

**DRAFT COMMUNITY PROVISIONS DUAL-USE ITEMS (EXPORT CONTROL) (JERSEY) REGULATIONS  
200-**

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by the Finance and Economics Committee**

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**STATES OF JERSEY**

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## REPORT

### **Draft Community Provisions Dual-Use Items (Export Control) (Jersey) Regulations 200- (P.86/2002) Draft Community Provisions (Control of Exports of Dual Use Items and Technology) (Application) (Jersey) Regulations 200- (P.87/2002)**

These Regulations combine to bring into force in the Island the provisions of European Community Council Regulation (EC) No. 1334/2000 (as amended) setting up a Community regime for the control of exports of dual use items and technology. Dual use items are items, including software and technology that can be used for either civil or military purposes. The European Community introduced EC Regulation 1334/2000 in order to play its part in controlling the proliferation of arms and related items.

Jersey currently controls the export of tangible items or goods by including the provisions of the United Kingdoms Dual-Use Items (Export Control) Regulations 2000 in its Open General Export Licence issued under the Import and Export (Control) (Jersey) Order 2000. However this does not cover the electronic export of intangible items such as software designed for a military application. The Policy and Resources Committee, in an Act of 8th February 2001, recorded its decision that it was appropriate for Jersey to play its part in co-operating in this important area of arms control and non-proliferation by giving effect to EC Regulation 1334/2000.

The enforcement of the Jersey Regulations will be the responsibility of the Customs and Excise Department. Its controlling Committee, Finance and Economics, are, therefore, sponsoring the new legislation.

For law drafting purposes it has been decided that two Jersey Regulations are needed to implement the EC Regulation in the Island.

The Draft Community Provisions (Control of Exports of Dual Use Items and Technology) (Application) (Jersey) Regulations 200- apply the EC Regulations to the Island under the European Communities Legislation (Implementation) (Jersey) Law 1996. The EC Regulation has approximately two hundred pages of Annexes that specify the items subject to control. Because of their length the Annexes are not being included in the prints of the draft Regulations but they are freely available to be viewed at either the States Greffe Bookshop or at the Customs and Excise offices in Maritime House, St. Helier.

The Draft European Communities Dual-Use Items (Export Control) (Jersey) Regulations 200- give effect to the provisions of the EC Regulation. The mechanics of how the controls will be applied are set out therein. In general, the Regulations control exports by means of export licences issued by either the Finance and Economics Committee or a competent authority in an EC Member State. Key elements of the Regulations are -

- the introduction of a Community General Export Authorisation to allow exports to specified 'friendly' nations;
- the introduction of a military end use control to ensure that exported goods are put to the use specified before they left the EC;
- control of certain transfers of technology by electronic means;
- the reduction of licensing requirements for intra-Community trade;
- requirements to keep accurate records and present them on request.

Customs and Excise will have the power to seize or detain goods not in compliance with the Regulations and require information concerning the ultimate destination of exported goods.

The Regulations introduce new offences (Regulation 10) for the contravention of the provisions relating to export of goods, electronic transmission of data, applications for licences or keeping of information with penalties of imprisonment for up to two years or an unlimited fine. (The transmission of restricted data without intent to evade the restriction is also an offence, carrying a fine not exceeding level 3 on the standard scale (currently £2,000).)

The Regulations also apply certain provisions of the Customs and Excise (Jersey) Law 1999 extending relevant Customs Officers' powers.

It is recognised that this legislation will not have a great impact on the Island due to the fact that for all intents and purposes we do not have an arms industry. Nonetheless its introduction is necessary to show that the Island is aware of its international

responsibilities and it also ensures that Jersey cannot be used as a 'backdoor' by unscrupulous arms dealers.

These draft Regulations have no implications for the financial or manpower resources of the States.

## **Explanatory Note**

These Regulations give effect to certain provisions of Council Regulation (EC) No. 1334/2000 (“the Council Regulation”) on the control of exports of dual-use items and technology.

The Regulations apply not just to exports of goods (including software and technology) in tangible form, but also to the transmission of software and technology by fax, telephone (subject to certain limits) or other electronic means. This is reflected in the use of the word “items” rather than “goods” throughout, as in the Council Regulation.

