



GUERNSEY STATUTORY INSTRUMENT

2010 No. 37

The Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010

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2010 No.

**The Export Control (Military, Security, and Related
Matters) (Bailiwick of Guernsey) Order, 2010**

<i>Made</i>	<i>26th April, 2010</i>
<i>Laid before the States</i>	<i>, 2010</i>
<i>Coming into operation</i>	<i>1st May, 2010</i>

THE HOME DEPARTMENT in exercise of the powers conferred upon it by sections 1 to 4 and 7 of the Export Control (Bailiwick of Guernsey) Law, 2006^a and of all other powers enabling it in that behalf, hereby makes the following Order:-

PART I

EXPORT AND TRANSFER CONTROLS

Military goods, etc.

1. Subject to articles 11 to 16 and 23, no person shall –
 - (a) export military goods, or
 - (b) transfer military software or technology by electronic means.

Movement of Bailiwick controlled dual-use goods, etc. to certain destinations.

2. (1) Subject to articles 11, 12, 15, 16 and 23, no person shall –
 - (a) export Bailiwick controlled dual-use goods, or

^a Order in Council No. XIV of 2007.

- (b) transfer Bailiwick controlled dual-use software or technology by electronic means,

if paragraph (2) or (3) applies.

(2) This paragraph applies where the destination is one specified in Schedule 3 to the UK Order as a prohibited destination in relation to the goods, software or technology in question ("a prohibited destination").

(3) This paragraph applies where the destination is not a prohibited destination but the exporter or transferor knows –

- (a) that the final destination of the goods, software or technology in question is a prohibited destination, and
- (b) that no processing or working is to be performed on the goods, software or technology in question before they are exported or transferred to that final destination.

WMD purposes end-use control supplementing the dual-use Regulation.

3. (1) This article applies where –

- (a) a person has grounds for suspecting that dual-use goods, software or technology are or may be intended, in their entirety or in part, for WMD purposes, and
- (b) the goods, software, or technology in question are not specified in Annex 1 to the dual-use Regulation.

(2) Subject to article 23, the person shall not –

- (a) export the goods in question, or
- (b) transfer the software or technology in question by electronic means,

to a destination outside the customs territory unless, having made all reasonable enquiries as to the proposed use of the goods, software or technology in question, that person is satisfied that they will not be used for WMD purposes.

Control on transfers within the customs territory supplementing the dual-use Regulation.

4. (1) This article applies where –

- (a) a person knows –
 - (i) that the final destination of dual-use goods, software or technology is outside the customs territory, and
 - (ii) that no processing or working is to be performed on the goods, software or technology in question within the customs territory,
- (b) the person would only be permitted to export or transfer the goods, software or technology in question to a destination outside the customs territory to the extent authorised to do so under Article 3 (controls on listed goods) or Article 4 (end-use controls) of the dual-use Regulation, and

- (c) the goods, software or technology in question are not specified in Annex IV to the dual-use Regulation.
- (2) Subject to articles 15 and 23, the person shall not –
- (a) export the goods in question, or
 - (b) transfer the software or technology in question by electronic means,

to a destination within the customs territory.

Transit controls supplementing the dual-use Regulation.

5. (1) Subject to articles 15 and 23, no person shall export goods listed in Annex 1 to the dual-use Regulation where the goods in question are non-community goods which are entering and passing through the customs territory with a final destination outside the customs territory.

- (2) Paragraph (3) applies where a person ("**the exporter**")—
- (a) has been informed by a competent authority that dual-use goods are or may be intended, in their entirety or in part, for purposes referred to in Article 4(1) (WMD purposes end-use control) of the dual-use Regulation, or
 - (b) is aware that dual-use goods specified are or may be intended, in their entirety or in part, for purposes referred to in Article 4(1) (WMD purposes end-use control) of the dual-use Regulation,

and the dual-use goods in question are non-community goods which are not listed in Annex I to the dual-use Regulation and which are entering and passing through the customs territory with a final destination outside the customs territory.

(3) Subject to article 23, the exporter shall not export the goods in question.

Provisions supplementing the torture Regulation.

6. (1) This article applies to –

- (a) gang chains and leg-irons specially designed for restraining human beings,
- (b) goods within item 2.1 in Annex II to the torture Regulation (electric-shock belts), and
- (c) goods within item 2.1 in Annex III to the torture Regulation (portable electric shock devices).

(2) Subject to article 23, no person shall export goods to which this article applies to a destination within the customs territory.

(3) Subject to article 23, no person shall export any goods specified in paragraph (1)(a) or (c) in relation to which there is no export authorisation requirement under Article 5 (export authorisation requirement) of the torture Regulation because the goods are in transit.

General prohibition

7. To the extent that, under any of articles 1 to 6, a person may not export goods, the exportation of the goods in question is prohibited.

Transfers within the Bailiwick for WMD purposes.

8. (1) This article applies where a person –
- (a) has been informed by the Department that software or technology is or may be intended, in its entirety or in part, for WMD purposes, or
 - (b) is aware that software or technology is intended, in its entirety or in part, for WMD purposes,

and knows that it may be or is intended to be used outside the customs territory or has been informed by the Chief Officer that it may be or is intended to be so used.

(2) Subject to articles 16 and 23, the person shall not transfer the software or technology in question to a person or place within the Bailiwick.

Transfers from outside the customs territory for WMD purposes.

9. (1) This article applies where a person who is a relevant person –
- (a) has been informed by a competent authority that software or technology is or may be intended, in its entirety or in part, for WMD purposes, or
 - (b) is aware that software or technology is intended, in its entirety or in part, for WMD purposes.

(2) Subject to articles 16 and 23, the person shall not transfer the software or technology in question from a place outside the customs territory to –

- (a) a destination outside the customs territory,

- (b) a destination anywhere within the customs territory (including, for avoidance of doubt, the Bailiwick), if that person –
 - (i) knows that the final destination of the software or technology is outside the customs territory, and
 - (ii) knows that no processing or working is to be performed on the software or technology within the customs territory, or
- (c) a destination within the Bailiwick, if that person –
 - (i) knows that the software or technology may be or is intended to be used outside the customs territory, or
 - (ii) has been informed by the Chief Officer that it may be or is intended to be so used.

Transfers by non-electronic means from the Bailiwick for WMD purposes.

10. (1) This article applies where a person –
- (a) has been informed by the Chief Officer that software or technology is or may be intended, in its entirety or part, for WMD purposes, or
 - (b) is aware that software or technology is intended, in its entirety or in part, for WMD purposes.

