

**DRAFT COMMUNITY PROVISIONS (CONTROL OF EXPORTS OF DUAL-USE ITEMS AND TECHNOLOGY)
(APPLICATION) (JERSEY) REGULATIONS 200-**

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STATES OF JERSEY

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Report

The report accompanying these draft Regulations covers two sets of draft Regulations and is printed in P.86/2002 (Draft Community Provisions Dual-Use Items (Export Control) (Jersey) Regulations 200-).

Explanatory Note

These Regulations apply the provisions of European Community Council Regulation (EC) No. 1334/2000 as amended by Council Regulations (EC) Nos. 2889/2000, 458/2001 and 2432/2001 to Jersey as part of the law of the Island. The European Regulation concerns the setting up of a Community system of export controls for dual-use items. Dual use items are items, including software and technology, which can be used for both civil and military purposes, and include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices. A copy of the European Regulation as modified, but excluding the four annexes to the European Regulation, is annexed to, but does not form part of, these Regulations. Future amendments to the Regulations that become necessary because of amendments to the European Regulations will be made by the Finance and Economics Committee by Order. The annexes to the European Regulation will be available in the States Bookshop during the lodging period.

European Communities Legislation (Implementation)
(Jersey) Law 1996

COMMUNITY PROVISIONS (CONTROL OF EXPORTS OF DUAL-USE ITEMS AND TECHNOLOGY)
(APPLICATION) (JERSEY) REGULATIONS 200-

(Promulgated on the day of 200-)

STATES OF JERSEY

The day of 200-

THE STATES, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996,^[1] as amended,^[2] have made the following Regulations -

1. Subject to the modifications set out in the Schedule, Council Regulation (EC) Number 1334/2000, as amended by Council Regulations (EC) Numbers 2889/2000, 458/2001 and 2432/2001, shall apply as part of the law of the Island to the same extent as in the United Kingdom.

2.(1) These Regulations may be amended by the Finance and Economics Committee by Order to take account of amendments made to Council Regulation (EC) Number 1334/2000.

(2) The Subordinate Legislation (Jersey) Law 1960, as amended^[3] shall apply to an Order made under paragraph (1) of this Regulation.

3. These Regulations may be cited as the Community Provisions (Control of Exports of Dual-Use Items and Technology) (Application) (Jersey) Regulations 200- and shall come into force seven days after the date of promulgation.

SCHEDULE

(Article 1)

LIST OF MODIFICATIONS TO THE APPLIED INSTRUMENT

- 1.** Throughout the instrument, reference to “Member State”, “Member States”, “the Community”, and “territory of the Community” shall be construed as including the Island.
- 2.** Throughout the instrument, references to the date of entry into force shall be construed as a reference to the date on which these Regulations come into force.
- 3.** Articles 15(3) and 24 of the instrument shall be omitted.

THE TEXT OF THE COMMUNITY REGULATIONS WITHOUT THE ANNEXES IS SET OUT BELOW FOR INFORMATION ONLY AND DOES NOT FORM PART OF THE REGULATIONS

THE ANNEXES TO THE COMMUNITY REGULATIONS ARE DEPOSITED AND AVAILABLE FOR INSPECTION
AT THE
OFFICE OF THE AGENT OF THE IMPÔTS AND AT
THE STATES GREFFE BOOKSHOP

COUNCIL REGULATION (EC) No 1334/2000

of 22 June 2000

setting up a Community regime for the control of exports of dual-use items and technology