Provision is made for use of the Community General Export Authorisation (“CGEA”) introduced by Article 6(1) of Annex 1 to the Council Regulation. This operates as a general authorisation for the export of most controlled dual-use items from anywhere in the European Community to the destinations listed in Part 3 of that Annex, subject to certain exceptions set out in that Annex. Exporters established in the Island who wish to make an export from the Island under the authority of the CGEA must, on first doing so, register with the Finance and Economics Committee and then keep certain records in relation to each such export. Any exporter who wishes to export certain cryptographic items from the Island under the authority of the CGEA must give the Finance and Economics Committee written notice of certain information in accordance with Regulation 8(3) of and Part II of Schedule 2 to the Regulations.

The Council Regulation extends the circumstances in which the actual or possible end use of dual-use items may make their export from the European Community subject to control. They include cases where the exporter has been informed by a competent authority that the dual-use items in question are or may be intended for a military end-use in a country subject to certain types of arms embargo, or for use as parts or components of military list items which have been exported in breach of Jersey export controls (and exporters who are aware that dual-use items are intended for such a use must inform the competent authorities of the country where they are established). These Regulations take up the option given by the Council Regulation of also making exports of dual-use items from the Island to Community Member States subject to control, where the exporter knows that the items are to be sent from another Member State out of the Community and export of the items directly out of the Community would require authorisation under the end-use controls.

Certain cryptographic items will not be subject to control when they are exported from the Island to Community Member States, but exporters of those items to Member States are required to keep records containing certain information in relation to such items in accordance with Regulation 9(7) and Part II of Schedule 2.

Regulation 3(3)(b) controls exports, for use in connection with weapons of mass destruction, of dual-use items in transit taking the form of the transmission of software or technology by fax, telephone or other electronic media.

**European Communities Legislation (Implementation)**  
**(Jersey) Law 1996**

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COMMUNITY PROVISIONS DUAL-USE ITEMS (EXPORT CONTROL) (JERSEY) REGULATIONS 200-

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**European Communities Legislation (Implementation)  
(Jersey) Law 1996**

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COMMUNITY PROVISIONS DUAL-USE ITEMS (EXPORT CONTROL) (JERSEY) REGULATIONS 200-

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*(Promulgated on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)*

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**STATES OF JERSEY**

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The \_\_\_\_\_ day of \_\_\_\_\_ 200-

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

**Interpretation**

1.-(1) In these Regulations

“the Community General Export Authorisation” means the export authorisation constituted by Article 6(1) and Annex II;

“Community Licence” means an authorisation granted (whether before or after commencement of these Regulations) under the Regulation or Council Regulation (EC) No. 3381/94 of 19th December 1994 by a competent authority for the export of dual-use items from the European Community;

“competent authority” means the Finance and Economics Committee or any authority empowered by a Member State to grant export authorisations for dual-use items under the Regulation;

“country” includes territory;

“export” means export from the Island, including -

- (a) export to a destination within the customs territory of the European Community; and
- (b) the transmission of software or technology by fax, telephone or other electronic media (except that oral transmission of technology by telephone is included 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 as if it had been so read);

“exporter” and other cognate expressions shall be construed accordingly (except that where the export is to a destination outside the customs territory of the European Community, “exporter” has the same meaning as in the definition in Article 2(c), to the extent that that definition applies);

“import” and “export” in relation to a vessel, submersible vehicle or aircraft includes the taking into or out of the Island of the vessel, submersible vehicle or aircraft notwithstanding that the vessel, submersible vehicle or aircraft is conveying goods or passengers, and whether or not it is moving under its own power;

“items” means both used and unused items;

“items in transit” means -

- (a) items which only pass through the territory of the Community within the meaning of Article 3(4); and
- (b) items being exported to a Member State which are not being transferred from the Island to that Member State within the meaning of Article 21;

“normal commercial journey” means a journey providing transport services made in the ordinary course of business;

“proper” has the same meaning as in the Customs and Excise (Jersey) Law 1999;<sup>[3]</sup>

“the Regulation” means Council Regulation (EC) No. 1334/2000 of 22nd June 2000 setting up a Community regime for the control of exports of dual use items and technology; and any reference to a numbered Article or Annex is to the article in, or Annex to, the Regulation so numbered;

“scheduled journey” means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such manner that its benefits are available to members of the public from time to time seeking to take advantage of it;

“surface effect vehicle” means any air cushion vehicle (whether side wall or skirted) and any vehicle using the wing-in-ground effect for positive lift; and

“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.

