

GUERNSEY STATUTORY INSTRUMENT

2024 No. 67

**The Export Control (Military, Security, and Related  
Matters) (Bailiwick of Guernsey) (Amendment) Order,  
2024**

*Made* 6<sup>th</sup> August, 2024

*Coming into operation* 1<sup>st</sup> September, 2024

*Laid before the States* , 2024

**THE COMMITTEE FOR HOME AFFAIRS**, in exercise of the powers conferred on it by sections 1 and 7 of the Export Control (Bailiwick of Guernsey) Law, 2006<sup>a</sup> and all other powers enabling it in that behalf, hereby makes the following Regulations:-

**Amendments to principal Order.**

1. The Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010<sup>b</sup> ("**principal Order**") is amended as follows.

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<sup>a</sup> Order in Council No. XIV of 2007; this enactment has been amended.

<sup>b</sup> G.S.I. No. 37 of 2010; this enactment has been amended.

2. In article 4(1)(b) of the principal Order -
  - (a) for "the person would only be permitted", substitute "an authorisation would be required", and
  - (b) for "to the extent authorised to do so under Article 3", substitute "under Article 3(1)".
  
3. In article 5 of the principal Order -
  - (a) in paragraph (1), delete "non-community goods which are", and
  - (b) in paragraph (2) -
    - (i) in subparagraph (a), for "a competent authority", substitute "the Committee or the Chief Officer", and
    - (ii) in the text following subparagraph (b), delete "non-community".
  
4. In article 7 of the principal Order, immediately after "articles 1 to 6," insert "or 10A,".
  
5. In article 8(1) of the principal Order -
  - (a) in subparagraph (a), immediately after "the Committee" insert "or the Chief Officer", and
  - (b) in the text following subparagraph (b), immediately

after "by", insert "the Committee or".

6. In article 9 of the principal Order -

(a) in paragraph (1)(a), for "a competent authority", substitute "the Committee or the Chief Officer", and

(b) in paragraph (2)(c)(ii), immediately after "by", insert "the Committee or".

7. In article 10(1)(a) of the principal Order, immediately after "by" insert "the Committee or".

8. Immediately after article 10, insert the following -

**"Military end-use control supplementing the dual-use Regulation.**

**10A. (1)** This article applies where a person ("**a relevant person**") -

(a) has been informed by the Committee or the Chief Officer that dual-use goods, software or technology are, or may be intended, in their entirety or in part, for use by a relevant entity, and

(b) the dual-use goods, software or technology in question are not specified in Annex I to the dual-use Regulation.

(2) Subject to articles 10B, 16 and 23, a relevant 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 Bailiwick.
- (3) In this article, "**relevant entity**" means -
- (a) any military forces, para-military forces, police forces, security services or intelligence services of a country that is one or more of the following -
    - (i) an embargoed destination,
    - (ii) subject to an arms embargo imposed by a decision of the Organisation for Security and Cooperation in Europe (OSCE), or
    - (iii) subject to an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or
  - (b) any person involved in the procurement, research, development, production or use of dual-use goods, software or technology on behalf, or at the direction, of any of the entities mentioned in subparagraph (a).

**Exceptions to military end-use control supplementing the dual-use Regulation.**

- 10B. (1) Nothing in article 10A shall be taken to prohibit -
- (a) the export of medical goods, including medicines and medical devices, for the benefit of the civilian population of a country,
  - (b) the export of consumer goods generally available to the public, or
  - (c) the transfer of software or technology generally available to the public.

(2) For the purposes of paragraph (1), goods, software or technology are generally available to the public if they are -

- (a) sold from stock at retail selling points without restriction, by means of -
  - (i) over the counter transactions,
  - (ii) mail order transactions,
  - (iii) electronic transactions, or
  - (iv) telephone order transactions, and
- (b) designed for installation by the user without further substantial support by the supplier."

9. In article 12A(2)(b) of the principal Order, for "or the United Kingdom"

substitute ", the United Kingdom, the Bailiwick of Jersey or the Isle of Man".

10. In article 15 of the principal Order –

(a) in paragraph (3)(a), for "a competent authority", substitute "the Committee or the Chief Officer", and

(b) in paragraph (4)(a), revoke item (ii).

11. In article 16(2) of the principal Order, for "or 10" substitute ", 10 or 10A".

12. In article 17(1)(a) and (2)(a) of the principal Order, immediately after "by" in each place where the expression occurs, insert "the Committee or".

13. In article 23 of the principal Order -

(a) in paragraph (1), immediately after "II or III", insert "or article 40(1C)",

(b) in paragraph (2) -

(i) delete "military", and

(ii) immediately after "goods" in the three places where the word occurs, insert "or transfer software", "or the software" and "or software" respectively, and

(c) in paragraph (4), delete "dual-use Regulation or".