(2) Subject to articles 16 and 23, the person shall not transfer the software or technology in question by non-electronic means to –

- (a) a destination outside the customs territory, or
- (b) a destination within the customs territory if that person—
 - (i) knows that the final destination of the software or technology is outside the customs territory, and
 - (ii) knows that no processing or working is to be performed on the software or technology within the customs territory.

Exceptions for aircraft.

11. (1) Nothing in article 2 shall be taken to prohibit the exportation of –

- (a) any aircraft on a scheduled journey, or
- (b) any aircraft if –
 - (i) its immediately preceding importation was on a scheduled journey, and
 - (ii) the aircraft is intended for further scheduled journeys.

(2) Nothing in article 1 shall be taken to prohibit the exportation of any aircraft which is being exported (except to a country or destination specified in

Part 1, 2 or 3 of Schedule 4 to the UK Order) after temporary importation into the Bailiwick if -

- (a) there has been no change of ownership or registration since such importation, and
- (b) no military goods 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 article 1 or 2 shall be taken to prohibit the exportation of any aircraft which is departing temporarily from the Bailiwick on trials.

Exceptions for vessels.

12. (1) Nothing in article 1 shall be taken to prohibit the exportation of any vessel registered or constructed outside the Bailiwick which is being exported (except to a country or destination specified in Part 1, 2 or 3 of Schedule 4 to the UK Order) after temporary importation into the Bailiwick provided that no military goods 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.

(2) Nothing in article 2 shall be taken to prohibit the exportation of any vessel proceeding on a journey providing transport services in the ordinary course of business.

(3) Nothing in article 1 or 2 shall be taken to prohibit the exportation of any vessel which is departing temporarily from the Bailiwick on trials.

Exception for firearms – relevant certificates and permits.

13. (1) This article applies to firearms authorised to be possessed or (as the case may be) purchased or acquired, by a relevant certificate or permit.

(2) Nothing in article 1 shall be taken to prohibit the exportation of any firearm to which this article applies, or any related ammunition or sight using non-electronic image enhancement for use with such a firearm, –

(a) to any destination in the United Kingdom, the Bailiwick of Jersey or the Isle of Man, subject to the conditions specified in paragraph (3),

(b) to any other authorised destination, subject to the conditions specified in paragraph (3).

(3) The conditions referred to in paragraph (2)(a) and (b) are–

(a) the firearm, and any related ammunition or sight –

(i) is exported or consigned by the holder of the relevant certificate or permit, and

(ii) is exported or consigned in conformity with any conditions of the relevant certificate or permit,

(b) the relevant certificate or permit is produced by the holder, or the holder's duly authorised agent, together with the firearm and any related ammunition or sight to the Chief Officer at the place of exportation, and

(c) the firearm, and any related ammunition or sight –

- (i) forms part of the personal effects of that holder, and
- (ii) is not exported for sale, hire, or any kind of business or commercial supply.

(4) In this article, -

"authorised destination" means any destination other than a country or destination specified in Part 1, 2 or 3 of Schedule 4 to the UK Order, and

"relevant certificate or permit" means –

- (a) a permit obtained from –
 - (i) the Chief Officer of the salaried police force of the Island of Guernsey under section 10 of the Firearms (Guernsey), Law, 1998^b, or
 - (ii) the Firearms Committee (elected by the Chief Pleas of the Island of Sark) under section 9 of the Firearms (Sark) Law, 2001^c,
- (b) a visitor's temporary permit issued under –

^b Ordres in Conseil, Vol. XXXVIII, p. 324, as amended by Vol. XL, p. 24 (functions transferred by Recueil d'Ordonnances Tome XXIX, p. 406).

^c Order in Council XII of 2002.

- (i) section 16 of the Firearms (Guernsey), Law, 1998, or
 - (ii) section 15(2) of the Firearms (Sark) Law, 2001,
- (c) a valid firearm certificate or shot gun certificate granted under –
- (i) section 30 or section 31, respectively, of the Firearms (Guernsey) Law, 1998, or
 - (ii) section 29 or section 30, respectively, of the Firearms (Sark) Law, 2001,
- (d) a valid weapons certificate granted under section 3 of the Dangerous Weapons (Alderney) Ordinance, 1965^d, or
- (e) a valid permit (by whatever name called) issued by the appropriate authority in the country of residence of a person authorised to possess a shotgun, rifle or pistol under section 4(7) of the Dangerous Weapons (Alderney) Ordinance, 1965.

Other exceptions for firearms.

14. (1) Nothing in article 1 shall be taken to prohibit the exportation of any firearm, or any related ammunition or sight using non-electronic image enhancement for use with such a firearm, if it meets Condition A or Condition B.

^d Alderney Ordinance No. II of 1965, as amended by Alderney Ordinances No. I of 1985, No. V of 1992, No. XII of 1993 and No. XI of 2009.

(2) Condition A is met if the firearm and any related ammunition or sight is exported or consigned to a destination within the United Kingdom, the Bailiwick of Jersey or the Isle of Man –

- (a) by a person registered as a firearms dealer in the Bailiwick, and
- (b) in conformity with any conditions of his registration.

(3) Condition B is met if the firearm and any related ammunition or sight is exported on board a ship or aircraft and had been

- (a) imported into the Bailiwick on board the ship or aircraft,
- (b) declared to the Chief Officer as part of the equipment of that ship or aircraft, and
- (c) kept on board that ship or aircraft whilst in the Bailiwick unless lawfully removed under section 15 of the Firearms (Guernsey) Law, 1998 or section 14 of the Firearms (Sark) Law, 2001.

(4) In paragraph (2), "**registered as a firearms dealer**", in relation to the Bailiwick, means so registered under–

- (a) section 36 of the Firearms (Guernsey) Law, 1998, or
- (b) section 35 of the Firearms (Sark) Law, 2001.

Transit or transshipment exception.

15. (1) Subject to paragraphs (2) and (3), nothing in articles 1, 2, 4 or 5(1) shall be taken to prohibit the exportation of any goods which are goods in transit provided that the conditions in paragraph (4) are met.

(2) Paragraph (1) does not apply to the following -

- (a) anti-personnel landmines and components specially designed for them,
- (b) category A goods,
- (c) equipment, software or technology falling within entry ML18, ML21 or ML22 in Schedule 2 to the UK Order, specifically related to anti-personnel landmines or Category A goods,
- (d) goods being exported to a destination specified in Part 1 of Schedule 4 to the UK Order,
- (e) military goods being exported to any country or destination specified in Part 2 or 3 of Schedule 4 to the UK Order, and
- (f) category B goods being exported to any country or destination specified in Part 4 of Schedule 4 to the UK Order.

