

**FINAL DRAFT ORDER LAID BEFORE PARLIAMENT ON 31
OCTOBER 2003**

STATUTORY INSTRUMENTS

2003 No. XXXX

CUSTOMS AND EXCISE

Trade in Goods (Control) Order 2003

<i>Made - - - - -</i>	<i>October 2003</i>
<i>Laid before Parliament</i>	<i>October 2003</i>
<i>Coming into force</i>	<i>1st May 2004</i>

The Secretary of State, in exercise of the powers conferred by sections 4, 5 and 7 of the Export Control Act 2002(a), hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Trade in Goods (Control) Order 2003 and shall come into force on 1st May 2004.

(2) Articles 3(1) and 4 apply to any person within the United Kingdom and article 3(2) applies to any person elsewhere who is a United Kingdom person as defined in section 11(1) of the Export Control Act 2002.

Interpretation

2.—(1) In this Order:

“to acquire” in relation to controlled goods, means to buy, hire, borrow or to accept them as a gift; and cognate expressions shall be construed accordingly;

“the Act” means the Export Control Act 2002;

“the Commissioners” means the Commissioners of Customs and Excise;

“controlled goods” means goods used and unused, specified in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003,(b) the transfer, acquisition or disposal, of which are prohibited by this Order, but does not include goods which are “restricted goods”. For the avoidance of doubt, “controlled goods” does not include software and technology.

“country” includes territory;

(a) 2002 c.28.

(b) S.I. 2003/xxxx

“customs and excise Acts” has the same meaning as in section 1 of the Customs and Excise Management Act 1979(c);

“to dispose of” in relation to controlled goods, means to sell, let on hire, lend or to give them as a gift; and cognate expressions shall be construed accordingly;

“prescribed sum” has the same meaning as in the Customs and Excise Management Act 1979;

“restricted goods” means goods, both used and unused, specified in the Schedule to this Order and which would otherwise be “controlled goods”, the supply and delivery of which are prohibited by this Order.

“a third country” means any country that is not the United Kingdom or the Isle of Man;

“transfer” means to move controlled goods over which one has rights of disposal from one third country to another third country;

“in transit” means any controlled goods imported into the United Kingdom or the Isle of Man for transit or transshipment; and

(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.

Supply or delivery of restricted goods

3. —(1) Subject to the provisions of this Order, no person shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of,

any restricted goods, where that person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of,

any restricted goods, where that person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country.

(3) Paragraph (1) applies to any act, or any part of any act, done in the United Kingdom.

(4) Paragraph (2) applies to any act, or any part of any act, done outside the United Kingdom or the Isle of Man.

(c) 1979 c.2

(5) Paragraphs (1) and (2) do not apply to any restricted goods that are present in the United Kingdom or the Isle of Man unless they are goods in transit.

(6) For the purpose of paragraphs (1) and (2), restricted goods that are goods in transit shall be considered to be located in a third country.

(7) Nothing in paragraph (1) or (2) shall be taken to prohibit any activities authorised by a licence in writing granted by the Secretary of State under this Order or under any other order made under the Act, provided that all the conditions attaching to the licence are complied with.

(8) Nothing in paragraph (1)(b) or (c) or (2)(b) or (c) shall apply where the supply or delivery of the restricted goods to the person or place concerned is authorised by a licence in writing granted by the Secretary of State under this Order.

Transfer, acquisition or disposal of controlled goods

4. —(1) Subject to the provisions of this Order, no person shall—

- (a) arrange the transfer of controlled goods from one third country to another third country; or
- (b) acquire or dispose, or agree to acquire or dispose, of any controlled goods, where that person knows or has reason to believe that such an acquisition or disposal will or may result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no person shall—

- (a) arrange or negotiate; or
- (b) agree to arrange or negotiate,

a contract for the acquisition or disposal of any controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(3) Subject to the provisions of this Order, no person shall in return for a fee, commission or other consideration —

- (a) do any act; or
- (b) agree to do any act,

calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(4) Paragraphs (1), (2) and (3) apply to any act, or any part of any act, done in the United Kingdom.

(5) Paragraphs (1), (2) and (3) shall not apply to any person whose sole involvement in relation to the transfer, acquisition or disposal of any controlled goods is to provide or agree to provide—

- (a) transportation services,
- (b) financing or financial services,
- (c) insurance or reinsurance services, or
- (d) general advertising or promotion services.