14. In article 24(1)(a) of the principal Order, immediately after "made,",

insert "where an export declaration is required,".

15. In article 25(1) of the principal Order -

- (a) in subparagraph (b) for "Union" substitute "Torture",  
and
- (b) in the text following subparagraph (b) -
  - (i) immediately after "copies of the", insert  
"registers or", and
  - (ii) delete "or 27(3)".

16. In article 26 of the principal Order -

- (a) in paragraph (1) -
  - (i) at the end of subparagraph (a), insert "or",
  - (ii) in subparagraph (b), for "Union", substitute  
"Torture", and delete "or",
  - (iii) revoke subparagraph (c), and
- (b) revoke paragraph (4).

17. In article 28(1) and (2)(a) of the principal Order, delete "or 27" in each place where the expression occurs.

18. In article 29(2) of the principal Order, delete the part beginning with "under Article 13(1)" and ending with "dual-use Regulation,".

19. In article 31 of the principal Order -

- (a) immediately after paragraph (3), insert the following paragraph -

"(3A) A person who contravenes a prohibition in Part I of this Order that is engaged because the person has been informed by the Committee or the Chief Officer that dual-use goods, software or technology are or may be intended, in their entirety or in part, for use by a relevant entity referred to in article 10A (military end-use control supplementing the dual-use Regulation), commits an offence and may be arrested.", and

- (b) in paragraph (4), immediately after "paragraph (3)", insert "or (3A)".

20. In article 32 of the principal Order -

- (a) in paragraph (1), for "a prohibition or restriction in", substitute "the prohibition or restriction in article 40(1C)(a) of this Order relating to",

- (b) in paragraph (2) -

- (i) in subparagraph (a), immediately after "contravenes", insert "the prohibition or restriction in article 40(1C) of this Order relating to", and

- (ii) in subparagraph (b), for "competent authority", substitute "the Committee",

- (c) in paragraph (4), for "Article 3(1), 4(1), 4(2), 4(3), 5(1) or 22(1) of the dual-use Regulation", substitute "article 40(1C) of this Order", and
- (d) revoke paragraph (6).

21. In article 35 of the principal Order -

- (a) in paragraph (1) -
  - (i) in the text before subparagraph (a), for "Community" substitute "Torture",
  - (ii) in subparagraph (a), for "the Community General Export Authorisation", substitute "authorisation", and
  - (iii) in subparagraph (b), delete ", 27,".

22. Immediately after article 35 of the principal Order, insert the following article -

**"Failure to comply with other record-keeping and related duties.**

35A. (1) A person who fails to comply with any obligation under –

- (a) Article 20, or Article 22(8) or (10), of the dual-use Regulation, or
- (b) articles 25, 26 or 28 of this Order,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable on conviction to a fine not exceeding level 2 on the uniform scale.

(3) Paragraph (1) does not apply where a person is acting under the authority of a licence and article 35(2) applies."

23. In article 37 of the principal Order -

(a) in paragraph (1) -

(i) in the text before subparagraph (a), for "a competent authority", substitute "the Committee or the Chief Officer",

(ii) at the end of subparagraph (a), delete "or",

(iii) at the end of subparagraph (b), insert "or", and

(iv) immediately after paragraph (b), insert the following -

"(c) that the goods are or may be intended, in their entirety or in part, for use by a relevant entity referred to in article 10A (military end-use control supplementing the dual-use Regulation).", and

(b) in paragraph (2), delete the text following subparagraph (b).

24. In article 38 of the principal Order -
- (a) in paragraph (1)(a) -
    - (i) in item (i), immediately after "10," "21," and "35" respectively, insert "10A," "32," and "35A",
    - (ii) at the end of item (ii), insert "or", and
    - (iii) revoke item (iii), and
  - (b) in paragraph (2) -
    - (i) in subparagraph (a) -
      - (A) immediately after "10," insert "10A,",
      - (B) for "or 21", substitute ", 21 or 40(1C)", and
      - (C) at the end, insert "or", and
    - (ii) revoke subparagraph (b).
25. In article 39 of the principal Order, in the text before subparagraph (a) -
- (a) immediately after "Part I", insert "or article 40(1C)(a)", and
  - (b) delete "the dual-use Regulation".
26. In article 40 of the principal Order -

(a) for paragraph (1), substitute the following paragraphs -

"(1) The following provisions of the dual-use Regulation have effect subject to any modifications necessary to make those provisions read as the provisions set out in the Schedule -

(a) Article 3(1),

(b) Article 4(1) to (4),

(c) Article 5(1),

(d) Article 20, and

(e) Article 22(1), (8) and (10).