(2) Any reference in these Regulations to time after an event is a reference to a period of that length of time beginning on the day after that event.

(3) Except where these Regulations otherwise provide, expressions used in the Regulation which are also used in these Regulations have the same meaning in these Regulations as they have in the Regulation.

(4) A reference in these Regulations to a Part, Regulation or Schedule by number only and without further identification is a reference to the Part, Regulation or Schedule of that number in these Regulations.

(5) A reference in a regulation or other division of these Regulations to a paragraph, sub-paragraph, clause or sub-clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph, clause or sub-clause of that number or letter in the regulation or other division of these Regulations.

(6) Unless the context otherwise requires, a reference in these Regulations to an enactment, to a Regulation made by the Council of the European Union, or to an Act or subordinate legislation of the United Kingdom, is a reference to that enactment, Regulation, Act or subordinate legislation as amended from time to time and includes a reference to that enactment, Regulation, Act or subordinate legislation as extended or applied under another enactment, including another provision of these Regulations.

### **Granting and revocation of licences**

2.-(1) The Finance and Economics Committee may grant licences and Community Licences.

(2) Any licence or Community Licence granted by the Finance and Economics Committee in pursuance of these Regulations or having effect as if so granted may be -

- (a) either general or individual;
- (b) limited so as to expire on a specified date unless renewed;
- (c) subject to or without conditions, and any such condition may require or prohibit any act before or after the export of items under that licence or Community Licence; and
- (d) varied or revoked by the Finance and Economics Committee.

(3) A licence issued by the Secretary of State under the Dual-Use Items (Export Control) Regulations 2000 of the United Kingdom shall have effect for the purposes of these Regulations as if it were a licence issued under these Regulations by the Finance and Economics Committee.

### **Exports of dual-use items**

3.-(1) Subject to Article 6(1), a Community Licence is the authorisation required by

- (a) Article 3(1) for the export from the European Community of any item listed in Annex I; and
- (b) paragraphs 1, 2 and 3 of Article 4 for the export from the European Community, in the circumstances respectively described in those paragraphs, of dual-use items not listed in Annex I.

(2) A licence granted by the Finance and Economics Committee shall be the authorisation required by Article 21 (1) for the export to a Member State of items listed in Annex IV.

(3) Subject to the provisions of these Regulations -

- (a) no person shall export any items specified in Schedule 1 contrary to a prohibition set out in that Schedule;
- (b) no person shall make to any destination any export consisting of the transmission by fax, telephone or other electronic media of dual-use items in the form of software or technology which are items in transit and which -

- (i) that person (or, if that person is not within the Island, any agent of that person within the Island concerned in the export or intended export) has been informed by a competent authority 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,

- (ii) that person is aware are intended, in their entirety or in part, for any of the uses referred to in clause (i),  
or

- (iii) that person has grounds for suspecting are or may be intended, in their entirety or in part, for any of the uses referred to in clause (i), unless that person has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used;

- (c) no person shall export to any destination not in a Member State any dual use items which that person has grounds for suspecting are or may be intended, in their entirety or in part, for any of the uses referred to in subparagraph (b)(i), unless that person has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used; and

- (d) no person shall export to a destination in a Member State -

- (i) any items listed in Annex I but not in Annex IV,

- (ii) any items specified in Schedule 1, or

- (iii) any dual-use items not listed in Annex I and not specified in Schedule 1 but for the export of which from the European Community an authorisation is required in accordance with Article 4(1), (2) or (3) or under Article 4(4),

- if that person knows at the time of export that the final destination of those items is outside the European Community and no processing or working is to be performed on those items in any Member State to which they are to be exported.

