



Jersey

## EXPORT CONTROL (JERSEY) LAW 2009

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Jersey

## EXPORT CONTROL (JERSEY) LAW 2009

**A LAW** to make provision enabling controls to be imposed on the exportation of goods, the transfer of technology, the provision of technical assistance overseas and activities connected with trade in controlled goods and for connected purposes

*Adopted by the States*

*1st April 2008*

*Sanctioned by Order of Her Majesty in Council*

*13th May 2009*

*Registered by the Royal Court*

*29th May 2009*

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **1 Interpretation**

(1) In this Law, unless the context otherwise requires –

“1999 Law” means the Customs and Excise (Jersey) Law 1999<sup>1</sup>;

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

“control Order” means an Order made under Article 2, 3, 4 or 5;

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

“Island person” has the same meaning as in the Crime and Security (Jersey) Law 2003<sup>2</sup>;

“Minister” means the Minister for Home Affairs;

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

“officer” has the same meaning as in the 1999 Law;

“place” includes a vehicle, vessel or aircraft;

“technical assistance” has the meaning given in Article 4(2);

“technical assistance controls” has the meaning given in Article 4(2);

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

- (a) the development, production or use of any goods or software;
- (b) the development of, or the carrying out of, an industrial or commercial activity or an activity of any other kind whatsoever;

“temporary control Order” means a control Order made by virtue of Article 7(1);

“trade controls” has the meaning given in Article 5(2);

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

“transfer controls” has the meaning given in Article 3(2).

- (2) In this Law, any reference to controls that are or may be imposed by a Community provision means such controls that are or may be imposed on member States, whether or not they also apply to Jersey.

## **2 Export controls**

- (1) The Minister may by Order make provision for, or in connection with, the imposition of export controls in relation to goods of any description.
- (2) For this purpose, “export controls” in relation to any goods, means the prohibition or regulation of their exportation from Jersey or their shipment as stores.
- (3) Goods may be described in the Order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put.
- (4) The power to impose export controls is subject to Article 6.
- (5) The Minister may by Order make provision in connection with any controls that may be imposed by a Community provision concerning the exportation of goods.
- (6) For the avoidance of doubt, export controls may be imposed in relation to the removal from Jersey of vehicles, vessels and aircraft (as an exportation of goods), whether or not they are moving under their own power or carrying goods or passengers.

## **3 Transfer controls**

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

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- (2) For this purpose “transfer controls”, in relation to any technology, means the prohibition or regulation of its transfer –
    - (a) by a person or from a place within Jersey to a person or place outside Jersey;
    - (b) by a person or from a place outside Jersey to a person who, or a place which, is also outside Jersey (but only where the transfer is by, or within the control of, an Island person);
    - (c) by a person or from a place within Jersey to a person who, or a place which, is also within Jersey (but only where there is reason to believe that the technology may be used outside Jersey); or
    - (d) by a person or from a place outside Jersey to a person or place within Jersey (but only where the transfer is by, or within the control of, an Island person and there is reason to believe that the technology may be used outside Jersey).
  - (3) Technology may be described in the Order wholly or partly by reference to the uses to which it may be put.
  - (4) The power to impose transfer controls is subject to Article 6.
  - (5) The Minister may by Order make provision in connection with any controls that may be imposed by a Community provision on the transfer of technology.

#### **4 Technical assistance controls**

- (1) The Minister may by Order make provision for or in connection with the imposition of technical assistance controls in relation to technical assistance of any description.
- (2) For this purpose –

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

“technical assistance” means services which are provided or used, or which are capable of being used, in connection with the development, production or use of any goods or technology.
- (3) Technical assistance may be described in the Order wholly or partly by reference to the uses to which it (or the goods or technology concerned) may be put.
- (4) The power to impose technical assistance controls –
  - (a) shall be exercised only for the purpose of imposing controls corresponding to or connected with any of the following –
    - (i) export controls or transfer controls imposed under Article 2 or 3,
    - (ii) controls imposed by a Community provision on the exportation of goods,

- (iii) controls imposed by a Community provision on the transfer of technology; and
  - (b) is subject to Article 6.
- (5) For the purposes of paragraph (1), a person participates in the provision of technical assistance outside Jersey if that person –
  - (a) provides technical assistance outside Jersey or agrees to do so; or
  - (b) makes arrangements under which another person provides technical assistance outside Jersey or agrees to do so.
- (6) The Minister may by Order make provision in connection with any controls that may be imposed by –
  - (a) a Community provision on the exportation of goods; and
  - (b) a Community provision on participation in the provision of technical assistance.
- (7) Technical assistance controls may be imposed on acts done outside Jersey but only if they are done by a person who is, or is acting under the control of, an Island person.