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Dual-use items (including software and technology) should be subject to effective control when they are exported from the Community.
- (2) An effective common system of export controls on dual-use items is necessary to ensure that the international commitments and responsibilities of the Member States, especially regarding non-proliferation, and of the European Union, are complied with.
- (3) The existence of a common control system and harmonised policies for enforcement and monitoring in all Member States is a prerequisite for establishing the free movement of dual-use items inside the Community.
- (4) The current regime of export controls on dual-use items established by Regulation (EC) No 3381/94, and Decision 94/942/CFSP, needs to be further harmonised in order to continue to guarantee the effective application of controls.
- (5) Common lists of dual-use items, destinations and guidelines are essential elements for an effective export control system; such lists have been established by Decision 94/942/CFSP and subsequent amendments and should be incorporated into this Regulation.
- (6) The responsibility for deciding on applications for export authorisations lies with national authorities. National provisions and decisions affecting exports of dual-use items must be taken in the framework of the common commercial policy, and in particular Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports.
- (7) Decisions to update the common lists of dual-use items must be in full conformity with the obligations and commitments that each Member State has accepted as a member of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.
- (8) Transmission of software and technology by means of electronic media, fax or telephone to destinations outside the Community should also be controlled.
- (9) Particular attention needs to be paid to issues of re-export and end-use.
- (10) On 22 September 1998 representatives of the Member States and the European Commission signed Protocols additional to the respective safeguards agreements between the Member States, the European Atomic Energy Community and the International Atomic Energy Agency, which, among other measures, oblige the Member States to provide information on specified equipment and non-nuclear material.
- (11) The Community has adopted a body of customs rules, contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Commission Regulation (EEC) No 2454/93 implementing Regulation (EEC) No 2913/92 which lay down, among other things, provisions relating to the export and re-export of goods. Nothing in this Regulation constrains any powers under and pursuant to the Community Customs Code and its implementing provisions.
- (12) Pursuant to and within the limits of Article 30 of the Treaty and pending a greater degree of harmonisation, Member States will retain the right to carry out controls on transfers of certain dual-use items within the European Community in order to safeguard public policy or public security. Where these controls are linked to the effectiveness of controls on exports from the Community, they will be periodically reviewed by the Council.
- (13) In order to ensure that this Regulation is properly applied, each Member State should take measures giving the competent authorities appropriate powers.
- (14) Each Member State should determine the penalties applicable in the event of breach of the provisions of this Regulation.
- (15) The European Parliament expressed its views in its resolution of 13 April 1999.
- (16) In view of the foregoing, Regulation (EC) No 3381/94 should be repealed.

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject and definitions

Article 1

This Regulation sets up a Community system of export controls for dual-use items.

Article 2

For the purposes of this Regulation:

- (a) “dual use items” shall mean items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;
- (b) “export” shall mean:
 - (i) an export procedure within Article 161 of the Community Customs Code;
 - (ii) a re-export within Article 182 of that Code, and
 - (iii) transmission of software or technology by electronic media, fax or telephone to a destination outside the Community; this applies to oral transmission of technology by telephone only where the technology is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result;
- (c) “exporter” shall mean any natural or legal person on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Community. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the power for determining the sending of the item out of the customs territory of the Community shall be decisive;

“exporter” shall also mean any natural or legal person who decides to transmit software or technology by electronic media, fax or telephone to a destination outside the Community;

Where the benefit of a right to dispose of the dual-use item belongs to a person established outside the Community pursuant to the contract on which the export is based, the exporter shall be considered to be the Contracting Party established in the Community.
- (d) “export declaration” shall mean the act whereby a person indicates in the prescribed form and manner the wish to place dual-use items under an export procedure.

CHAPTER II

Scope

Article 3

1. An authorisation shall be required for the export of the dual-use items listed in Annex I.
2. Pursuant to Article 4 or Article 5, an authorisation may also be required for the export to all or certain destinations of certain dual-use items not listed in Annex I.
3. This Regulation does not apply to the supply of services or the transmission of technology if that supply or transmission involves cross-border movement of natural persons.
4. This Regulation does not apply to dual-use items which only pass through the territory of the Community, that is those which are not assigned a customs-approved treatment or use other than the external transit procedure or which are merely placed in a free zone or free warehouse and where no record of them has to be kept in an approved stock record.

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 competent authorities of the Member State in which he is established 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 decided by a common position or joint action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1 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 military items listed in the military list of Member States;
 - (b) use of production-, test- or analytical equipment and components therefor, for the development, production or maintenance of military items listed in the abovementioned list;

(c) use of any unfinished products in a plant for the production of military items listed in the abovementioned list.

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 authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for use as parts or components of military items listed in the national military list that have been exported from the territory of that Member State without authorisation or in violation of an authorisation prescribed by national legislation of that Member State.