(3) Paragraph (1) does not apply to the extent that –

- (a) the exporter (or, if the exporter is not within the Bailiwick, any agent of the exporter within the Bailiwick concerned in the exportation or intended exportation) has been informed by a competent authority that the goods are or may be intended, in their entirety or in part, for WMD purposes,
 - (b) the exporter is aware that the goods are intended, in their entirety or in part, for WMD purposes, or
 - (c) the exporter has grounds for suspecting that the goods are or may be intended, in their entirety or in part, for WMD purposes, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.
- (4) The conditions are that –
- (a) the goods in question remain on board a vessel or aircraft for the entire period that they remain in the Bailiwick 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 the goods in question following exportation from the Bailiwick 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 either –

- (i) the destination has not been changed prior to their exportation from the Bailiwick, or
- (ii) 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 there at the time of exportation of the goods.

Software and technology exceptions.

16. (1) Nothing in article 1 or 2 shall be taken to prohibit the transfer of technology –

- (a) that is in the public domain,
- (b) that is the minimum technology required for –
 - (i) the installation, operation, maintenance or repair of goods or software that are not military goods or software or Bailiwick controlled dual-use goods or software, or
 - (ii) a patent application, or
- (c) in the course of basic scientific research.

(2) Nothing in article 8, 9 or 10 shall be taken to prohibit the transfer of software or technology in the public domain.

(3) In this article, "**basic scientific research**" means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts and not primarily directed towards a specific practical aim or objective.

PART II

TECHNICAL ASSISTANCE CONTROLS

End-use control on technical assistance.

17. (1) Subject to article 23, no person shall directly or indirectly provide to a person or place outside the customs territory any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which—

- (a) that person has been informed by the Chief Officer is or may be intended, in its entirety or in part, for WMD purposes, or
- (b) that person is aware is intended, in its entirety or in part, for WMD purposes.

(2) Subject to article 23, no person who is a relevant person shall directly or indirectly provide from a place outside the customs territory to any person or place outside the customs territory any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which —

- (a) that person has been informed by the Chief Officer is or may be intended, in its entirety or in part, for WMD purposes, or

- (b) that person is aware is intended, in its entirety or in part, for WMD purposes.
- (3) For the purposes of paragraphs (1) and (2) –
 - (a) directly providing technical assistance includes providing technical assistance or agreeing to do so, and
 - (b) indirectly providing technical assistance includes making arrangements under which another person provides technical assistance or agrees to do so.

PART III
TRADE CONTROLS

Embargoed destinations.

18. (1) This article applies to –
- (a) persons carrying out activities in the Bailiwick, and
 - (b) relevant persons.
- (2) Subject to article 23, no person to whom this article applies 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 goods subject to trade controls from one third country to another third country that is an embargoed destination.

Category A goods.

19. (1) This article applies to –

- (a) persons carrying out activities in the Bailiwick, and
- (b) relevant persons.

(2) Subject to articles 22 and 23, no person to whom this article applies 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 category A goods, where that person knows or has reason to believe that such action will, or may, result in the removal of those goods from one third country to another third country.

Category B goods.

20. (1) This article applies to –

- (a) persons carrying out activities in the Bailiwick, and
- (b) relevant persons.

(2) Subject to paragraphs (3), (4) and (7) and to article 23, no person to whom this article applies 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 category B goods, where that person knows or has reason to believe that such action will, or may, result in the removal of those goods from one third country to another third country.

(3) Nothing in this article shall be taken to prohibit the provision of –

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

by a person whose only involvement in the activities described in paragraph (2) is to provide or agree to provide such services.

(4) A person whose only involvement in the activities described in paragraph (2) is to provide or agree to provide transportation services in relation to category B goods only contravenes the prohibition in this article if paragraph (5) or (6) applies.

(5) This paragraph applies if the person arranges the removal of those goods from one third country to another third country.

(6) This paragraph applies if the person, otherwise than in the course of providing services to another person –

(a) to whom this article applies, and

(b) who has agreed to provide transportation services in relation to those goods,

removes or agrees to remove the relevant goods from one third country to another third country.

(7) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out otherwise than for payment.

Category C goods.

21. (1) Subject to paragraphs (2) and (3) and to articles 22 and 23, no person shall directly or indirectly –

(a) agree to supply or deliver, or

(b) do any act calculated to promote the supply or delivery of,

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

(2) Nothing in this article shall be taken to prohibit the provision of –

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

by a person whose only involvement in the activities described in paragraph (1) is to provide or agree to provide such services.

(3) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out otherwise than for payment.

Exception for movement of goods within the customs territory.

22. Nothing in article 19 or 21 shall be taken to prohibit activities related to the movement of any of the following goods within the customs territory –

- (a) the goods listed in paragraph 1 of Schedule 1 to the UK Order,
- (b) individual cuffs,
- (c) shackles except those shackles which have an overall dimension including chain, when measured from the outer edge of one cuff to the outer edge of the other cuff, of between 240mm and 280mm when locked and

have not been modified to cause physical pain or suffering,

- (d) the goods listed in paragraphs 2(b), (c) and (d) and 4 of Schedule 1 to the UK Order,
- (e) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance,
- (f) pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4), or
- (g) oleoresin capsicum (OC) (CAS 8023-77-6).

PART IV LICENCES, ETC.

Licences.

23. (1) Nothing in Part I, II or III prohibits an activity that is carried out under the authority of a Bailiwick licence.

(2) Unless it provides otherwise, a Bailiwick licence to export military goods also authorises the export or transfer of the minimum technology required for the installation, operation, maintenance and repair of the goods to the same destination as the goods.

(3) A Bailiwick licence to supply or deliver goods subject to trade controls also authorises the following –

- (a) agreeing to supply or deliver, or

- (b) doing any act calculated to promote the supply or delivery of,

the goods.

(4) A licence granted by the Department (whether it is a Bailiwick licence or an authorisation granted under the dual-use Regulation or torture Regulation) may be –

- (a) either general or granted to a particular person (except that a licence granted under or in relation to the torture Regulation may not be a general licence),
- (b) limited so as to expire on a specified date unless renewed, and
- (c) subject to, or without, conditions and any condition imposed may require any act or omission before or after the doing of the act authorised by the licence.

Person authorised by Bailiwick licence to export goods.