(4) No person shall make any export consisting of the transmission by fax, telephone or other electronic media of dual-use items in the form of software or technology -

- (a) to any destination not in a Member State, if the export is contrary to the restriction imposed by Article 3(1);  
or

- (b) to any destination in a Member State, if the export is contrary to the restriction imposed by Article 21(1).

(5) Subject to the provisions of these Regulations -

- (a) paragraph (4)(a) shall not prohibit the export of any items under the authority of the Community General



Export Authorisation, or in relation to which a licence in writing has been granted by the Finance and Economics Committee or a Community Licence has been granted by any competent authority, provided that all conditions applying to that Authorisation or attaching to the licence or Community Licence are complied with; and

- (b) paragraph (4)(b) does not prohibit the export of any items in relation to which a licence in writing has been granted by the Finance and Economics Committee provided that all conditions attaching to the licence are complied with.

#### **Exceptions**

**4.-(1)** Nothing in these Regulations shall prohibit the export of

- (a) any aircraft on a scheduled journey;
  - (b) any aircraft the immediately preceding import of which was on a scheduled journey and which is intended for further scheduled journeys;
  - (c) any vessel which is departing temporarily from the Island on trials; or
  - (d) any vessel proceeding on a normal commercial journey.
- (2) Sub-paragraphs (a) and (d) of Regulation 3(3) do not apply in respect of items in transit.

#### **Customs and Excise Powers**

**5.-(1)** Any dual-use items not listed in Annex I, in relation to which a Community Licence has not been granted and which are brought to any place in the Island for the purpose of being exported to a destination outside the European Community, not being items which only pass through the territory of the Community within the meaning of Article 3(4), may be detained by the proper officer of Customs and Excise 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 export brought to its attention) might inform the exporter as provided in Article 4(1), (2) or (3).

(2) Where -

- (a) a Community Licence has been granted by a competent authority in a Member State for the export of any items to any destination outside the European Community;
- (b) the export of any items is authorised by the Community General Export Authorisation; or
- (c) items, of which the exporter (within the meaning of the Regulation) is established in a Member State, are or have been detained under paragraph (1),

the Finance and Economics Committee may give notice to the proper officer of Customs and Excise that it considers that export of the items would be contrary to the essential foreign policy or security interests, or to the fulfilment of the international obligations or commitments, of the United Kingdom and the Island; and in such a case the export is prohibited notwithstanding, in a case within sub-paragraph (a) the grant of the Community Licence, or in a case within sub-paragraph (b) the Community General Export Authorisation.

(3) In the case of an export which includes the transmission of software or technology by fax, telephone or other electronic media, the Finance and Economics Committee shall send a copy of any notice given under paragraph (2) to the exporter (or, if the exporter is not within the Island, any agent of the exporter within the Island concerned in the export or intended export) at the address stated in the particulars given under Regulation 8(1) or (2), or if no such particulars have been given -

- (a) if the exporter or agent is a body corporate, at the address of its registered or principal office in the Island; or
- (b) in any other case, at the usual or last known address in the Island of the exporter or agent (whether of the exporter's or agent's residence or a place where the exporter or agent carries on business).

(4) Any items listed in Annex I in relation to which a Community Licence has been granted which are brought to any place in the Island for the purpose of being exported to a destination outside the European Community may be detained

by the proper officer of Customs and Excise for a period of 10 working days as if they were liable to forfeiture where there are grounds for suspecting that -

- (a) relevant information was not taken into account when the Community Licence was granted; or
- (b) circumstances have materially changed since the issue of the Community Licence,

provided that the period shall be extended to 30 working days where the Finance and Economics Committee certifies that a request for such an extension in accordance with Article 12.4 has been received from the Member State which granted the Licence.

(5) Any exporter shall, if so required by the Agent of the Impôts, furnish within such time as he may allow, proof to his satisfaction that the items exported have reached either -

- (a) a destination to which they were authorised to be exported by the Community General Export Authorisation or by a Community Licence or by a licence granted for the purposes of these Regulations; or
- (b) a destination to which their export was not prohibited by these Regulations,

and an exporter who fails to do so shall be guilty of an offence and liable on conviction to a fine not exceeding level 3 on the standard scale<sup>[4]</sup> unless he proves that he did not consent to or connive at the items reaching any destination other than such a destination.