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 authorities referred to in paragraph 1, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

5. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter has grounds for suspecting that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1.

6. A Member State which imposes an authorisation requirement, in application of paragraphs 1 to 5, on the export of a dual-use item not listed in Annex I, shall, where appropriate, inform the other Member States and the Commission. The other Member States shall give all due consideration to this information and shall inform, to the extent possible, their customs offices and other relevant national authorities.

7. The provisions of Article 9(2) and 9(3) shall apply to cases concerning dual-use items not listed in Annex I.

8. This Regulation is without prejudice to the right of Member States to take national measures under Article 11 of Regulation (EEC) No 2603/69.

Article 5

1. A Member State may prohibit or impose an authorisation requirement on the export of dual-use items not listed in Annex I for reasons of public security or human rights considerations.

2. Member States shall notify any measures adopted pursuant to paragraph 1 to the Commission immediately after their adoption and indicate the precise reasons for the measures.

3. Member States shall also immediately notify the Commission of any modifications to measures adopted pursuant to paragraph 1.

4. The Commission shall publish the measures notified to it pursuant to paragraphs 2 and 3 in the C series of the *Official Journal of the European Communities*.

CHAPTER III

Export authorisation

Article 6

1. A Community general export authorisation for certain exports as set out in Annex II is established by this Regulation.

2. For all other exports for which an authorisation is required under this Regulation, such authorisation shall be granted by the competent authorities of the Member State where the exporter is established. Subject to the restriction specified in paragraph 3, this authorisation may be an individual, global or general authorisation.

The authorisation shall be valid throughout the Community.

The authorisation may be subject, if appropriate, to certain requirements and conditions, such as an obligation to provide an end-use statement.

3. Items listed in Part 2 of Annex II shall not be included in a general authorisation.

4. Member States shall indicate in general authorisations that these may not be used if the exporter has been informed by his authorities that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in paragraphs 1, 2 and 3 of Article 4, or if the exporter is aware that the items are intended for the abovementioned uses.

5. Member States shall maintain or introduce in their respective national legislation the possibility of granting a global authorisation to a specific exporter in respect of a type or category of dual-use items which may be valid for exports to one or more specified countries.

6. Member States shall supply the Commission with a list of the authorities empowered to grant export authorisations for dual-use items.

The Commission shall publish the list of these authorities in the C series of the *Official Journal of the European Communities*.

Article 7

1. If the dual-use items in respect of which an application has been made for an individual export authorisation to a destination not listed in Annex II or to any destination in the case of dual-use items listed in Annex IV are or will be located in one or more Member States other than the one where the application has been made, that fact shall be indicated in the application. The competent authorities of the Member State to which the application for authorisation has been made shall immediately consult the competent authorities of the Member State or States in question and provide the relevant information. The Member State or States consulted shall make known within 10 working days any objections it or they may have to the granting of such an authorisation, which shall bind the Member State in which the application has been made.

If no objections are received within 10 working days, the Member State or States consulted shall be regarded as having no objection.

In exceptional cases, any Member State consulted may request the extension of the 10-day period. However, the extension may not exceed 30 working days.

2. If an export might prejudice its essential security interests, a Member State may request another Member State not to grant an export authorisation or, if such authorisation has been granted, request its annulment, suspension, modification or revocation. The Member State receiving such a request shall immediately engage in consultations of a non-binding nature with the requesting Member State, to be terminated within 10 working days.

Article 8

In deciding whether or not to grant an export authorisation under this Regulation, the Member States shall take into account all relevant considerations including:

- (a) the obligations and commitments they have each accepted as a member of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties;
- (b) their obligations under sanctions imposed by a common position or a joint action adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations;
- (c) considerations of national foreign and security policy, including those covered by the European Union Code of Conduct on arms exports;
- (d) considerations about intended end-use and the risk of diversion.

Article 9

1. Exporters shall supply the competent authorities with all relevant information required for their applications for export authorisation.