## **5 Trade controls**

- (1) The Minister may by Order make provision for or in connection with the imposition of trade controls in relation to goods of any description.
- (2) For this purpose, “trade controls”, in relation to any goods, means the prohibition or regulation of –
  - (a) their acquisition or disposal;
  - (b) their movement; or
  - (c) activities which facilitate or are otherwise connected with their acquisition, disposal or movement.
- (3) Goods may be described in the Order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put.
- (4) The power to impose trade controls –
  - (a) shall be exercised only for the purpose of imposing controls corresponding to or connected with any of the following –
    - (i) export controls or transfer controls imposed under Article 2 or 3,
    - (ii) controls imposed by a Community provision on the exportation of goods,
    - (iii) controls imposed by a Community provision on the transfer of technology; and
  - (b) is subject to Article 6.
- (5) The Minister may by Order make provision in connection with any controls that may be imposed by a Community provision on, or on activities which facilitate or are otherwise connected with, the acquisition, disposal or movement of goods.

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- (6) For the purposes of this Article –
    - (a) a person acquires goods if that person buys, hires or borrows them or accepts them as a gift; and
    - (b) a person disposes of goods if that person sells, lets on hire, lends or gives them.
  - (7) For the purposes of this Article –
    - (a) the making of an agreement with another to acquire, dispose of or move goods; and
    - (b) the making of arrangements under which another person –
      - (i) acquires, disposes of or moves goods, or
      - (ii) agrees with a third person to acquire, dispose of or move goods,

are activities which facilitate the acquisition, disposal or movement of the goods.
  - (8) Trade controls may be imposed on acts done outside Jersey but only if the acts are done by a person who is, or is acting under the control of, an Island person.

## **6 Control Orders: restriction of power to impose controls**

- (1) Subject to Article 7, the power to impose export controls, transfer controls, technical assistance controls or trade controls may be exercised only where authorized by this Article.
- (2) Controls referred to in paragraph (1) may be imposed for the purpose of giving effect to –
  - (a) any Community provision or a joint action or common position adopted, or a decision taken, by the Council under Title V of the Treaty on European Union; or
  - (b) an international obligation of the United Kingdom that applies to Jersey.
- (3) Export controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.
- (4) Transfer controls may be imposed in relation to any description of technology within one or more of the categories specified in the Schedule for such controls.
- (5) Technical assistance controls may be imposed in relation to any description of technical assistance within one or more of the categories specified in the Schedule for such controls.
- (6) Trade controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.

**7 Exceptions to Article 6**

- (1) Article 6 shall not apply to the power to impose any controls if the control Order which imposes them provides for its expiry no later than the end of the period of 12 months beginning with the day on which it is made (a “temporary control Order”).
- (2) Article 6 does not apply in relation to provisions of a control Order which –
  - (a) amend an earlier control Order; or
  - (b) revoke and re-enact (with or without modifications) an earlier control Order,unless they impose new controls or strengthen the controls previously imposed.
- (3) In paragraph (2), “earlier control Order” does not include a temporary control Order.
- (4) The Minister shall, no later than 14 days after making a temporary control Order, lodge a proposition seeking the States’ approval of the Order.
- (5) The minimum lodging period for the proposition shall be 14 days.
- (6) Paragraph (5) is without prejudice to any power that the States may have, pursuant to Standing Orders made under Article 48 of the States of Jersey Law 2005<sup>3</sup>, to reduce or waive a minimum lodging period.
- (7) The States shall debate the proposition no later than 60 days after it is lodged, unless they decide otherwise.
- (8) The States may resolve to approve or annul the Order, but may not amend it.
- (9) Notwithstanding paragraph (1), a temporary control Order shall expire –
  - (a) 14 days after it is made, where the Minister does not comply with paragraph (4);
  - (b) 60 days after the proposition relating to it is lodged, where the States do not comply with paragraph (7).
- (10) Where the States resolve to annul a temporary control Order, the Order shall cease to have effect immediately, but without prejudice to anything previously done under it or to the passing of a new Order.
- (11) Paragraphs (4) to (8) shall not apply to a temporary control Order which provides for its expiry within the period of 14 days after it is made and shall cease to apply to a temporary control Order which expires or is revoked before the States debate it.
- (12) For the purposes of paragraphs (7) and (9)(b), there shall be disregarded any day when the States are not in session.
- (13) The notice published pursuant to Article 3 of the Official Publications (Jersey) Law 1960<sup>4</sup> in respect of a temporary control Order shall specify the period for which the Order is expressed to be in force.