#### **Misleading applications for licences**

**6.** For the purposes of obtaining any licence from the Finance and Economics Committee or any Community Licence from any competent authority no person shall -

- (a) make any statement or furnish any document or information which to that person's knowledge is false in a material particular; or
- (b) recklessly make any statement or furnish any document or information which is false in a material particular,

and any licence or Community Licence which may have been granted by the Finance and Economics Committee in connection with an application for which a false statement was made or a false document or information was furnished shall be void as from the time it was granted.

#### **Failure to comply with licence conditions**

**7.-(1)** This paragraph applies to any person who

- (a) has exported items from -
  - (i) the Island under the authority of a licence granted by the Finance and Economics Committee or of the Community General Export Authorisation,
  - (ii) the European Community under the authority of a Community Licence granted by the Finance and Economics Committee, or
  - (iii) the European Community under the authority of a Community Licence sought by or on behalf of a person in, or established in, the Island; and
- (b) fails to comply with any condition attaching to that licence or Community Licence or applying on use of the Community General Export Authorisation.

(2) Subject to paragraph (3), a person to whom paragraph (1) applies shall be guilty of an offence and liable on conviction to a fine or imprisonment for a term not exceeding 2 years, or to both.

(3) No person shall be guilty of an offence under paragraph (2) where-

- (a) (i) in the case of a licence the condition in question had been previously modified without that person's

consent by the Finance and Economics Committee,

- (ii) in the case of a Community Licence the condition in question had been previously modified without that person's consent by the Finance and Economics Committee or other competent authority which granted that Community Licence, or
  - (iii) in the case of the Community General Export Authorisation the condition in question had been previously modified;
- (b) the alleged failure to comply would not have been a failure had the licence, Community Licence or Community General Export Authorisation not been so modified; and
  - (c) that person proves that the items in relation to which he has failed to comply with the condition had, at the time the condition was modified, been exported from the Island in the case of a licence or from the European Community in the case of a Community Licence or the Community General Export Authorisation.

### **Registration and provision of information**

**8.**-(1) Not later than 30 days after

- (a) any person first makes an export from the Island or from the European Community under the authority of any licence or Community Licence granted by the Finance and Economics Committee that does not provide otherwise; or
- (b) any person established in the Island first makes an export from the Island under the authority of the Community General Export Authorisation,

that person shall give to the Finance and Economics Committee written notice of the following particulars -

- (i) the name of the person, and
- (ii) the address at which copies of the records referred to in Regulation 9 may be inspected by any person authorised by the Finance and Economics Committee or the Agent of the Impôts under Regulation 9.

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

(3) Not later than 30 days after the first export of any item listed in Part 2 of category 5 in Annex I but not specified in Part 1 of Schedule 2 from the Island under the authority of the Community General Export Authorisation by any person, that person shall (in addition to any notice given under paragraph (1)), give to the Finance and Economics Committee in relation to that item written notice of such of the information specified in Part II of Schedule 2 as is in that person's possession and such other of that information as that person can reasonably be expected to obtain within that time.

(4) A person who has given to the Finance and Economics Committee written notice of information under paragraph (3) shall, not later than 30 days after any change in that information, give to the Finance and Economics Committee written notice of the changed information.

(5) Any notice to be given by a person under this Regulation may be given by the agent of that person; and shall be sent by post or delivered to the Finance and Economics Committee at the States Greffe.

### **Record keeping and inspection**

**9.**-(1) Any person established in the Island who exports any items from the European Community under the authority of a Community Licence, and any such person who exports any items from the Island under the authority of the Community General Export Authorisation, shall maintain records in relation to each such export that contain the following information -

- (a) a description of the items;
- (b) the quantity of the items;

- (c) the person's name and address;
- (d) the name and address of any consignee of the items;
- (e) in so far as it is known to that person, the end-use of the items and the name and address of the end-user; and
- (f) in the case of an export under the authority of a Community Licence, any further information required by the Community Licence to be kept.