24. (1) For the purpose of article 23(1), but subject to paragraph (2), the exportation of goods to any destination outside the customs territory shall be regarded as being under the authority of a Bailiwick licence issued to, or for the benefit of, a particular person ("X") only if –

- (a) X is the person on whose behalf the exportation declaration is made, and
- (b) X is established within the customs territory and either–

- (i) X is the owner of the goods or has a similar right of disposal over them, or
- (ii) if no person who is the owner of the goods or has a similar right of disposal over them is established within the customs territory, X is a party to one or more contracts under which the ownership of the goods or a similar right of disposal over them has passed to a person not established within the customs territory and pursuant to which the goods are to be, are being or have been exported from the customs territory.

(2) Paragraph (1) does not apply if no person falls within subparagraph (b) of that paragraph or if the exportation is of goods imported into the Bailiwick for transit or transshipment.

Registration with the Department.

25. (1) Not later than 30 days after—
- (a) any person first does any act under the authority of a general licence granted by the Department that does not provide otherwise, or
 - (b) any person established in the Bailiwick first does any act under the authority of the Community General Export Authorisation,

the person in question shall give to the Department written notice of his name and the address at which copies of the records referred to in article 26(1) or 27(3) of this Order or Article 20(1) (record-keeping) of the dual-use Regulation may be inspected by an authorised person under article 28.

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

Record keeping – general.

26. (1) A person who –

- (a) acts under the authority of a general licence granted by the Department, or
- (b) acts under the authority of the Community General Export Authorisation whilst established in the Bailiwick,

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 in relation to each act carried out under the authority referred to in paragraph (1) –

- (a) a description of the act,
- (b) a description of the goods, software or technology to which the act relates,

- (c) the date of the act or the dates between which the act took place,
 - (d) the quantity of the goods (if any) to which the act relates,
 - (e) the name and address of the person referred to in paragraph (1),
 - (f) the name and address of any consignee of the goods to which the act relates or any recipient of the software or technology to which the act relates,
 - (g) in so far as it is known to the person referred to in paragraph (1), the name and address of the end-user of the goods, software or technology to which the act relates,
 - (h) if different from the person referred to in paragraph (1), the name and address of the supplier of the goods (if any) to which the act relates, and
 - (i) any further information required by the licence or authorisation referred to in paragraph (1).
- (3) The registers or records shall be kept –
- (a) in the case of a general licence authorising an activity that would otherwise be prohibited by Part III, for at least four years from the end of the calendar year in which the authorised act took place, and

- (b) in any other case, for at least three years from the end of the calendar year in which the authorised act took place or for such longer period as may be specified in the licence or authorisation referred to in paragraph (1).

(4) The documents and records to be kept in accordance with Article 22(8) (records of exportation and transfer of listed items within the customs territory) of the dual-use Regulation are the registers and records referred to in paragraph (2)(a) to (i).

Registration and record keeping – information security items.

27. (1) Not later than 30 days after the first exportation or transfer of information security items (other than those specified in Schedule 5 to the UK Order) from the Bailiwick under the authority of the Community General Export Authorisation by any person, that person shall (in addition to any notice given under article 25(1)) give to the Department in relation to those goods or that software or technology written notice of –

- (a) the information specified in Schedule 5 to the UK Order that is in their possession, and
- (b) any other information specified in Schedule 5 to the UK Order that they can reasonably be expected to obtain within that time.

(2) A person who has given to the Department written notice of information under paragraph (1) shall, not later than 30 days after any change in that information, give to the Department written notice of the changed information.

(3) A person who exports or transfers information security items (other than those specified in Annex IV to the dual-use Regulation) to a destination within the customs territory shall maintain registers or records, in relation to each exportation or transfer, that contain –

- (a) the information specified in Schedule 5 to the UK Order that they can reasonably be expected to obtain, and
- (b) any other information specified in Schedule 5 to the UK Order that comes into their possession.

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

Inspection of records.

28. (1) A person ("**record holder**") who is required under article 26 or 27 of this Order or under Article 20 (record-keeping) or 22(8) (records of exportation and transfer of listed items within the customs territory) of the dual-use Regulation to keep registers, records or documents ("**compulsory records**") shall permit those compulsory records to be inspected and copied by any authorised person.

(2) For the purposes of paragraph (1), an authorised person who produces, on request, a duly authenticated document showing that he is an authorised person, may at any reasonable hour enter –

- (a) in the case of compulsory records required to be kept under article 26 or 27 of this Order, the premises the address of which has been most recently notified to the

Department under article 25 of this Order in relation to the records,

- (b) in the case of compulsory records required to be kept under Article 20 or 22(8) of the dual-use Regulation, the premises the address of which has been most recently notified to the Department under article 25 of this Order in relation to the records, or
- (c) if no address has been so notified under article 25 of this Order, any other premises at which the authorised person believes, on reasonable grounds, the compulsory records referred to in subparagraph (a) or (b) are kept.

(3) Where a record holder keeps compulsory records in a form which is not legible, the record holder shall at the request of the authorised person reproduce the relevant records in a legible form.

(4) In this article, "**authorised person**" means –

- (a) the Chief Officer,
- (b) any person authorised by the Chief Officer, or
- (c) any person authorised by the Department.

Amendment, suspension and revocation of licences.

29. (1) The Department may by written notice –

- (a) amend, suspend or revoke any licence granted by the Department, or

- (b) suspend or revoke a general licence granted by the Department as it applies to a particular licence user.

(2) A notice by the Department under paragraph (1), under Article 13(1) (suspension, revocation, etc. of export authorisations) or (4) (suspension, revocation, etc. of authorisations for brokering services) of the dual-use Regulation, or Article 9(4) (suspension, revocation, etc. of authorisations) of the torture Regulation, does not take effect until –

- (a) in the case of a notice affecting all users of a general licence, it has been published in a manner appearing to the Department to be suitable for securing that the notice is seen by persons likely to be affected by it, and
- (b) in any other case, it has been served on the holder of the licence or on the licence user affected.

Licence refusals, etc. and appeals.

30. (1) If the Department decides not to grant a licence to any person who has applied for one, the Department shall give the applicant written notice of the reason for the decision.

(2) If the Department decides –

- (a) to suspend a licence other than a general licence, or
- (b) to suspend a general licence as it applies to a particular licence user,

the Department shall give the licence holder or licence user written notice of the terms of, and reason for, the suspension.

