

# Export Control and Non-Proliferation Bill

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## ARRANGEMENT OF CLAUSES

Clause

1. Export controls.
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4. Controls on the provision of technical assistance overseas.
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SCHEDULE:—

- Purposes of orders under section 1 or 2.

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# B I L L

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Make provision enabling controls to be imposed on the exportation of goods, the intangible transfer of technology, the provision of technical assistance overseas and activities connected with trade in controlled goods; and for connected purposes. A.D. 2001.

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

5 **1.**—(1) The Secretary of State may by order make provision for or in connection with the imposition of export controls in relation to goods of any description. Export controls.

(2) For this purpose “export controls”, in relation to any goods, means the prohibition or regulation of their exportation from the United Kingdom or their shipment as stores. 10

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

(4) The power under this section includes power to make provision in relation to any controls on the exportation of goods which are imposed by any directly applicable Community provision. 15

(5) For the avoidance of doubt, export controls may be imposed in relation to the removal from the United Kingdom of vehicles, vessels and aircraft (as an exportation of goods), whether or not they are carrying goods or passengers.

20 **2.**—(1) The Secretary of State may by order make provision for or in connection with the imposition of transfer controls in relation to technology of any description. Transfer controls.

(2) For this purpose “transfer controls”, in relation to any technology, means the prohibition or regulation of its intangible transfer—

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

- (b) from a person or place outside the United Kingdom to another person or place outside the United Kingdom (but only where the transfer is within the control of a United Kingdom person); or
- (c) from a person or place within the United Kingdom to another person or place within the United Kingdom (but only where there is reason to believe that the information may be used outside the United Kingdom);

and in this subsection “place” includes a vehicle, vessel or aircraft.

(3) Technology may be described in the order wholly or partly by reference to the uses to which it may be put. 10

(4) The power under this section includes power to make provision in relation to any controls on intangible transfers of technology which are imposed by any directly applicable Community provision.

(5) In this Act—

“intangible transfer”, in relation to any technology, means a transfer by any means other than the exportation of goods on which the technology is recorded or from which it can be derived, and includes oral communication; 15

“technology” means information (including information comprised in software) that is capable of use in connection with— 20

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

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

Purposes of export and transfer controls.

**3.—**(1) The purposes for which— 25

(a) export controls may be imposed in relation to any goods under section 1, and

(b) transfer controls may be imposed in relation to any technology under section 2,

are those specified in the Schedule to this Act. 30

(2) Subsection (1) does not apply to the imposition of export controls or transfer controls if the order imposing them provides—

(a) for the order to expire, or

(b) for the provision imposing them to cease to have effect,

no later than the end of the period of 12 months beginning with the day on which the order is made. 35

(3) Subsection (1) only applies to an order under section 1 which—

(a) revokes or amends an earlier order, or

(b) re-enacts (with or without modifications) provisions of an earlier order which are being revoked by the order, 40

if and to the extent that the order either strengthens the export controls on goods which are already subject to such controls or imposes export controls in relation to goods which are not subject to such controls.

(4) Subsection (1) only applies to an order under section 2 which—

(a) revokes or amends an earlier order, or 45

(b) re-enacts (with or without modifications) provisions of an earlier order which are being revoked by the order,

if and to the extent that the order either strengthens the transfer controls imposed in relation to technology which is already subject to such controls  
5 or imposes transfer controls in relation to technology which is not subject to such controls.

(5) In subsections (3) and (4) “earlier order” means an order under section 1 or 2 which does not include any provision made by virtue of subsection (2).

(6) Nothing in this section or the Schedule affects the power of the  
10 Secretary of State to include provision in an order under section 1 or 2, or to publish guidance, about—

(a) the manner in which applications for a licence under an order under section 1 or 2 will be considered; and

15 (b) the factors (including where relevant any factors which may be balanced against risks mentioned in paragraph 3 of the Schedule) that may be taken into account in considering applications for such licences.

**4.—**(1) The Secretary of State may by order make provision for or in connection with the imposition of controls prohibiting or regulating  
20 participation in the provision outside the United Kingdom of technical assistance of any description.

Controls on the provision of technical assistance overseas.

(2) In this section “technical assistance” means services which are provided or used, or which are capable of being used, for purposes connected with the development, production or use of controlled goods or controlled  
25 technology.