(2) The records referred to in paragraph (1) shall be kept for at least 3 years from the end of the calendar year in which the export took place, and the person concerned shall permit any such records to be inspected and copied by any person authorised by the Finance and Economics Committee or the Agent of the Impôts.

(3) Any person who has been granted a Community Licence under these Regulations in relation to the export from the European Community of any items shall, upon request in writing by the Finance and Economics Committee or the Agent of the Impôts, produce any documents or other records he may hold that relate to the application for that Community Licence; and any such documents or records shall be kept for at least 3 years from the end of the calendar year in which such application was made, and that person shall permit any such documents or records to be inspected and copied by any person authorised by the Finance and Economics Committee or the Agent of the Impôts.

(4) Any person authorised by the Finance and Economics Committee or the Agent of the Impôts may, on producing if required to do so a duly authenticated document showing his authority, at any reasonable hour enter -

- (a) for the purpose of paragraph (2), the premises of which the address has most recently been notified to the Finance and Economics Committee under Regulation 8; or
- (b) for the purpose of paragraph (3), any premises of which the address has been notified for this purpose by the exporter to a competent authority when applying for a licence.

(5) Where any documents or records referred to in paragraph (2) or (3) are kept in a form which is not legible and intelligible the exporter shall at the request of the person authorised by the Finance and Economics Committee or the Agent of the Impôts reproduce such documents or records in a legible and intelligible form.

(6) The documents and records to be kept in accordance with Article 21(5) shall be the records referred to in paragraph (1)(a) to (e) and paragraphs (4) and (5) and the provision in paragraph (2) relating to inspection and copying shall apply for the production of such documents and records to the competent authorities in accordance with Article 21(5) as they apply in respect of the records referred to in paragraph (2) or in respect of entry into premises for the purpose of paragraph (2).

(7) Any person who exports to a Member State any item listed in Part 2 of category 5 in Annex I but not listed in Annex IV shall maintain records in relation to each such export that contain such of the information specified in Part II of Schedule 2 as that person can reasonably be expected to obtain and such other of that information as comes into that person's possession.

(8) Those records shall be kept for at least 3 years from the end of the calendar year in which the export took place, and that person shall permit any such records to be inspected and copied by any person authorised by the Finance and Economics Committee or the Agent of the Impôts and paragraphs (4) and (5) and the provision in paragraph (2) relating to inspection and copying shall apply for the production of such documents and records as they apply in respect of the records referred to in paragraph (2) or in respect of entry into premises for the purpose of paragraph (2).

### **Penalties**

**10.-(1)** Any person who contravenes

- (a) Regulation 3(3);
- (b) Regulation 3(4)(a) with intent to evade the restriction imposed by Article 3(1);
- (c) Regulation 3(4)(b) with intent to evade the restriction imposed by Article 21(1); or

(d) a prohibition in Regulation 5(2),

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable on conviction to a fine or imprisonment for a term not exceeding 2 years, or to both.

(3) A person who fails to comply with Regulation 6, 8, or 9, or Article 4(4), 9(1) or 21(5) or (7), shall be guilty of an offence and liable on conviction to a fine or imprisonment for a term not exceeding 2 years, or to both.

(4) A person who contravenes Regulation 3(4) shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.<sup>[5]</sup>

### **Application of the Customs and Excise (Jersey) Law 1999**

11.-(1) (a) Article 6(2), (3), (4) and (5) of the Customs and Excise (Jersey) Law 1999 shall apply for the purpose of implementing these Regulations and the Regulation as it applies for the purpose of implementing the arrangements for the Bailiwick set out in the Treaties.

(b) In this paragraph “the Treaties” has the same meaning as in the Customs and Excise (Jersey) Law 1999.<sup>[6]</sup>

(2) Article 48 of the Customs and Excise (Jersey) Law 1999<sup>[7]</sup> shall apply to the arrest of any person for any offence under these Regulations as it applies to the arrest of any person for any offence under that Law.

(3) Articles 62 to 67 of the Customs and Excise (Jersey) Law 1999<sup>[8]</sup> shall apply in relation to offences and penalties under these Regulations and proceedings for such offences as they apply in relation to offences and penalties and proceedings for offences under that Law.