(3) If the Department decides –

- (a) to revoke a licence other than a general licence, or
- (b) to revoke a general licence as it applies to a particular licence user,

the Department shall give the licence holder or licence user written notice of the reason for the decision.

(4) If the Department decides to amend a licence other than a general licence (other than at the request of the licence holder), the Department shall give the licence holder written notice of the reason for the decision.

(5) Any person who has a right under any of paragraphs (1) to (4) to written notice in respect of a decision made by the Department may appeal to the Court against the decision on any of the following grounds –

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(6) An appeal must be made –

(a) within a period of 28 days immediately following the date of the written notice given under the relevant paragraph, and

(b) by summons served on the Department stating the grounds and material facts on which the appellant relies.

(7) At the appellant's request, the Court may suspend or modify, on such terms and conditions as the Court thinks just, the operation of the Department's decision (against which the appeal was made) pending the determination of the appeal.

(8) On an appeal, the Department may apply to the Court, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and on hearing the application the Court may -

(a) dismiss the appeal or the application (in either case on such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just.

(9) On determining an appeal, the Court may –

(a) set the decision of the Department aside and, if the Court considers it appropriate to do so, remit the matter

to the Department with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(10) An appeal from a decision of the Court under this article lies to the Court of Appeal on a question of law.

(11) Paragraph (8) is without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^e.

(12) In this article, "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this article the Court may appoint one or more assessors to assist it in the determination of any matter before it.

PART V

OFFENCES, ENFORCEMENT AND PENALTIES

Offences relating to prohibitions in Parts I, II and III.

31. (1) Subject to paragraph (2), a person who contravenes a prohibition in Part I or III of this Order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(2) A person who –

^e Order of the Royal Court No. IV of 2007, as amended by Order of the Royal Court No. II of 2008.

- (a) did not know, and had no reason to suppose, that the goods referred to in article 18 were destined for an embargoed destination, and
- (b) is able to show the matters stated in sub-paragraph (a),

is not guilty of an offence under paragraph (1) by reason only of a contravention of the prohibition in article 18.

(3) A person who contravenes a prohibition in Part I or II of this Order that is engaged because the person –

- (a) has been informed,
- (b) is aware, or
- (c) has grounds for suspecting,

that goods, software or technology are or may be intended, in their entirety or in part, for WMD purposes is guilty of an offence and may be detained.

(4) A person guilty of an offence under paragraph (3) is liable –

- (a) on summary conviction to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 6 months, or to both, or
- (b) on conviction on indictment to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

(5) A person knowingly concerned in any activity prohibited by Part I, II or III of this Order with intent to evade the relevant prohibition is guilty of an offence and may be detained.

(6) A person guilty of an offence under paragraph (5) is liable –

- (a) on summary conviction to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 6 months, or to both, or
- (b) on conviction on indictment to a fine, or to imprisonment for a term not exceeding 10 years, or to both.

Offences relating to prohibitions and restrictions in the dual-use Regulation.

32. (1) A person who contravenes a prohibition or restriction in Article 3(1) (controls on listed goods), 4(2) (military end-use control), 4(3) (end-use control relating to use in items exported or transferred without authorisation) or 22(1) (exportation or transfer of sensitive items within the customs territory) of the dual-use Regulation is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

(2) A person who –

- (a) contravenes a prohibition or restriction in Article 4(1) (WMD purposes end-use control) or Article 5(1) (brokering services) of the dual-use Regulation, or
- (b) fails to comply with the requirement in Article 4(4) (requirement to notify competent authority in the case of

awareness of end-use for certain military or WMD purposes) of the dual-use Regulation,

is guilty of an offence and may be detained.

(3) A person guilty of an offence under paragraph (2) is liable –

- (a) on summary conviction to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both.

(4) A person knowingly concerned in an activity prohibited or restricted by Article 3(1), 4(1), 4(2), 4(3), 5(1) or 22(1) of the dual-use Regulation with intent to evade the relevant prohibition or restriction is guilty of an offence and may be detained.

(5) A person guilty of an offence under paragraph (4) is liable –

- (a) on summary conviction to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment to a fine, or to imprisonment for a term not exceeding 10 years, or to both.

(6) A person who fails to comply with Article 9(2) (provision of relevant information for export authorisation applications) or 10(2) (provision of relevant information for authorisation applications for brokering services) of the dual-use Regulation is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale; any licence which may have been granted in connection with the application is void as from the time it was granted.

(7) A person who fails to comply with Article 20 (record-keeping), 22(8) (records of exportation and transfer of listed items within the customs territory) or 22(10) (requirement in relation to commercial documents for exportation and transfer of listed items within the customs territory) of the dual-use Regulation is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

Offences relating to prohibitions and restrictions in the torture Regulation.

33. (1) A person who contravenes a prohibition or restriction in Article 3(1) (export prohibition) of the torture Regulation in respect of the supply of technical assistance as defined in the torture Regulation is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

(2) A person knowingly concerned in the provision of technical assistance as defined in the torture Regulation with intent to evade the prohibition on the provision of technical assistance in article 3(1) of the torture Regulation is guilty of an offence and may be detained.

(3) A person guilty of an offence under paragraph (2) is liable –

(a) on summary conviction to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years, or to both.

(4) A person who contravenes a prohibition or restriction in Article 4(1) (import prohibition) of the torture Regulation in respect of the acceptance of technical assistance as defined in the torture Regulation is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

(5) A person knowingly concerned in the acceptance of technical assistance as defined in the torture Regulation with intent to evade the prohibition on the acceptance of technical assistance in article 4(1) of the torture Regulation is guilty of an offence and may be detained.

(6) A person guilty of an offence under paragraph (5) is liable –

(a) on summary conviction to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

(7) A person who fails to comply with Article 8(2) (provision of relevant information for licence applications) of the torture Regulation is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale; any licence which may have been granted in connection with the application is void as from the time it was granted.

Misleading applications for licences.

34. (1) Where for the purpose of obtaining a licence a person either –
- (a) makes a statement or provides a document or information which to the person's knowledge is false in a material particular; or
 - (b) recklessly makes a statement or provides a document or information which is false in a material particular,

that person is guilty of an offence and any licence that has been granted in connection with the application for which the false statement was made or the false document or information was provided is void as from the time it was granted.

- (2) A person guilty of an offence under paragraph (1) is liable –
- (a) on summary conviction to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 12 months, or to both, or
 - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 2 years, or to both.

Failure to comply with licence conditions.