2. The competent authorities, acting in accordance with this Regulation, may refuse to grant an export authorisation and may annul, suspend, modify or revoke an export authorisation which they have already granted. Where they refuse, annul, suspend, substantially limit or revoke an authorisation, they shall inform the competent authorities of the other Member States and the Commission thereof and exchange the relevant information with the other Member States and the Commission, while complying with the provisions of Article 15(3) concerning the confidentiality of such information.

3. Before any Member State grants an export authorisation which has been denied by another Member State or States for an essentially identical transaction within the previous three years, it will first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant an authorisation, it shall inform the other Member States and the Commission, providing all relevant information to explain the decision.

Article 10

1. All individual and global export authorisations shall be issued on forms consistent with the model set out in Annex IIIa.

2. At the request of exporters, global export authorisations that contain quantitative limitations shall be split.

3. General export authorisations granted under Article 6(2) shall be published in accordance with national laws and practices. They shall be issued in accordance with the indications set out in Annex IIIb.

CHAPTER IV

Updating of list of dual-use items

Article 11

The lists of dual-use items set out in Annex I and Annex IV shall be updated in conformity with the relevant obligations and commitments, and any modification thereof, that each Member State has accepted as a member of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.

CHAPTER V

Customs procedures

Article 12

1. When completing the formalities for the export of dual-use items at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorisation has been obtained.

2. A translation of any documents furnished as proof into an official language of the Member State where the export declaration is presented may be required of the exporter.

3. Without prejudice to any powers conferred on it under, and pursuant to, the Community Customs Code, a Member State may also, for a period not exceeding the periods referred to in paragraph 4, suspend the process of export from its territory, or, if necessary, otherwise prevent the dual-use items listed in Annex I which are covered by a valid export authorisation from leaving the Community via its territory, where it has grounds for suspicion that:

- (a) relevant information was not taken into account when the authorisation was granted, or
- (b) circumstances have materially changed since the grant of the authorisation.

4. In the case referred to in paragraph 3, the competent authorities of the Member State which granted the export authorisation shall be consulted forthwith in order that they may take action pursuant to Article 9(2). If such competent authorities decide to maintain the authorisation, they shall reply within 10 working days, which, at their request, may be extended to 30 working days in exceptional circumstances. In such case, or if no reply is received

within 10 or 30 days, as the case may be, the dual-use items shall be released immediately. The Member State which granted the authorisation shall inform the other Member States and the Commission.

Article 13

1. Member States may provide that customs formalities for the export of dual-use items may be completed only at customs offices empowered to that end.
2. Member States availing themselves of the option set out in paragraph 1 shall inform the Commission of the duly empowered customs offices. The Commission shall publish the information in the C series of the *Official Journal of the European Communities*.

Article 14

The provisions of Articles 843 and 912a to 912g of Regulation (EEC) No 2454/93 shall apply to the restrictions relating to the exportation, re-exportation and exit from the customs territory of dual-use items for the export of which an authorisation is required under this Regulation.

CHAPTER VI

Administrative cooperation

Article 15

1. Acting in liaison with the Commission, Member States shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities, in particular to eliminate the risk that possible disparities in the application of export controls to dual-use items may lead to a deflection of trade, which could create difficulties for one or more Member States.
2. Member States shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities on sensitive end-users with a view to providing a consistent level of guidance to exporters concerned by this Regulation.
3. Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*, without prejudice to Article 18 of this Regulation.

CHAPTER VII

Control measures

Article 16

1. Exporters shall keep detailed registers or records of their exports, in accordance with the practice in force in the respective Member States. 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. The registers or records and the documents referred to in paragraph 1 shall be kept for at least three years from the end of the calendar year in which the export took place. They shall be produced to the competent authorities of the Member State in which the exporter is established on request.

Article 17

In order to ensure that this Regulation is properly applied, each Member State shall take whatever measures are needed to permit its competent authorities:

- (a) to gather information on any order or transaction involving dual-use items;
- (b) to establish that the export control measures are being properly applied, which may include in particular the power to enter the premises of persons with an interest in an export transaction.