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**8 Control Orders: supplemental provisions**

- (1) A control Order may (without prejudice to the generality of the power under which it is made) make provision –
- (a) for an activity to be prohibited unless authorized by a licence granted by a person specified in the Order and for the granting of such a licence (whether subject to conditions, restrictions or requirements);
  - (b) creating exceptions from any provision of the Order;
  - (c) requiring persons to keep and produce records;
  - (d) requiring persons to provide information to any person specified in the Order;
  - (e) about the purposes for which information held in connection with anything done under the Order may be used;
  - (f) about the persons to whom any such information may be disclosed;
  - (g) for the enforcement of the Order (including powers and duties of any person enforcing it);
  - (h) providing –
    - (i) that contravention of a provision of the Order shall be an offence, and
    - (ii) for the penalty for any offence so created to be imprisonment for a specified number of years, which shall not exceed 10 years, or a fine (whether specified to be on the standard scale or otherwise), or both;
  - (i) providing that any person who aids, abets, counsels or procures the commission of an offence under the Order shall be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence;
  - (j) providing that where an offence under the Order committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
    - (i) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate, or
    - (ii) any person purporting to act in any such capacity,the person mentioned in clause (i) or (ii) is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for the offence;
  - (k) providing that where an offence under the Order is committed by a body corporate whose affairs are managed by its members, any rule made pursuant to sub-paragraph (j) shall apply in relation to acts and defaults of a member in connection with the member's functions as if the member were a director of the body corporate;
  - (l) for forfeiture of any thing in respect of which there has been a contravention of the Order; and

- (m) for the service of notices.
- (2) A control Order may –
  - (a) amend, repeal or revoke any enactment or apply (with or without modification) any of the provisions of any enactment, for the purposes of this Law;
  - (b) provide for any reference in the Order to a document (including a technical list by reference to which any Community provision or international obligation operates) to take effect as a reference to that document as revised or re-issued from time to time; and
  - (c) contain such consequential, incidental, supplementary and transitional provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

## **9 Control Orders: restriction of prohibition or regulation of certain activities**

- (1) The Minister shall not make a control Order that has the effect of prohibiting or regulating any of the following activities –
  - (a) the communication of information in the ordinary course of scientific research;
  - (b) the making of information generally available to the public;
  - (c) the communication of information that is generally available to the public,unless the interference by the Order in the freedom to carry on the activity concerned is necessary (and no more than is necessary).
- (2) The question whether any such interference is necessary shall be determined by the Minister by reference to the circumstances prevailing at the time the Order is made and having considered the reasons for seeking to control the activity in question and the need to respect the freedom to carry on that activity.

## **10 Guidance about the exercise of functions under control Orders**

- (1) This Article applies to licensing powers and other functions conferred by a control Order on any person in connection with controls imposed under this Law.
- (2) The Minister may give guidance about any matter relating to the exercise of any licensing power or other function to which this Article applies.
- (3) The Minister shall give guidance about the general principles to be followed when exercising licensing powers to which this Article applies.
- (4) The guidance required by paragraph (3) shall include guidance about the consideration (if any) to be given, when exercising such powers, to –
  - (a) issues relating to sustainable development; and
  - (b) issues relating to any possible consequences of the activity being controlled that are of a kind mentioned in the Table in paragraph 3 of the Schedule,

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but this paragraph does not restrict the matters that may be addressed in the guidance.

- (5) Any person exercising a licensing power or other function to which this Article applies shall have regard to any guidance that relates to the licensing power or other function concerned.
- (6) A copy of any guidance shall be presented to the States and published in such manner as the Minister may think fit.
- (7) In this Article, “guidance” means guidance stating that it is given under this Article.

## **11 Annual reports**

- (1) The Minister shall, in each year, lay before the States in respect of the previous year –
  - (a) a report on the operation during the year of any Order under Article 2 that relate to the export of objects of cultural interest; and
  - (b) a report on other matters relating to the operation of this Law (and any control Orders made under it) during the year.
- (2) A report required by paragraph (1) shall be laid as soon as practicable after the end of the year to which it relates.
- (3) The first report to be laid shall relate to the 12 month period that commences with the date on which this Article comes into force and in each following year the report relating to that year shall commence on the anniversary of that date.

## **12 Power to amend Schedule**

- (1) The States may by Regulations amend the Schedule.
- (2) Regulations made under paragraph (1) may include such incidental, consequential and transitional provisions as the States consider to be necessary or expedient for the purpose of the Regulations.

## **13 Application of 1999 Law**

- (1) This Law (and any enactment made under it), insofar as it relates to the imposition of export controls, is an assigned matter for the purpose of the 1999 Law.
- (2) This Article does not derogate from the power in Article 8(2)(a) to apply provisions of the 1999 Law for the purposes of this Law.