(1A) The following also have effect in the Bailiwick -

(a) any other provision of the dual-use Regulation necessary to give effect to the provisions given effect by paragraph (1), and

(b) any other provision of that Regulation, to the extent -

(i) incorporated by any provision of this Order, or

(ii) necessary to give effect to any provision of this Order.

(1B) The provisions of the dual-use Regulation given effect by paragraph (1) or (1A) shall be read together with the provisions of this Order.

(1C) Subject to article 23 of this Order, a person shall not -

(a) export or transfer any thing if Article 3(1), 4(1), (2) or (3) or 22(1) of the dual-use Regulation requires an authorisation to export or transfer the thing, or

(b) provide or carry out brokering services of any description if Article 5(1) of the dual-use Regulation requires an authorisation for those brokering services.",

(b) in paragraph (2) -

(i) for "the dual-use Regulation" in both places where the expression occurs, substitute "provisions of the dual-use Regulation given effect by paragraph (1A)" and "those provisions" respectively, and

(ii) immediately after subparagraph (d), insert the following subparagraph -

"(da) to an intra-Community transfer, shall be construed to mean a transfer within the customs territory, and", and

(c) for paragraphs (3), (4), (5) and (6), substitute the following paragraph -

"(3) For the avoidance of doubt -

(a) the definitions of "**export**", "**brokering services**" and "**broker**" in Articles 2(2) and 28 respectively of the dual-use Regulation have no effect,

(b) in the provisions of the dual-use Regulation given effect by paragraph (1) of this article -

(i) "**the Committee**" has the meaning given by article 44(1) of this Order, and

(ii) "**military good**" has the meaning given by article 44(1) of this Order in relation to the definition of "military",

(c) in paragraph (2)(b) and (d) of this article, "**customs territory**" has the meaning given by article 44(1) of this Order, and

(d) a reference in this Order to a provision of the dual-use Regulation given effect by paragraph (1) is a reference to the provision as modified and set out in the Schedule."

27. In article 42 of the principal Order -

(a) in paragraph (1)(d), immediately after "any", insert

"Preserved EU law (within the meaning of section 3 of the European Union (Brexit) Law, 2018) or", and

- (b) in paragraph 2(b), for "Community directive or regulation", substitute "Preserved EU law (within the meaning of section 3 of the European Union (Brexit) Law, 2018), Community directive or regulation having effect in the Bailiwick,".

28. In article 44 of the principal Order -

- (a) in paragraph (1) -

- (i) revoke the definitions of "**competent authority**", "**Member State**", "**non-community goods**" and "**Union General Export Authorisation**",

- (ii) in paragraph (a) of the definition of "**Bailiwick licence**", immediately after "III" insert "or article 40(1C)",

- (iii) for the definition of "**customs territory**", substitute the following definition -

""**customs territory**" -

- (a) in relation to any provision of the torture Regulation, or any provision of this Order giving effect or otherwise relating to the torture Regulation, means -

- (i) the customs territory described in Article 4 of Regulation (EU) No 952/2013, and
  - (ii) the British Islands,
- taken collectively, and
- (b) in any other case, means the British Islands,"
  - (iv) in the definition of "**dual-use Regulation**", for "as given effect and modified by article 40 of this Order", substitute "as it had effect in the European Union immediately before 31st December, 2020; but any reference to Annex I or IV of that Regulation in this Order or any provision of that Regulation is to be construed as a reference to that Annex as amended from time to time and given effect in the United Kingdom,"
  - (v) in the definition of "**licence**", in subparagraph (b), delete "40(5) or",
  - (vi) immediately after the definition of "**in the public domain**", insert the following definition -

""**relevant person**" means -

- (a) a British national,

- (b) a limited partnership which has separate legal personality pursuant to section 9A of the Limited Partnerships (Guernsey) Law 1995, or
- (c) a body incorporated under the law of any part of the Bailiwick," and
- (vii) immediately after the definition of "**third country**", insert the following -

""**Torture General Export Authorisation**" means Union General Export Authorisation as defined by Article 2(o) of the Torture Regulation," and

- (b) revoke paragraph (1A).

29. At the end of the principal Order, insert the schedule set out in the Schedule to this Order.

**Transitional.**

30. (1) This article applies where -
- (a) immediately before the commencement of this Order, a person had been carrying on a business of exporting dual-use items of any kind to any country or a number of countries, and
  - (b) the exportation of dual-use items of that kind to the country or countries concerned was carried out –
    - (i) without a Bailiwick licence (within the meaning

given by the principal Order before it was amended by this Order), and

- (ii) either to a Member State of the European Union or in accordance with a Community or General Export Authorisation issued under the dual-use Regulation (within the meaning given by the principal Order before it was amended by this Order).

