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STATUTORY INSTRUMENTS

1999 No. 1778

CUSTOMS AND EXCISE

The Dual-Use and Related Goods (Export Control) (Amendment No. 2) Regulations 1999

<i>Made</i>	- - - -	<i>23rd June 1999</i>
<i>Laid before Parliament</i>		<i>23rd June 1999</i>
<i>Coming into force</i>	- -	<i>14th July 1999</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purpose of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the control of the export of goods and measures relating to trade in dual-use goods, in exercise of the powers conferred on him by that section hereby makes the following Regulations:

1.—(1) These Regulations may be cited as the Dual-Use and Related Goods (Export Control) (Amendment No. 2) Regulations 1999 and shall come into force on 14th July 1999.

(2) In these Regulations, “the principal Regulations” means the Dual-Use and Related Goods (Export Control) Regulations 1996⁽³⁾.

2. In regulation 2 of the principal Regulations, the following shall be added at the end of the definition of “exporter”:-

“(save that where the export is to a destination outside the customs territory of the European Community, “exporter” shall have the same meaning as in the definition in Article 2(c) of the Regulation, to the extent that that definition applies).”.

3. In regulation 4(3) of the principal Regulations, the words “in writing” shall be inserted after the word “licence” where it first appears.

4. Regulation 8(2) of the principal Regulations shall be replaced by the following:-

“No person shall be guilty of an offence under paragraph (1) above where-

(a) the licence had been previously modified without that person’s consent

(1) S.I. 1983/1706 and 1994/2791.

(2) 1972 c. 68.

(3) S.I. 1996/2721; the relevant amending instruments are S.I. 1997/324 and 2759, and 1999/984.

- (i) in the case of a licence, by the Secretary of State, or
- (ii) in the case of a Community Licence, by the Secretary of State or other competent authority who granted that Community Licence;
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified, and
- (c) that person proves that the goods in relation to which he has failed to comply with the condition had, at the time the condition was modified, been exported from the United Kingdom in the case of a licence or from the European Community in the case of a Community Licence.”.

5.—(1) The following amendments shall be made in Schedule 2 to the principal Regulations.

(2) In Category 1—Materials, Chemicals, Microorganisms & Toxins, entry 1C950 shall be replaced by the following:—

“1C950

The export of goods 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, .11, .12, .13, .17, .18, .21, .22, .26, .27, .28, .3 and .54 of “Annex I” where the chemical constitutes more than 10% by weight of the mixture;
- b. Mixtures containing any of the chemicals specified in entry 1C350.2, .6, .7, .8, .9, .10, .14, .15, .16, .19, .20, .24, .25, .3 and .53 of “Annex I” where the chemical constitutes more than 25% by weight of mixture.

Except

Mixtures which include any of the controlled chemicals which are put up for retail sale and intended for individual personal use or consumption.”;

(3) In Category 9—Aircraft, Space Vehicles, Propulsion Systems and Related Equipment,

- (a) in the head of each of entries 9A990, 9E990, 9A991 and 9E991, the words “in Iran, Iraq or Libya” shall be replaced by the words “in Iran or Iraq”, and
- (b) entries 9A993, 9D993 and 9E993 shall be revoked.

Kim Howells

Parliamentary Under Secretary of State for
Competition and Consumer Affairs,
Department of Trade and Industry

23rd June 1999

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Dual Use and Related Goods (Export Control) Regulations 1996 (“the principal Regulations”) made in implementation of and pursuant to Council Regulation (EC) No. 3381/94 on the control of exports of dual-use goods (OJ No. L367 31.12.94, p. 1), is amended as follows:

Regulation 2 provides that the definition of “exporter” has the same meaning found in Council Regulation (EC) No 3381/94 on the control of exports of dual-use goods to the extent that that definition applies.

Regulation 3 introduces a requirement that all licences issued by the Secretary of State under regulation 4(3) of the principal Regulations shall be in writing.

Regulation 4 corrects an ambiguity as to who carries the burden of proof with respect to the exception to the offence set out in regulation 8(1), namely that it is for the prosecution to establish whether or not the licence has been modified without the consent of the licensee and whether or not any modification made was material to the offence that is charged. Paragraph (c) makes clear that it is for the defendant to prove that the export happened before the modification took effect.

Regulation 5(2) amends the controls in entry 1C950 by

- prohibiting the export only of mixtures containing more than the prescribed weight of a chemical specified in entry 1C350 of Annex I to Council Decision 94/942.
- removing an exception to the controls. Mixtures which contain a controlled chemical in such a way that it cannot be easily recovered by standard processes are now controlled.

Regulation 5(3) removes the prohibition on the export of specified goods to Libya.