

EXPORT CONTROL ACT 2005

Principal Act

Act. No. 2005-33		<i>Commencement</i>	23.5.2005
		<i>Assent</i>	23.5.2005
Amending enactments	Relevant current provisions	Commencement date	
Act. 2014-04	ss. 1(2) & 2(1)		27.2.2014

ARRANGEMENT OF SECTIONS

Section

1. Title and transitional provisions.
2. Interpretation.
3. Export controls.
4. Transfer Controls.
5. Technical assistance controls.
6. Trade controls.
7. General restriction on control powers.
8. Exceptions from the general restriction.
9. Control powers: supplementary.
10. Protection of certain freedoms.
11. Guidance about the exercise of functions under control orders.
12. Annual reports.
13. Power to modify the Schedule.

SCHEDULE

CATEGORIES OF GOODS, TECHNOLOGY AND TECHNICAL ASSISTANCE

AN ACT TO MAKE PROVISION ENABLING CONTROLS TO BE IMPOSED ON THE EXPORTATION OF GOODS, THE TRANSFER OF TECHNOLOGY, THE PROVISION OF TECHNICAL ASSISTANCE OVERSEAS AND ACTIVITIES CONNECTED WITH TRADE IN CONTROLLED GOODS; AND FOR CONNECTED PURPOSES.

Title and transitional provisions.

1.(1) This Act may be cited as the Export Control Act 2005.

(2) The Minister with responsibility for finance may by Order in the Gazette make such transitional provisions and savings as he considers appropriate in connection with the coming into operation of any provision of this Act.

Interpretation.

2.(1) In this Act—

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

“control order” means an order under section 3(1), 4(1), 5(1) or 6(1);

“export controls” has the meaning given in section 3(2);

“Minister” means the Minister with responsibility for finance;

“objects of cultural interest” includes objects of historical or scientific interest;

“place” includes a vehicle, vessel or aircraft;

“technical assistance” and “technical assistance controls” have the meanings given in section 5(2);

“technology” has the meaning given in section 4(6);

“trade controls” has the meaning given in section 6(2);

“transfer” has the meaning given in section 4(6);

“transfer controls” has the meaning given in section 4(2); and

“British person” means a British national or a body incorporated under the Companies Act.

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

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
- (c) a British protected person within the meaning of that Act.

Export controls.

3.(1) The Minister may by Order in the Gazette make provision for or in connection with the imposition of export controls in relation to goods of any description.

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

(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 to impose export controls is subject to section 7.

(5) The Minister may by Order in the Gazette make provision in connection with any controls that may be imposed by a directly applicable Community provision on the exportation of goods.

(6) For the avoidance of doubt, export controls may be imposed in relation to the removal from Gibraltar of vehicles, vessels and aircraft (as an exportation of goods), whether or not they are moving under their own power or carrying goods or passengers.

Transfer Controls.

4.(1) The Minister may by Order in the Gazette make provision for or in connection with the imposition of transfer controls in relation to technology of any description.

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

- (a) by a person or from a place within Gibraltar to a person or place outside Gibraltar;
- (b) by a person or from a place outside Gibraltar to a person who, or a place which, is also outside Gibraltar (but only where the transfer is by, or within the control of, a British person);
- (c) by a person or from a place within Gibraltar to a person who, or a place which, is also within Gibraltar (but only where there is reason to believe that the technology may be used outside Gibraltar); or
- (d) by a person or from a place outside Gibraltar to a person or place within Gibraltar (but only where the transfer is by, or within the control of, a British person and there is reason to believe that the technology may be used outside Gibraltar).

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

(4) The power to impose transfer controls is subject to section 7.

(5) The Minister may by Order in the Gazette make provision in connection with any controls that may be imposed by a directly applicable Community provision on the transfer of technology.

(6) In this Act—

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

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

- (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.

Technical assistance controls.

5.(1) The Minister may by Order in the Gazette make provision for or in connection with the imposition of technical assistance controls in relation to technical assistance of any description.

(2) For this purpose—

“technical assistance controls”, in relation to any technical assistance, means the prohibition or regulation of participation in the provision outside Gibraltar of that technical assistance; and

“technical assistance” means services which are provided or used, or which are capable of being used, in connection with the development, production or use of any goods or technology.

(3) Technical assistance may be described in the order wholly or partly by reference to the uses to which it (or the goods or technology in question) may be put.

(4) The power to impose technical assistance controls—

(a) shall only be exercised for the purpose of imposing controls corresponding to or connected with—

(i) any export controls or transfer controls imposed under section 3 or 4; or

(ii) any controls imposed by a directly applicable Community provision on the exportation of goods or the transfer of technology; and

(b) is subject to section 7.

(5) For the purposes of subsection (1) a person participates in the provision of technical assistance outside Gibraltar if—

(a) he provides technical assistance outside Gibraltar or agrees to do so; or

(b) he makes arrangements under which another person provides technical assistance outside Gibraltar or agrees to do so.