(2) On the commencement of this Order, the provisions of the principal Order apply to the exportation of dual-use items of that kind to the country or countries concerned by that person in the course of the business concerned as if the principal Order had not been amended by this Order.

(3) This article ceases to have effect on the day after the expiry of two calendar months following the commencement of this Order.

(4) In this article, "**dual-use items**" means dual-use goods, software or technology.

**Interpretation.**

31. In this Order, "**the principal Order**" means the Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) Order, 2010.

**Citation.**

32. This Order may be cited as the Export Control (Military, Security, and Related Matters) (Bailiwick of Guernsey) (Amendment) Order, 2024.

**Commencement.**

33. This Order comes into force on 1<sup>st</sup> September, 2024.

Dated this 6<sup>th</sup> day of August, 2024.

A handwritten signature in black ink, consisting of several overlapping loops and a long diagonal stroke extending upwards and to the right.

Deputy Robert Prow  
President for the Committee for Home Affairs  
For and on behalf of the Committee

## SCHEDULE

Article 29

### "SCHEDULE

Article 40(1)

## DUAL-USE REGULATION PROVISIONS MODIFIED AND GIVEN EFFECT

### *Article 3*

1. An authorisation shall be required for the export of the dual-use items listed in Annex I.

### *Article 4*

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the Committee or the Chief Officer that the items in question are or may be intended, in their entirety or in part, for 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.
2. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an arms embargo imposed through its listing as an embargoed destination in Part 1 or 2 of Schedule 4 to the Export Control Order 2008, or a decision of the Organisation for Security and Cooperation in Europe (OSCE), or an arms embargo imposed by a binding resolution of the Security Council of the United Nations, and the exporter has been informed by the Committee or the Chief

Officer that the items in question are or may be intended, in their entirety or in part, for a military end-use. For the purposes of this paragraph, "military end-use" shall mean:

- (a) incorporation into a military good;
  - (b) use of production, test or analytical equipment and components therefor, for the development, production or maintenance of a military good; or
  - (c) use of any unfinished products in a plant for the production of military goods.
3. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the Committee or the Chief Officer that the items in question are or may be intended, in their entirety or in part, for use as parts or components of military goods that have been exported from the Bailiwick without authorisation or in violation of a Bailiwick licence.
  4. If an exporter is aware that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraphs 1, 2 and 3, he must notify the Committee, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

#### *Article 5*

1. An authorisation shall be required for brokering services of dual-use items listed in Annex I if the broker has been informed by the Committee or the Chief

Officer that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1). If a broker is aware that the dual-use items listed in Annex I for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), he must notify the Committee which will decide whether or not it is expedient to make such brokering services subject to authorisation.

**"Brokering services"** means –

- (a) the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a country or territory outside the Bailiwick of Guernsey to a third country; or
- (b) the selling or buying of dual-use items that are located in a country or territory outside the Bailiwick of Guernsey for their transfer to a third country.

The sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion.

#### *Article 20*

1. Exporters of dual-use items shall keep detailed registers or records of their exports. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:
  - (a) the description of the dual-use items;

- (b) the quantity of the dual-use items;
  - (c) the name and address of the exporter and of the consignee;
  - (d) where known, the end-use and end-user of the dual-use items.
2. Brokers shall keep registers or records for brokering services which fall under the scope of Article 5 so as to be able to prove, on request, the description of the dual-use items that were the subject of brokering services, the period during which the items were the subject of such services and their destination, and the countries concerned by those brokering services.
  3. The registers or records and the documents referred to in paragraphs 1 and 2 shall be kept for at least three years from the end of the calendar year in which the export took place or the brokering services were provided. They shall be produced, on request, to an authorised person.

#### *Article 22*

1. An authorisation shall be required for a transfer within the customs territory of dual-use items listed in Annex IV.
8. A person who transfers within the customs territory dual-use items listed in Annex I shall keep a register and records relating to each transfer for at least three years from the end of the calendar year in which the transfer took place. The register and records must include the details specified in article 26(2) of this Order, and for this purpose a reference in that provision to an act carried out under the authority referred to in article 26(1) of this Order, howsoever referred to or styled, is to be read as a reference to each transfer.
10. A person who transfers within the customs territory any dual-use item listed

in Annex I shall indicate clearly on commercial documents that the item was subject to controls when exported from the Bailiwick and may be subject to controls if exported from the country or territory within the customs territory to which it was transferred. Commercial documents include, in particular, any sales contract, order confirmation, invoice or dispatch note."

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#### EXPLANATORY NOTE

*(This note is not part of this Order)*

This Order amends the Export Control (Military, Security and Related Matters) (Bailiwick of Guernsey) Order, 2010.

This Order comes into force on 1<sup>st</sup> September, 2024.