## **14 Article 19 of 1999 Law amended**

In Article 19 of the 1999 Law –

- (a) in paragraph (1), the words “, or exportation from,” shall be deleted;

- (b) in paragraph (2), the words “, exported or brought to any place for the purpose of being exported” shall be deleted;
- (c) in paragraph (2), the words beginning “, save that” and ending “thinks fit” shall be deleted;
- (d) in paragraph (3), the words “, exported or brought to any place for the purpose of being so exported” shall be deleted;
- (e) in paragraph (3), the words “ or exportation” shall be deleted.

### **15 Transitional provisions and savings**

The Minister may by Order make such transitional provisions and savings as the Minister considers necessary for the purposes of the coming into force of any provision of this Law.

### **16 Citation and commencement**

This Law may be cited as the Export Control (Jersey) Law 2009 and shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different provisions and different purposes.

**M.N. DE LA HAYE**

*Greffier of the States*

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**SCHEDULE**

(Article 6)

**CATEGORIES OF GOODS, TECHNOLOGY AND TECHNICAL ASSISTANCE****1 Military equipment, military technology and related matters**

- (1) Export controls and trade controls may be imposed in relation to all or any of the following –
  - (a) military equipment;
  - (b) goods on which military technology is recorded or from which it can be derived;
  - (c) goods intended, designed or adapted for use in the development or production of military equipment or military technology.
- (2) Transfer controls may be imposed in relation to all or any of the following –
  - (a) military technology;
  - (b) technology intended, designed or adapted for use in the development or production of military technology.
- (3) Technical assistance controls may be imposed in relation to any services connected with the development, production or use of all or any of the following –
  - (a) any goods falling within sub-paragraph (1)(a), (b) or (c);
  - (b) any technology falling within sub-paragraph (2)(a) or (b).
- (4) In this paragraph (without prejudice to the generality of the terms) –

“military equipment” includes –

  - (a) firearms and other weapons (whether or not intended, designed or adapted for military use or in military use); and
  - (b) goods intended, designed or adapted for military use (whether or not in military use); and

“military technology” includes –

  - (a) technology intended, designed or adapted for military use (whether or not in military use); and
  - (b) technology intended, designed or adapted for use in connection with the development, production or use of military equipment or goods falling within sub-paragraph (1)(c).
- (5) For the purposes of sub-paragraph (4) the reference to firearms and other weapons includes a reference to –
  - (a) component parts of firearms or other weapons;

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

**2 Exportation capable of relevant consequence**

- (1) Export controls may be imposed in relation to any goods the exportation or use of which is capable of having a relevant consequence.
- (2) Transfer controls may be imposed in relation to any technology the transfer or use of which is capable of having such a consequence.
- (3) Technical assistance controls may be imposed in relation to any technical assistance the provision or use of which is capable of having such a consequence.
- (4) Trade controls may be imposed in relation to any goods the acquisition, disposal, movement or use of which is capable of having such a consequence.

**3 Relevant consequence**

- (1) For the purposes of paragraph 2 a relevant consequence, in relation to any activity, is a consequence (direct or indirect) of a kind mentioned in the Table to this sub-paragraph.

TABLE	
RELEVANT CONSEQUENCES	
	National security of the United Kingdom (or any dependency of the United Kingdom), Jersey, Bailiwick of Guernsey, Isle of Man, any Member State or other friendly state.
A.	An adverse effect on <ul style="list-style-type: none"> <li>(a) the national security; or</li> <li>(b) the security of members of the armed forces,</li> </ul> of the United Kingdom (or any dependency of the United Kingdom, Jersey, Bailiwick of Guernsey, Isle of Man), any Member state or any other friendly State.
Regional stability and internal conflict	
B.	An adverse effect on peace, security or stability in any region of the world or within any country.
Weapons of mass destruction	
C.	The carrying out anywhere in the world of acts which facilitate the development, production or use of weapons of mass destruction.

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Breaches of international law and human rights

- D. The carrying out anywhere in the world of (or of acts which facilitate)
- (a) acts threatening international peace and security;
  - (b) acts contravening the international law of armed conflict;
  - (c) internal repression in any country;
  - (d) breaches of human rights.

Terrorism and crime

- E. The carrying out anywhere in the world of (or of acts which facilitate) acts of terrorism or serious crime anywhere in the world.

- (2) The question whether an activity involving goods, technology or technical assistance of any particular description is capable of having a relevant consequence is to be determined by the Minister at the time the Order imposing the controls is made.
- (3) In this paragraph –
- “country” includes a territory but does not include Jersey, the Bailiwick of Guernsey, the Isle of Man or the United Kingdom;
- “dependency” means a British overseas territory.

#### **4 Objects of cultural interest**

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

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- 1* chapter 24.660
  - 2* chapter 08.110
  - 3* chapter 16.800
  - 4* chapter 15.440