Part II deals with controls on the electronic transfer of military and dual-use technology and the transfer of technology with a WMD end-use by both electronic and non- electronic means;

Part III deals with controls on the provision of WMD technical assistance;

Part IV sets out exceptions to the controls in Parts I, II and III;

Part V provides for the granting of licences, record keeping and appeals. Paragraph 15 sets out the procedure for appealing against any decision of the

Governor to refuse, suspend or revoke any licence issued under the Order. Appeals must be made within 28 days of the date of the written notification recording the Governor's decision; and

Part VI sets out the penalties and means of enforcement for breach of the controls in the Regulation and Parts I, II and III. In paragraph 16 the maximum penalty for the intentional breach of controls on exports, transfer of technology and technical assistance is set at ten years, the maximum penalty permitted under section 7(1) of the Export Control Act 2002.

Schedule 3 extends with modifications the provisions of section 9 of the Export Control Act 2002 to the territories listed in Schedule 1.

Schedule 4 provides for offences, enforcement and penalties for breach of the controls in Schedule 2 in respect of the Sovereign Base Areas of Akrotiri and Dhekelia.

Notes:

[1] 2002 c.28.

[2] S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.

[3] OJ No L 159, 30.06.2000, p1.

[4] 2002 c. 28.

[5] OJ No L 302, 19.10.92, p1 as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ No L 236, 23.9.2003, p33).

[6] OJ No L159, 30.06.2000, p1.

[7] 1981 c.61.