(6) The Minister may by Order in the Gazette make provision in connection with any controls that may be imposed by a directly applicable

Community provision on participation in the provision of technical assistance.

(7) Technical assistance controls may be imposed on acts done outside Gibraltar, but only if they are done by a person who is, or is acting under the control of, a British person.

Trade controls.

6.(1) The Minister may by Order in the Gazette make provision for or in connection with the imposition of trade controls in relation to goods of any description.

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

- (a) their acquisition or disposal;
- (b) their movement; or
- (c) activities which facilitate or are otherwise connected with their acquisition, disposal or movement.

(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 to impose trade controls—

- (a) shall only be exercised for the purpose of imposing controls corresponding to or connected with—
 - (i) any export controls or transfer controls imposed under section 3 or 4; or
 - (ii) any controls imposed by a directly applicable Community provision on the exportation of goods or the transfer of technology; and

(b) is subject to section 7.

(5) The Minister may by Order in the Gazette make provision in connection with any controls that may be imposed by a directly applicable Community provision on, or on activities which facilitate or are otherwise connected with, the acquisition, disposal or movement of goods.

- (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; and
 - (b) a person disposes of goods if he sells, lets on hire, lends or gives them.
- (7) For the purposes of this section—
- (a) the making of an agreement with another to acquire, dispose of or move goods, and
 - (b) the making of arrangements under which another person—
 - (i) acquires, disposes of or moves goods; or
 - (ii) agrees with a third person to acquire, dispose of or move goods,

are activities which facilitate the acquisition, disposal or movement of the goods.

(8) Trade controls may be imposed on acts done outside Gibraltar, but only if they are done by a person who is, or is acting under the control of, a British person.

General restriction on control powers.

7.(1) Subject to section 8, the power to impose export controls, transfer controls, technical assistance controls or trade controls may only be exercised where authorised by this section.

(2) Controls of any kind may be imposed for the purpose of giving effect to any Community provision or other international obligation binding Gibraltar.

(3) In subsection (2) “international obligation” includes an obligation 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).

(4) Export controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.

(5) Transfer controls may be imposed in relation to any description of technology within one or more of the categories specified in the Schedule for such controls.

(6) Technical assistance controls may be imposed in relation to any description of technical assistance within one or more of the categories specified in the Schedule for such controls.

(7) Trade controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.

Exceptions from the general restriction.

8.(1) Section 7 does not apply to the power to impose any controls if the control order which imposes them provides for its expiry no later than the end of the period of 12 months beginning with the day on which it is made.

(2) Section 7 does not apply in relation to provisions of a control order which—

- (a) amend an earlier control order; or
- (b) revoke and re-enact (with or without modifications) provisions of an earlier control order,

unless they impose new controls or strengthen the controls previously imposed.

(3) In subsection (2) “an earlier control order” does not include an order made by virtue of subsection (1).

Control powers: supplementary.

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

- (a) for an activity to be prohibited unless authorised by a licence granted by a person specified in the order;
- (b) creating exceptions from any provision of the order;
- (c) requiring persons to keep (and produce) records;

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- (d) requiring persons to provide information to any person specified in the order;
 - (e) about the purposes for which information held in connection with anything done under or by virtue of the order may be used;
 - (f) about the persons to whom any such information may be disclosed;
 - (g) creating indictable offences, summary offences or offences triable either way (subject to the limitation that no offence so created shall be punishable on indictment with imprisonment for a term exceeding 10 years); and
 - (h) for the enforcement of the order (including provision as to the powers and duties of any person who is to enforce it).
- (2) Such an order may–
- (a) make provision binding the Crown;
 - (b) amend, repeal or revoke, or apply (with or without modifications) provisions of any Act or subordinate legislation;
 - (c) provide for any reference in the order to a document (including a technical list by reference to which any Community provision or international obligation operates) to take effect as a reference to that document as revised or re-issued from time to time;
 - (d) make incidental, supplementary and transitional provision; and
 - (e) make different provisions for different cases and different circumstances.

Protection of certain freedoms.

10.(1) The Minister may not make a control order which has the effect of prohibiting or regulating any of the following activities–

- (a) the communication of information in the ordinary course of scientific research;
- (b) the making of information generally available to the public; or

- (c) the communication of information that is generally available to the public,

unless the interference by the order in the freedom to carry on the activity in question is necessary (and no more than is necessary).

(2) The question whether any such interference is necessary shall be determined by the Minister by reference to the circumstances prevailing at the time the order is made and having considered the reasons for seeking to control the activity in question and the need to respect the freedom to carry on that activity.

Guidance about the exercise of functions under control orders.

11.(1) This section applies to licensing powers and other functions conferred by a control order on any person in connection with controls imposed under this Act.

(2) The Minister may give guidance about any matter relating to the exercise of any licensing power or other function to which this section applies and about the general principles to be followed when exercising licensing powers to which this section applies.

(3) The guidance required by subsection (2) may include guidance about the consideration (if any) to be given, when exercising such powers, to—

- (a) issues relating to sustainable development; and
- (b) issues relating to any possible consequences of the activity being controlled that are of a kind mentioned in the Table in paragraph 3 of the Schedule;

but this subsection does not restrict the matters which may be addressed in guidance.