(6) Paragraphs (1), (2) and (3) do not apply to controlled goods that are present in the United Kingdom or the Isle of Man unless they are goods in transit.

(7) For the purposes of paragraphs (1), (2) and (3) controlled goods that are goods in transit shall be considered to be located in a third country.

(8) Nothing in paragraph (1), (2) or (3) shall be taken to prohibit any activities authorised by a licence in writing granted by the Secretary of State under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

LICENCES

Granting and revocation of licences etc.

5. —(1) The Secretary of State may grant licences authorising any act that would otherwise be prohibited under this Order.

(2) Any licence granted by the Secretary of State 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.

(3) Any licence granted under this Order, shall be in writing and may be amended, suspended or revoked by the Secretary of State at any time and in such circumstances and on such terms as he thinks fit by serving a notice to that effect on the holder of the licence.

Registration with the Secretary of State

6. —(1) Not later than 30 days after any person first does any act under the authority of any general licence granted by the Secretary of State that does not provide otherwise, that person shall give to the Secretary of State written notice of his name and the address at which copies of the records referred to in article 7(1) may be inspected by any person authorised by the Secretary of State or the Commissioners under article 7(4).

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

Record keeping and inspection

7. —(1) Any person who does any act under the authority of any general licence under this Order shall keep registers or records in accordance with this article.

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

- (a) a description of the restricted or controlled goods that have been supplied, delivered, transferred, acquired or disposed of, or for which arrangements or negotiations for their acquisition or disposal have been made or entered into;

- (b) the date or the period of time over which the relevant activities relating to the supply, delivery, transfer, acquisition or disposal of the restricted or controlled goods were carried out ;
- (c) the quantity of the restricted or controlled goods;
- (d) the name and address of the end-user of the restricted or controlled goods;
- (e) the name and address of the supplier of the restricted or controlled goods; and
- (f) any further information required to be kept by the Secretary of State.

(3) The registers or records referred to in paragraph (1) shall be kept for at least 4 years from the end of the calendar year in which the authorised act took place.

(4) The person referred to in paragraph (1) shall permit any such records to be inspected and copied by any person authorised by the Secretary of State or the Commissioners.

(5) Any person authorised by the Secretary of State or the Commissioners 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 paragraph (4) the premises, the address of which has been most recently notified to the Secretary of State under article 6 of this Order.

(6) Where the registers or records required to be maintained under this article are kept in a form which is not legible the person required under paragraph (1) to maintain such records shall at the request of the person authorised by the Secretary of State or the Commissioners, as the case may be, reproduce such registers or records in a legible form.

Licence refusals etc. and appeals

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

(2) In the event that the Secretary of State 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 Secretary of State 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 had a licence application refused under article 5 of this Order or who has had a licence suspended or revoked under that article shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Secretary of State, Export Control Organisation, Department of Trade and Industry, 4 Abbey Orchard Street, London SW1P 2HT.

(5) Any appeal submitted under 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 paragraph (4), any decision taken by the Secretary of State shall continue to have effect.

GENERAL

Offences and penalties

9. —(1) Any person who contravenes a prohibition in article 3 or 4 shall be guilty of an offence and liable on summary conviction to a penalty not exceeding level 3 on the standard scale.

(2) Any person knowingly concerned in the supply, delivery, transfer, acquisition or disposal of any restricted or controlled goods with intent to evade any prohibition or restriction in article 3(1) or 4 shall be guilty of an offence.

(3) Any person knowingly concerned in the supply or delivery of any restricted goods with intent to evade any prohibition or restriction in article 3(2) shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (2) or (3) shall be liable—

- (a) on summary conviction to a fine of the prescribed sum or to imprisonment for a term not exceeding 6 months, or to both; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding 10 years, or to both.

Misleading applications for licences etc.

10. —(1) Where for the purpose of obtaining a 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 paragraph (1) shall be liable—

- (a) on summary conviction to a fine of the prescribed sum; or
- (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding 2 years, or to both,

and any licence which may have been granted by the Secretary of State 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

11. —(1) Subject to paragraph (3), any person who—

- (a) has done any act under the authority of a licence granted by the Secretary of State under this Order, and
- (b) fails to comply with —
 - (i) any conditions attaching to that licence;
 - (ii) any obligation under article 6, or
 - (iii) any obligation under article 7,

shall be guilty of an offence.