(3) For the purposes of this section a person participates in the provision of technical assistance outside the United Kingdom if—

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

30 (b) he makes arrangements under which another person provides technical assistance outside the United Kingdom or enters into a contract to do so.

(4) Controls may be imposed under this section on things done outside the United Kingdom but only if they are done by a person who is, or is acting  
35 under the control of, a United Kingdom person.

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

Controls on trade in controlled goods.

(2) For this purpose “trade controls”, in relation to any controlled goods,  
40 means the prohibition or regulation of—

(a) their acquisition or disposal; or

(b) activities which facilitate their acquisition or disposal.

(3) Trade controls may be imposed on things done outside the United Kingdom and the Isle of Man, but only if they are done by, or by a person  
45 acting under the control of, a United Kingdom person.

(4) Trade controls may not be imposed on, or on activities which facilitate—

- (a) the acquisition or disposal of goods which are, when acquired or disposed of or when an agreement to acquire or dispose of them is made, present in the United Kingdom; or 5
- (b) the making of an agreement to acquire or dispose of goods which, at any time between the making and performance of the agreement, will be present in the United Kingdom.

(5) The power under this section includes power to make provision in relation to any controls which may be imposed by any directly applicable 10 Community provision on, or on activities which facilitate, the acquisition or disposal of goods.

(6) For the purposes of this section—

- (a) a person acquires goods if he buys, hires or borrows them or accepts them as a gift (or agrees to do so); 15
- (b) a person disposes of goods if he sells, lets on hire, lends or gives them (or agrees to do so); and
- (c) the making of arrangements under which another person acquires or disposes of goods (or agrees to do so) shall be regarded as an activity which facilitates the acquisition or disposal of the goods. 20

Power to require information.

**6.** The Secretary of State may by order require any persons carrying on activities capable of being prohibited or regulated under any of the preceding provisions of this Act—

- (a) to keep such records of their activities as may be prescribed by the order; and 25
- (b) to provide the Secretary of State or any other authority specified in the order with such information about their activities as may be so prescribed.

Control powers: supplementary.

**7.—(1)** An order under any of the preceding provisions of this Act may (without prejudice to the generality of the power under which it is made) 30 make provision—

- (a) for an activity to be prohibited unless authorised by a licence granted by a person specified in the order;
- (b) creating exceptions from any provision of the order;
- (c) about the purposes for which information obtained by virtue of the 35 order may be used (whether by the person obtaining it or any other person) or disclosed;
- (d) creating indictable offences, summary offences or offences triable either way (subject to the limitation that no offence so created shall be punishable on indictment with imprisonment for a term 40 exceeding 10 years); and
- (e) for the enforcement of the order (including provision as to the powers and duties of any person who is to enforce it).

(2) Such an order may—

- (a) amend or repeal, or apply (with or without modifications), the 45 provisions of any enactment or subordinate legislation;

- (b) provide for any reference in the order to a document (including a technical list by reference to which any Community provision or international obligation operates) to take effect as a reference to that document as revised or re-issued from time to time; and
- 5 (c) make different provision for different circumstances.

**8.** The Secretary of State shall, as soon as practicable after the end of 2002 and each subsequent year, lay before each House of Parliament a report on the operation during that year of this Act and any order under section 1, 2, 4, 5 or 6. Annual reports by Secretary of State.

10 **9.—(1)** In this Act— Interpretation.

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

15 “controlled goods” means goods which are subject to export controls or controls mentioned in section 1(4);

“controlled technology” means technology which is subject to transfer controls or controls mentioned in section 2(4);

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

“intangible transfer” has the meaning given by section 2(5);

20 “technology” has the meaning given by section 2(5);

“transfer controls” has the meaning given by section 2(2);

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

25 (2) For the purposes of the definition of “United Kingdom person” a United Kingdom national is an individual who is—

(a) a British citizen, a British Dependent Territories Citizen, a British National (Overseas) or a British Overseas citizen;

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

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

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

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

**10.** The Secretary of State may by order modify the provisions of the Schedule to this Act. Power to modify the Schedule.

40 **11.—(1)** The power to make an order under this Act is exercisable by statutory instrument. Orders.