35. (1) A person who, having acted under the authority of a licence or the Community General Export Authorisation, fails to comply with –
- (a) any of the requirements or conditions to which the licence or the Community General Export Authorisation is subject, or

- (b) any obligation under article 25, 26, 27, or 28,

is guilty of an offence unless paragraph (2) applies.

- (2) This paragraph applies if –

- (a) the licence was modified after the completion of the act authorised, and
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified.

- (3) A person guilty of an offence under paragraph (1) is liable –

- (a) on summary conviction to a fine not exceeding level 5 on the uniform scale or to imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 2 years, or to both.

Customs powers to require evidence of destination.

36. (1) This article applies where a person has exported goods and required a licence to do so.

(2) The Chief Officer may require the person to provide within a time specified by the Chief Officer evidence of the destination to which the goods in question were delivered.

(3) A person who fails to comply with a requirement made under paragraph (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

Customs powers relating to dual-use goods.

37. (1) Goods in relation to which a licence has not been granted and which are brought to any place in the Bailiwick for the purpose of being exported may be detained by the Chief Officer as if they were liable to forfeiture, if and so long as that officer has reason to believe that a competent authority (after, if necessary, having had the impending exportation brought to its attention) might inform the exporter –

- (a) that the goods are or may be intended, in their entirety or in part, for WMD purposes, or
- (b) as provided in Article 4(2) (military end-use control) or 4(3) (end-use control relating to use in items exported or transferred without authorisation) of the dual-use Regulation.

(2) Any goods listed in Annex I to the dual-use Regulation in relation to which a licence has been granted which are brought to any place in the Bailiwick for the purpose of being exported to a destination outside the customs territory may be detained by the Chief Officer for a period of 10 business days as if they were liable to forfeiture where that officer or the Department has grounds for suspicion that –

- (a) relevant information was not taken into account when the licence was granted, or

- (b) circumstances have materially changed since the issue of the licence,

but the period shall be extended to 30 business days where the Department certifies that a request for such an extension in accordance with Article 16(4) (customs procedures) of the dual-use Regulation has been received from the Member State which granted the licence.

- (3) In this article, "**business day**" means any day other than –
 - (a) a Saturday, a Sunday, Christmas Day or Good Friday, or
 - (b) a day appointed as a public holiday by Ordinance of the States of Deliberation, the States of Alderney or (as the case may be) the Chief Pleas of Sark, under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^f.

Application of 1972 Law in respect of offences.

38. (1) Where the Department or the Chief Officer investigates or proposes to investigate any matter with a view to determining –

- (a) whether there are grounds for believing that an offence has been committed by reason of a contravention of –
 - (i) article 1, 2, 3, 4, 5, 6, 9, 10, 17, 18, 19, 20, 21, 34, 35 or 36 of this Order,

^f Ordres en Conseil Vol. XVII, p. 384; vo. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

- (ii) article 28 of this Order so far as it relates to the powers of an authorised person,
 - (iii) the dual-use Regulation, or
 - (iv) the torture Regulation, or
- (b) whether a person should be prosecuted for such an offence,

the matter shall be treated as an assigned matter for the purposes of the 1972 Law.

(2) Section 69A of the 1972 Law (power to require furnishing of information, etc.) applies to a person concerned in an activity which, if not authorised by a licence, would contravene –

- (a) article 1, 2, 3, 4, 5, 6, 9, 10, 17, 18, 19, 20 or 21 of this Order,
- (b) the dual-use Regulation, or
- (c) the torture Regulation,

and accordingly references in section 69A of the 1972 Law to exportation shall be read as including any such activity.

(3) Section 55 of the 1972 Law (provisions as to detention of persons) applies to the detention of a person for an offence under this Order as it applies to the detention of a person for an offence under customs Laws.

(4) Sections 61 to 65 (provisions relating to proceedings, fines and proof) of the 1972 Law apply in relation to offences and penalties under this Order as they apply in relation to offences and penalties under customs Laws.

(5) Nothing in this article limits or otherwise affects the operation of section 11 (application of the 1972 Law to control orders) of the Law.

(6) For the avoidance of doubt, nothing in this Order limits the offences for which a person may be charged, or the penalties that may be imposed for offences, under the 1972 Law; and conversely, nothing in the 1972 Law limits the offences for which a person may be charged, or the penalties that may be imposed for offences, under this Order.

Increase of maximum penalties for prohibited exportation in 1972 Law.

39. In the case of an offence committed in connection with a prohibition or restriction on exportation in Part I of this Order, the dual-use Regulation or the torture Regulation –

- (a) in section 30(2) (offences in relation to exportation of prohibited or restricted goods) of the 1972 Law, paragraph (i) has effect as if for the words "three months" there were substituted the words "6 months", and paragraph (ii) has effect as if for the words "two years" there were substituted the words "10 years", and
- (b) section 77(1) (fraudulent evasion of duty, etc.) of the 1972 Law has effect as if for the words "two years" there were substituted the words "10 years".

PART VI
GENERAL

Application of dual-use Regulation.

40. (1) Subject to the modifications specified in paragraphs (2) to (4), the dual-use Regulation –

- (a) has full force and effect to the extent that it imposes export controls, transfer controls, technical assistance controls, or trade controls, or provides for matters authorised by section 7 of the Law, and
- (b) shall be read together with this Order.

(2) A reference in the dual-use Regulation –

- (a) to "Member State", "Member States", "the Community", "customs territory", or "territory of the Community" includes the Bailiwick, and
- (b) to the date of entry into force is a reference to the date on which this Order comes into force.

(3) The Department shall be regarded as the competent authority of the Bailiwick, for the purposes of granting or administering any authorisation under the dual-use Regulation, and the authorisation required under article 22(1) of that Regulation (exportation or transfer of sensitive items within the customs territory) for intra-Community exportation or transfer from the Bailiwick of certain dual-use items may be granted by the Department.

(4) Articles 19(3) and 28 of the dual-use Regulation are omitted.

(5) An authorisation granted by the Department under the dual-use Regulation (whether before or after this Order comes into force) shall be regarded as a licence for the purposes of this Order.

(6) Nothing in this article limits the effect of section 2 (general implementation of the Treaties) of the the European Communities (Bailiwick of Guernsey) Law, 1973^g.

Application of torture Regulation.

41. (1) Subject to the modifications specified in paragraphs (2) to (4), the torture Regulation -

- (a) has full force and effect to the extent that it imposes export controls, transfer controls, technical assistance controls, or trade controls, or provides for matters authorised by section 7 of the Law, and
- (b) shall be read together with this Order.