(4) Where the Agent of the Impôts investigates, or proposes to investigate, any matter with a view to determining -

(a) whether there are grounds for believing that an offence under Regulation 10(1)(a) for contravention of Regulation 3(3)(b), 10(1)(b) or (c) or 10(4) has been committed; or

(b) whether a person should be prosecuted for that offence,

the matter shall be treated as an assigned matter within the meaning of that Law.

### **Citation and commencement**

12. These Regulations may be cited as the Community Provisions Dual-Use Items (Export Control) (Jersey) Regulations 200- and shall come into force on the day on which they are made.

*SCHEDULE 1*

**(Regulations 3(3)(a), 3(3)(d)(ii), 12)**

**PROHIBITED ITEMS - ANY DESTINATION**

**Interpretations, exclusions and definitions**

1. Where notes are included in any entry of this Schedule they are to be treated as part of the entry.
2. "Software" described by the General Software Note in Annex I is not specified in this Schedule.
3. References in this Schedule to the General Technology Note are to that Note in Annex I; and "according to the General Technology Note" means that these Regulations apply to the extent indicated in the General Technology Note.
4. For convenience only, defined terms are printed in this Schedule in quotation marks.

**CATEGORY 1**

**MATERIALS, CHEMICALS, MICRO-ORGANISMS & TOXINS**

**1A** *Equipment, Assemblies and Components.*

**1A905** The export of "items" specified in this entry is prohibited to any destination except to Member States.

Portable devices, other than those specified in entry PL 5001 of Part III of Schedule 1 to "the 1994 Order", designed for self-protection by the administration of an incapacitating substance, and specially designed components therefor.

**1C** *Materials.*

**1C950** The export of "items" specified in this entry is prohibited to any destination except to Member States.

Chemical mixtures, as follows -

- a. Mixtures containing one or more of the chemicals specified in entries 1C350.1, .3, .5, .11, .12, .13, .17, .18, .21, .22, .26, .27, .28, .31, .32, .33, .34, .35, .36 and .54 and entries 1C450.b.1, b.2, b.4, b.5 and b.6 of "Annex I", where the chemical constitutes more than 10% by weight of the mixture;
- b. Mixtures containing one or more of the chemicals specified in entries 1C350.2, .6, .7, .8, .9, .10, .14, .15, .16, .19, .20, .24, .25, .30, .37, .38, .39, .40, .41, .42, .43, .44, .45, .46, .47, .48, .49, .50, .51, .52 and .53 of "Annex I", where the chemical constitutes more than 25% by weight of the mixture;
- c. Mixtures containing one or both of the chemicals specified in entries 1C450.a.1 and a.2 of "Annex I", where the chemical constitutes more than 1 % by weight of the mixture;
- d. Mixtures containing one or more of the chemicals specified in entries 1 C450.a.4, a.5, a.6, a.7, b.7, and b.8 of "Annex I", where the chemical constitutes more than 30% by weight of the mixture;

*except:*

"items" which will include any of the controlled chemicals or mixtures, and which are put up for retail sale and are intended for individual personal use or consumption.

**1C991** The export of "items" specified in this entry is prohibited to any destination.

Other explosives and propellants and related substances as follows -

- a. Amatol;

- b. Nitro-cellulose (containing more than 12.5% nitrogen);
- c. Nitroglycol;
- d. Pentaerythritol tetranitrate (PETN);
- e. Picryl chloride;
- f. Trinitrophenylmethylnitramine (tetryl);
- g. 2, 4, 6-Trinitrotoluene (TNT).

**1C992** The export of “items” specified in this entry is prohibited to any destination.

Vaccines for protection against either of the following -

- a. bacillus anthracis; or
- b. botulinum toxin.

**1E** *Technology.*

**1E950** The export of “items” specified in this entry is prohibited to any destination except to Member States.

“Technology” according to the “General Technology Note” for the “development” or “production” of mixtures specified in entry 1C950 of this Schedule.

#### CATEGORY 5

#### TELECOMMUNICATIONS AND INFORMATION SECURITY

**Part 1** *Telecommunications.*

**5A1** *Equipment, Assemblies and Components.*

**5A990** The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

Tropospheric scatter communications equipment using analogue or digital modulation techniques and specially designed components therefor.