(2) A statutory instrument containing—

(a) an order under section 1 or 2 any provision of which is made by virtue of section 3(2);

(b) an order under section 10, shall be laid before Parliament after being made but, unless it is approved by a resolution of each House before the end of the period of 40 days beginning with the day on which it is made, shall cease to have effect at the end of that period. 5

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

(4) A statutory instrument containing—

(a) an order under section 1 or 2 no provision of which is made by virtue of section 3(2); or 10

(b) an order under section 4, 5, 6 or 13(3),

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

Consequential repeals.

**12.**—(1) The following provisions of the Import, Export and Customs Powers (Defence) Act 1939 (which are concerned with the exportation of goods and related matters) are repealed. 15

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

(a) in subsection (1), the words “or exportation from” and the words from “or the carriage” to “stores”; 20

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

(c) in subsection (4), the words “or out of” and “or exportation”.

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

(a) in subsection (1), in paragraph (a), the words from “exported” to “stores”, paragraph (b) (and the word “or” preceding it) and, in the words following paragraph (b) the words from “and the exporter” to the end; 25

(b) subsection (2); and

(c) in subsection (3) the words from “exported” (in the first place it appears) to “shipped” (in the second place it appears) and the words from “exportation” to “may be”. 30

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

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

Short title, commencement and extent.

**13.**—(1) This Act may be cited as the Export Control and Non-Proliferation Act 2001. 35

(2) This Act (apart from this section) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

(3) The Secretary of State may by order make such transitional provisions and savings as he considers appropriate in connection with the coming into force of any provision of this Act. 40

(4) This Act (apart from any repeals which extend there by virtue of section 12(5)) does not extend to the Isle of Man; but Her Majesty may by Order in Council direct that any of the provisions of this Act, or of any order under this Act, shall extend, with such exceptions and modifications as  
5 appear to Her Majesty to be appropriate, to the Isle of Man.

(5) This Act extends to Northern Ireland.

## SCHEDULE

## PURPOSES OF ORDERS UNDER SECTION 1 OR 2

1. Export controls and transfer controls may be imposed for the purpose of giving effect to any Community provision which relates to the export of goods or the intangible transfer of technology. 5
2. Export controls and transfer controls may be imposed for the purpose of giving effect to—
- (a) any obligation of the United Kingdom relating to a joint action or common position adopted, or a decision taken, by the Council under Title V of the Treaty on European Union (provisions on a common foreign and security policy); or 10
  - (b) any other international obligation of the United Kingdom.
- 3.—(1) If it appears to the Secretary of State that there is a risk that the exportation of goods of any description would have any of the consequences mentioned in the following Table, export controls may be imposed for the purpose of reducing that risk or enabling it to be reduced. 15
- (2) For the purposes of sub-paragraph (1) the consequences of the exportation of goods include consequences relating to the use of information recorded on or derived from the goods.
- (3) If it appears to the Secretary of State that there is a risk that the intangible transfer as mentioned in section 2(2)(a) of technology of any description would have any of the consequences mentioned in the following Table, transfer controls may be imposed for the purpose of reducing that risk or enabling it to be reduced. 20
- (4) The Table referred to in sub-paragraphs (1) and (3) is as follows:—

## CONSEQUENCES OF EXPORTATION OR TRANSFER OF GOODS OR TECHNOLOGY 25

*National security of the United Kingdom and other countries*

A. An adverse effect on the national security of the United Kingdom (or any United Kingdom dependency), any Member state or any other friendly State.

*Regional stability* 30

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

*Weapons of mass destruction*

C. Use of the goods or technology anywhere in the world in connection with the development, production or use of weapons of mass destruction. 35

*Breaches of international law*

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

- (a) acts threatening international peace and security;
- (b) acts contravening the international law of armed conflict; 40
- (c) internal repression in any country;
- (d) breaches of human rights.

*Terrorism and crime*

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

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*Sustainable development*

F. A serious adverse effect on—

(a) the economy of any country; or

(b) the potential for sustainable economic development in any country.

10 4.—(1) Export controls may be imposed for the purpose of prohibiting or regulating the exportation of objects of cultural interest.

(2) In this paragraph “objects of cultural interest” includes objects of historical or scientific interest.

5. In this Schedule—

15 “country” includes a territory but does not include the United Kingdom or the Isle of Man;

“United Kingdom dependency” means the Isle of Man, any of the Channel Islands or any United Kingdom overseas territory; and

“international agreement” means an international agreement to which the United Kingdom is a party.