(2) A reference in the torture Regulation -

- (a) to "Member State", "Member States", "the Community", "customs territory", or "territory of the Community" includes the Bailiwick, and
- (b) to the date of entry into force is a reference to the date on which this Order comes into force.

^g Ordres in Conseil, Vol. XXIV, p.87. Amended Vol. XXVII, p. 242, Vol. XXIX, p. 127 and p. 419, and Order No. XXV of 2002.

(3) The Department shall be regarded as the competent authority of the Bailiwick for the purposes of granting or administering any authorisation under the torture Regulation.

(4) Article 19 of the torture Regulation is omitted.

(5) An authorisation granted by the Department under the torture Regulation (whether before or after this Order comes into force) shall be regarded as a licence for the purposes of this Order.

(6) Nothing in this article limits the effect of section 2 (general implementation of the Treaties) of the the European Communities (Bailiwick of Guernsey) Law, 1973.

Use and disclosure of information.

42. (1) This article applies to information which is held by the Department or any person in connection with the operation of controls imposed by –

- (a) this Order,
- (b) the dual-use Regulation, to the extent that it has effect in the Bailiwick,
- (c) the torture Regulation, to the extent that it has effect in the Bailiwick,
- (d) any other Community directive or regulation, to the extent that it has effect in the Bailiwick in relation to the export of goods, the transfer of software or technology,

participation in the provision of technical assistance, or activities which facilitate, or are otherwise connected with, the acquisition, disposal or movement of goods.

(2) The information 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 any other order made under the Law,
- (b) implementation of any Community directive or regulation or any international agreement, or
- (c) facilitating the exercise by an authority or international organisation outside the Bailiwick of functions which correspond to functions –
 - (i) conferred by, or
 - (ii) in connection with any activity subject to control by,

this Order or any other order made under the Law.

(3) The information may be disclosed to any person for use for any purpose specified in paragraph (2), but the disclosure must be proportionate to its object.

(4) For the purposes of this article, "**information**" means information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this article affects or limits any power to disclose information that exists apart from this article.

(6) The information that may be disclosed under this article includes information obtained before this Order came into force.

Service of notices.

43. A notice to be given to the Department by a person under this Order—

- (a) may be given by an agent of that person, and
- (b) shall be sent by post or delivered care of the Chief Officer, at the current business address of the Chief Officer.

Interpretation.

44. (1) In this Order, unless the context otherwise requires —

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

"**Bailiwick controlled**", in relation to dual-use goods, software, or technology, means listed in Schedule 3 to the UK Order;

"**Bailiwick licence**" —

- (a) means a licence in writing granted by the Department

that authorises an act that would otherwise be prohibited by Part I, II, or III of this Order, and

- (b) includes a licence or Community Licence deemed to be a Bailiwick licence under article 46;

"category A goods" means goods specified in Part 1 of Schedule 1 to the UK Order;

"category B goods" means goods specified in Part 2 of Schedule 1 to the UK Order;

"category C goods" means –

- (a) military goods other than goods specified in Schedule 1 to the UK Order,
- (b) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance,
- (c) pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4), or
- (d) oleoresin capsicum (OC) (CAS 8023-77-6);

"Chief Officer" –

- (a) means the Chief Officer of Customs and Excise for the time being appointed by the Policy Council, and

- (b) includes any officer of Customs and Excise acting by or under his authority;

"Community General Export Authorisation" has the meaning given by Article 2(9) of the dual-use Regulation;

"competent authority" means the Department or any other authority that is empowered to grant authorisations under the dual-use Regulation;

"contract promotion activity" means –

- (a) any act calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or movement of goods, or
- (b) any agreement to do such an act;

"country" includes territory or dependency;

"customs territory" means the customs territory described in Article 3 of Council Regulation (EEC) No 2913/92 until its repeal by Council Regulation (EC) No 450/2008, and then the customs territory described in Article 3 of the latter Regulation;

"dual-use" in relation to goods, software, or technology, means usable for both civil and military purposes;

"dual-use Regulation" means Council Regulation (EC) No 428/2009;

"embargoed destination" means a country listed in Part 1 or 2 of Schedule 4 to the UK Order;

"exportation" –

- (a) means removal from the Bailiwick to any destination outside the Bailiwick,
- (b) includes shipping as stores, and
- (c) in relation to a vessel, vehicle, submersible vehicle, aircraft, or any other means of conveyance, includes taking it out of the Bailiwick even if it is conveying goods or passengers, or moving under its own power –

and cognate expressions shall be construed accordingly;

"general", in relation to a licence, means not granted to a particular person but available for use generally;

"goods subject to trade controls" means goods that are category A goods, category B goods, or category C goods;

"information security items" means goods, software and technology specified in Part 2 of Category 5 in Annex I to the dual-use Regulation;

"importation", in relation to a vessel, vehicle, submersible vehicle, aircraft, or any other means of conveyance, means taking it into the Bailiwick, even if it is conveying goods or passengers, or moving under its own power; and cognate expressions shall be construed accordingly;

"the Law" means the Export Control (Bailiwick of Guernsey) Law, 2006;

"licence", except in article 46, means –

- (a) a Bailiwick licence, or
- (b) an authorisation regarded as a licence for the purposes of this Order under article 40(5) or 41(5);

"licence user" means a person –

- (a) who is registered under article 25(1) in relation to a general licence, or
- (b) who is entitled to use a general licence without registration owing to the terms of that general licence;

"Member State" –

- (a) means a Member State of the European Community, and
- (b) in relation to any Community directive or regulation, or any provision of this Order intended to implement a Community directive or regulation, includes the Bailiwick;

"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;

"military", in relation to goods, software, or technology, means listed in Schedule 2 to the UK Order;

"non-community goods" means non-community goods described in Article 4(8) of Council Regulation (EEC) No 2913/1992 until its repeal by Council Regulation (EC) No 450/2008 and then non-community goods described in Article 4(19) of the latter Regulation;

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

"payment" –

- (a) includes a payment in money or money's worth or in kind whether referable to a particular act or made from time to time, but
- (b) excludes a payment made by way of wages or salary;

"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 on further dissemination (no account being taken of copyright restrictions);

"scheduled journey" means one of a series of journeys which –

- (a) are undertaken between the same two places, and

- (b) together amount to a systematic service operated in such manner that its benefits are available to members of the public seeking to take advantage of it;

"shipment" (and cognate expressions) and **"stores"** have the same respective meanings as in section 1(1) of the 1972 Law;

"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) or any vehicle using the wing-in-ground effect for positive lift;