**5E990** The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

“Technology” according to the “General Technology Note” for the “development”, “production” or “use” of “items” specified in entry 5A990 of this Schedule.

#### CATEGORY 8

#### MARINE

**8A** *Equipment, Assemblies and Components.*

**8A990** The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

Vessels and inflatable craft in an inflated or uninflated state, and equipment and components designed therefor, other than any vessel, craft, equipment or component specified in entry ML9 in Part III of Schedule 1 to “the 1994 Order” or in “Annex I”.

**8D** *Software.*

**8D990** The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

“Software” designed for the “development”, “production” or “use” of “items” specified in entry 8A990.

**8E**     ***Technology.***

**8E990**   The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

“Technology” according to the “General Technology Note” for the “development”, “production” or “use” of “items” specified in entry 8A990 or 8D990.

CATEGORY 9

AIRCRAFT, SPACE VEHICLES, PROPULSION SYSTEMS AND RELATED EQUIPMENT

**9A**     ***Equipment, Assemblies and Components.***

**9A990**   The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

“Aircraft” having a maximum all up weight of 390kg or more, and aero engines, and equipment or components designed therefor, other than those specified elsewhere in this Schedule or in entry ML10 of Part III of Schedule 1 to “the 1994 Order” or “Annex I”.

**9A991**   The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

“Aircraft” or steerable parachutes other than those specified in entry ML10 of Part III of Schedule 1 to “the 1994 Order”, having a maximum all up weight of less than 390kg.

**9E**     ***Technology.***

**9E990**   The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

“Technology” according to the “General Technology Note” for the “development”, “production” or “use” of “items” specified in entry 9A990 of this Schedule.

**9E991**   The export of “items” specified in this entry is prohibited to any destination in Iran or Iraq.

“Technology” according to the “General Technology Note” for the “development”, “production” or “use” of “items” specified in entry 9A991 of this Schedule.



## SCHEDULE 2

(Regulations 8(3), 9(7))

### PART I

#### ITEMS IN RELATION TO WHICH THE REQUIREMENT IN REGULATION 8(3) DOES NOT APPLY

Any item specified in entry 5A002 or 5D002 of Annex I if -

- (1) it is generally available to the public by being sold, without restriction, from stock at retail selling points by means of -
  - (a) over the counter transactions,
  - (b) mail order transactions,
  - (c) electronic transactions, or
  - (d) telephone order transactions;
- (2) its cryptographic functionality cannot easily be changed by the user;
- (3) it is designed for installation by the user without further substantial support by the supplier; and
- (4) details of it are accessible and will be provided, upon request, to the Agent of the Impôts in order to enable him to ascertain whether the conditions in paragraphs (1) to (3) of this Part are satisfied.

### PART II

#### INFORMATION TO BE KEPT IN RELATION TO CERTAIN ITEMS LISTED IN PART 2 OF CATEGORY 5 IN ANNEX I

1. A general description of the item, such as might be contained in a product brochure.
2. Descriptions of all relevant encryption algorithms and key management schemes, and descriptions of how they are used by the item (for example, which algorithm is used for authentication, which for confidentiality and which for key exchange); and details (for example, source code) of how they are implemented (for example, how keys are generated and distributed, how key length is governed and how the algorithm and keys are called by the software).
3. Details of any measures taken to preclude user modification of the encryption algorithm, key management scheme or key length.
4. Details of pre- or post-processing of data, such as compression of plain text or packetization of encrypted data.
5. Details of programming interfaces that can be used to gain access to the cryptographic functionality of the item.
6. A list of any standards or protocols to which the item adheres.

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

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

[3] Recueil des Lois, Volume 1999, page 547.

[4] Recueil des Lois, Volume 1992-1993, page 437.

[5] Recueil des Lois, Volume 1992-1993, page 437.

[6] Recueil des Lois, Volume 1999, page 548.

[7] Recueil des Lois, Volume 1999, page 588.

[8] Recueil des Lois, Volume 1999, pages 600 to 604.