(5) 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.

(6) A copy of any guidance shall be laid before the Parliament and published in such manner as the Minister may think fit.

(7) In this section “guidance” means guidance stating that it is given under this section.

Annual reports.

12.(1) The Minister shall lay before the Parliament in respect of each year–

- (a) a report on the operation during the year of any order under section 3 so far as relating to the export of objects of cultural interest; and
- (b) a report on other matters relating to the operation of this Act (and any order made under it) during the year.

(2) A report required by subsection (1) shall be laid as soon as practicable after the end of the year to which it relates.

Power to modify the Schedule.

13.(1) The Minister may by Order in the Gazette modify the provisions of the Schedule.

(2) An order under this section may make transitional provision in connection with any modification made by the order.

SCHEDULE

Section 7

CATEGORIES OF GOODS, TECHNOLOGY AND TECHNICAL ASSISTANCE

- 1.(1) Export controls and trade controls may be imposed in relation to—
- (a) military equipment;
 - (b) goods on which military technology is recorded or from which it can be derived; or
 - (c) goods intended, designed or adapted for use in the development or production of military equipment or military technology.
- (2) Transfer controls may be imposed in relation to—
- (a) military technology; or
 - (b) technology intended, designed or adapted for use in the development or production of military technology.
- (3) Technical assistance controls may be imposed in relation to any services connected with the development, production or use of—
- (a) any goods falling within sub-paragraph (1)(a), (b) or (c); or
 - (b) any technology falling within sub-paragraph (2)(a) or (b).
- (4) In this paragraph (without prejudice to the generality of the terms)—
- “military equipment” includes—
- (a) firearms and other weapons (whether or not intended, designed or adapted for military use or in military use); and
 - (b) goods intended, designed or adapted for military use (whether or not in military use); and
- “military technology” includes—
- (a) technology intended, designed or adapted for military use (whether or not in military use); and

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- (b) technology intended, designed or adapted for use in connection with the development, production or use of military equipment or goods falling within sub-paragraph (1)(c).

(5) For the purposes of sub-paragraph (4) the reference to firearms and other weapons includes a reference to—

- (a) component parts of firearms or other weapons;
- (b) accessories for use with firearms or other weapons; and
- (c) ammunition, missiles or projectiles of any kind which are intended, designed or adapted for use with firearms or other weapons.

2.(1) Export controls may be imposed in relation to any goods the exportation or use of which is capable of having a relevant consequence.

(2) Transfer controls may be imposed in relation to any technology the transfer or use of which is capable of having a relevant consequence.

(3) Technical assistance controls may be imposed in relation to any technical assistance the provision or use of which is capable of having a relevant consequence.

(4) Trade controls may be imposed in relation to any goods the acquisition, disposal, movement or use of which is capable of having a relevant consequence.

(5) The Minister shall issue the appropriate control order in the event that the Governor or the Secretary of State, as the case may be, certifies his opinion that a relevant consequence has arisen or is likely to arise.

3.(1) For the purposes of paragraph 2 a “relevant consequence”, in relation to any activity, is a consequence (direct or indirect) of a kind mentioned in the following Table.

(2) The Table referred to above is as follows—

Relevant Consequences

National security of Gibraltar, the United Kingdom and other countries

A(1). In the Governor’s opinion, an adverse effect on—

- (a) the national security; or

- (b) the security of members of the armed forces,

of or in Gibraltar.

A(2). In the opinion of the Secretary of State for Defence, an adverse effect on—

- (a) the national security; or
- (b) the security of members of the armed forces,

of the United Kingdom, any member State or any other friendly State.

Regional stability and internal conflict

B(1). In the Governor's opinion an adverse effect on peace, security or stability in Gibraltar.

B(2). In the opinion of the Secretary of State for Defence, an adverse effect on peace, security or stability in any region of the world or within any country.

Weapons of mass destruction

C(1). The carrying out in Gibraltar of acts which, in the Governor's opinion, facilitate the development, production or use of weapons of mass destruction.

C(2). The carrying out anywhere in the world of acts which, in the opinion of the Secretary of State for Defence, facilitates the development, production or use of weapons of mass destruction.

Breaches of international law and human rights

D(1). The carrying out in Gibraltar of acts which, in the Governor's opinion, facilitates—

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

D(2). The carrying out anywhere in the world of acts which, in the opinion of the Secretary of State for Defence, facilitates—

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

Terrorism and crime

E(1). The carrying out in Gibraltar of acts which, in the Governor's opinion facilitates, acts of terrorism or serious crime anywhere in the world.

E(2). The carrying out anywhere in the world of acts which, in the opinion of the Secretary of State for Defence, facilitates acts of terrorism or serious crime anywhere in the world.

(3) In this paragraph, "country" includes a territory but, save where the context so requires, does not include Gibraltar; and

4. Export controls may be imposed in relation to objects of cultural interest.