"third country" means any country that is not the Bailiwick except that, for the purposes of Part III of this Order, goods that are goods in transit are considered to be located in a third country;

"torture Regulation" means Council Regulation (EC) No 1236/2005;

"transfer", in relation to software or technology, means transfer by electronic or non-electronic means (or any combination of electronic and non-electronic means) from a person or place within the Bailiwick to a person or place outside the Bailiwick, except in articles 8 and 9 where the limitations as to the origin and destination of the transfer do not apply; and cognate expressions shall be construed accordingly;

"transfer by electronic means", in relation to software or technology, means transmission by facsimile, telephone or other electronic media, and includes the transmission of technology by describing it orally over the telephone;

"in transit" means imported into the Bailiwick for transit or transshipment;

"transit or transshipment", in relation to goods, means transit through the Bailiwick or transshipment with a view to re-exportation of the goods or transshipment of the goods for use as stores;

"UK legislation" means any Act of Parliament or subordinate legislation enacted or made in the United Kingdom, or any provision or part of such an Act or subordinate legislation;

"the UK Order" means the the Export Control Order 2008^h;

"uniform scale" means the scale of fines for offences set out in the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989ⁱ;

"vehicle" includes a railway carriage;

"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; and

"WMD purposes" 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.

^h United Kingdom S.I. 2008 No. 3231, as amended by United Kingdom S.I.s 2009 No. 1305, 2009 No. 1852, 2009 No. 2151, 2009 No. 2969 and 2010 No. 121.

ⁱ Ordres in Conseil Vol. XXXI, p. 278 amended by Recueil d'Ordonnances Tome XXV, p.344 and Ordinance No. XXII of 1998.

(2) Except in the definition of category C goods, tangible storage media on which military or dual-use software or technology is recorded shall be regarded as military or dual-use goods respectively.

(3) In this Order, unless the context requires otherwise –

- (a) a reference to time after an event is a reference to a period of that length of time beginning on the day of that event,
- (b) a reference to any enactment or UK legislation is a reference to the enactment or UK legislation as from time to time amended, varied, re-enacted (with or without modification), extended or applied,
- (c) a reference to any Community directive or regulation, or any provision or part of a Community directive or regulation is a reference to it as from time to time amended or re-issued (with or without modification), and
- (d) a reference to any convention, treaty or other international agreement, or any provision or part of it is a reference to the agreement, provision, or part concerned, as from time to time amended or re-issued (with or without modification).

(4) The provisions of the Interpretation (Guernsey) Law, 1948^j apply to the interpretation of this Order throughout the Bailiwick as they apply to the interpretation of an enactment in force in the Island of Guernsey.

(5) For the avoidance of doubt, unless the context otherwise requires, an expression used in this Order has the same meaning as in the Law.

Repeals.

45. Subject to article 46, the following ordinances are repealed –

- (a) the European Communities (Implementation of Council Regulation for Control of Exports of Dual-Use Items) (Guernsey) Ordinance, 2003^k,
- (b) the European Communities (Implementation of Council Regulation for the Control of Exports of Dual-Use Items) (Alderney) Ordinance, 2003^l, and
- (c) the European Communities (Implementation of Council Regulation for Control of Exports of Dual-Use Items) (Sark) Ordinance, 2003^m.

^j Ordres en Conseil Vol. XIII, p. 355.

^k Ordinance No. II of 2003.

^l Alderney Ordinance No. V of 2003.

^m Sark Ordinance No. 122.

Transitional provisions.

46. (1) Subject to this article, on the coming into force of this Order, a licence or Community Licence –

(a) granted by the Department under any Ordinance specified in article 45, and

(b) in force immediately before the coming into force of this Order,

is deemed to be a Bailiwick licence.

(2) A licence or Community Licence deemed to be a Bailiwick licence under paragraph (1) expires on the expiry date (if any) stated on it, unless sooner surrendered or revoked under this Order.

(3) This article expires on the first anniversary of this Order coming into force.

Extent.

47. This Order has effect throughout the Bailiwick and the provisions of this Order have extra-territorial effect according to their tenor.

Citation and commencement.

48. This Order may be cited as the Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010 and comes into force on the 1st of May, 2010.

Dated this 26th day of April, 2010

G H Mahy

G. H. MAHY

Minister of the States Home Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the Order)

This Order puts in place controls on the export of goods, software, and technology that can be used for both civil and military purposes and goods that can be used for capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment.

It mirrors provisions in the UK's Export Control Order 2008.

This Order applies Council Regulation (EC) No 428/2009 (the dual-use Regulation) throughout the Bailiwick (article 40) and repeals Guernsey, Sark, and Alderney Ordinances that applied that Regulation (article 45). This Order also applies Council Regulation (EC) No 1236/2005 (the torture Regulation) throughout the Bailiwick (article 41).

Part I supplements the applicable provisions of these two Regulations by extending their controls to cover additional goods (article 2), intra-Community transfers and goods in transit (articles 3, 4, 5, and 6), and different types of technology transfers (articles 8, 9, and 10).

Article 1 controls the export of military goods, software, and technology (which is not covered by either of the two Regulations). The list of military goods, software, and technology controlled is based on the Wassenaar Arrangement military list (the Wassenaar Arrangement is an international regime for controlling conventional arms).

The remaining provisions of Part I are exceptions from the controls, notably covering scheduled flights and other low-risk movements of aircraft and vessels, firearms, transit and transshipment, and transfers of software and technology that are of little

concern. The extent of the transit and transshipment exception varies according to the type of goods and their destination.

Part II prohibits the provision of technical assistance in relation to chemical, biological, or nuclear weapons programmes.

Part III controls movement of goods between the Bailiwick and the UK and other countries. Goods are organised into 3 categories, A , B and C, A being goods with the highest level of sensitivity (such as torture equipment). Different controls are applied and different exemptions apply to each category of goods.

Part IV contains provisions about licences. There are provisions about record keeping by licence holders (articles 26 and 27) and inspection of the relevant records (article 28) and appeals from licensing decisions (article 30).

Part V contains provisions about offences and the powers of Customs and Excise officers who will enforce the Order. In addition to provisions in this Order, offences relating to exportation out of the Bailiwick without a licence are also dealt with in sections 30 and 77 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

Part VI applies the dual-use Regulation and the torture Regulation to the Bailiwick, It also sets out the purposes for which information held by the Department or the Chief Officer in connection with controls can be disclosed. Finally it deals with service of notices, interpretation, the extent of application of this Order, and its commencement.