CHAPTER VIII

General and final provisions

Article 18

1. A Coordinating Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to the Coordinating Group.

The Coordinating Group shall examine any question concerning the application of this Regulation which may be raised either by the chairman or by a representative of a Member State and, *inter alia*:

- (a) the measures which should be taken by Member States to inform exporters of their obligations under this Regulation;

(b) guidance concerning export authorisation forms.

2. The Coordinating Group may, whenever it considers it to be necessary, consult organisations representative of exporters concerned by this Regulation.

Article 19

Each Member State shall take appropriate measures to ensure proper enforcement of all the provisions of this Regulation. In particular, it shall lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive.

Article 20

Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including the measures referred to in Article 19. The Commission shall forward the information to the other Member States. Every three years the Commission shall present a report to the European Parliament and the Council on the application of this Regulation. Member States shall provide to the Commission all appropriate information for the preparation of the report.

Article 21

1. An authorisation shall be required for intra-Community transfers of dual-use items listed in Annex IV. Items listed in Part 2 of Annex IV shall not be covered by a general authorisation.

2. (a) A Member State may impose an authorisation requirement for the transfer of other dual-use items from its territory to another Member State in cases where at the time of transfer:

- the operator knows that the final destination of the items concerned is outside the Community;
- export of those items to that final destination is subject to an authorisation requirement pursuant to Articles 3, 4 or 5 in the Member State from which the items are to be transferred, and such export directly from its territory is not authorised by a general authorisation or a global authorisation;
- no processing or working as defined in Article 24 of the Community Customs Code is to be performed on the items in the Member State to which they are to be transferred.

(b) The transfer authorisation must be applied for in the Member State from which the dual-use items are to be transferred.

(c) In cases where the subsequent export of the dual-use items has already been accepted, in the consultation procedures set out in Article 7, by the Member State from which the items are to be transferred, the transfer authorisation shall be issued to the operator immediately, unless the circumstances have substantially changed.

(d) A Member State which adopts legislation imposing such a requirement shall inform the Commission and the other Member States of the measures it has taken. The Commission shall publish this information in the C series of the *Official Journal of the European Communities*.

3. The measures pursuant to paragraphs 1 and 2 shall not involve the application of internal frontier controls within the Community, but solely controls which are performed as part of the normal control procedures applied in a non-discriminatory fashion throughout the territory of the Community.

4. Application of the measures pursuant to paragraphs 1 and 2 may in no case result in transfers from one Member State to another being subject to more restrictive conditions than those imposed for exports of the same items to non-Member States.

5. Documents and records of intra-Community transfers of dual-use items listed in Annex I shall be kept for at least three years from the end of the calendar year in which a transfer took place and shall be produced to the competent authorities of the Member State from which these items were transferred on request.

6. A Member State may, by national legislation, require that, for any intra-Community transfers from that Member State of items listed in Category 5, Part 2 of Annex I which are not listed in Annex IV, additional information concerning those items shall be provided to the competent authorities of that Member State.

7. The relevant commercial documents relating to intra-Community transfers of dual-use items listed in Annex I shall indicate clearly that those items are subject to controls if exported from the Community. Relevant commercial documents include, in particular, any sales contract, order confirmation, invoice or dispatch note.

Article 22

This Regulation does not affect:

- the application of Article 296 of the Treaty establishing the European Community,
- the application of the Treaty establishing the European Atomic Energy Community.

Article 23

Regulation (EC) No 3381/94 is hereby repealed.

However, for export authorisation applications made before the date of entry into force of this Regulation, the relevant provisions of Regulation (EC) No 3381/94 shall continue to apply.

Article 24

This Regulation shall enter into force 90 days after the date of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 22 June 2000.

For the Council
The President
J. SÓCRATES

PLEASE NOTE: THE FULL TEXT OF THE ANNEXES TO THE EUROPEAN REGULATION ARE AVAILABLE TO VIEW IN THE STATES BOOKSHOP DURING THE LODGING PERIOD

^[1] Recueil des Lois, Volume 1996-1997, page 4.

^[2] Recueil des Lois, Volume 2000, page 29.

^[3] Recueil des Lois, Tome VIII, page 849 and Volume 2001, pages 3 and 4.