- (2) A person guilty of an offence under paragraph (1) shall be liable—
- (a) on summary conviction to a fine of the prescribed sum; or
 - (b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding 2 years, or both.
- (3) No person shall be guilty of an offence under paragraph (1) where—
- (a) the licence condition in question had been previously modified by the Secretary of State; and
 - (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 by the Secretary of State after the doing of the act authorised by the licence.

Application of the Customs and Excise Management Act 1979

12.—(1) It shall be the duty of the Commissioners to take such action as they consider appropriate to secure the enforcement of article 3, 4, 10, 11 or any obligation arising under article 7 insofar as the obligation relates to the powers of the Commissioners.

(2) Sections 145 to 148 and 150 to 152(b) and 153 to 155 of the Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties, proof and other matters) apply in relation to offences and penalties under this Order 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) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the Commissioners by virtue of paragraph (1) shall not be offences under the customs and excise Acts for the purposes of section 145 of the Customs and Excise Management Act 1979.

Use and disclosure of information

13.—(1) This article applies to information which is held by—

- (a) the Secretary of State or
- (b) the Commissioners,

in connection with the operation of controls imposed by this Order or by any directly applicable Community provision, on activities which facilitate or are otherwise connected with the supply or delivery of restricted goods or the transfer, acquisition or disposal of controlled goods.

(2) Information to which this article 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 United Kingdom 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 article unless the making of the disclosure is proportionate to the object of the disclosure.

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

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

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

Service of notices

14. Any notice to be given by any person under this Order may be given by an agent of that person and shall be sent by post or delivered to the Secretary of State at the Export Control Organisation, Department of Trade and Industry, 4 Abbey Orchard Street, London SW1P 2HT.

[date]

Patricia Hewitt

Secretary of State for Department of Trade and Industry

SCHEDULE

Article 3

RESTRICTED GOODS

The following are restricted goods for the purposes of this Order:

Certain Security and Para-Military Police Equipment

1. Any good falling within paragraph c. or g. of PL5001 in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003.

Certain Missiles

2. Missiles capable of a range of 300km or more, and specially designed components therefor.

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

This Order, made under the Export Control Act 2002, controls the trade between one overseas country and another of military and para-military goods listed in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance Order 2003 (S.I. 2003/xxxx). In this Order these goods are referred to as “controlled goods”. Further controls are imposed on “restricted goods” as defined in the Schedule to this Order. The controls in this Order do not apply to software or technology or to activities connected to trade in controlled goods that are situated in the United Kingdom (with the exception of goods in transit via the United Kingdom).

In relation to restricted goods, article 3 of this Order prohibits any person within the United Kingdom, or a United Kingdom person anywhere in the world, from supplying or delivering, or doing any act calculated to promote the supply or delivery of, restricted goods without a licence from the Secretary of State.

In relation to controlled goods, article 4 of this Order prohibits any person in the United Kingdom, from transferring, acquiring or disposing, or arranging or negotiating a contract for the acquisition or disposal of controlled goods without a licence from the Secretary of State. In addition, the provisions on controlled goods prohibit any person in return for a fee, commission or other consideration from doing any act or agreeing to do any act, without a licence, which would promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods where that person knows or has reason to believe that the goods will be moved from one third country to another third country.

The Order exempts persons whose sole involvement in the movement of controlled goods from one overseas country to another is to provide transport, finance, insurance or general advertising or promotion services.

The remaining articles in this Order do the following:

Articles 5 – 7 provide for the issuing of licences by the Secretary of State, registration, record keeping and inspection and licence refusals and appeals;

Articles 8 – 12 provide for offences, enforcement and penalties for the breach of the controls created by this Order;

Article 13 sets out the purposes for which information obtained by the Secretary of State, or the Commissioners for Customs and Excise, can be disclosed; and

Article 14 of this Order states the address where notices to be given by any person under this Order are to be sent.

Guidance issued pursuant to Section 9 of the Export Control Act 2002, on the operation of these controls and a full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from <http://www.dti.gov.uk/export.control/> or the ECO help-line - Telephone (020) 7215 8070, Fax (020) 7215 0558 or E-mail: ECO.help@dti.gsi.gov.uk.