

## 2017 No. 193

### CUSTOMS

#### The Export Control (Amendment) (No. 2) Order 2017

*Made* - - - - 20th February 2017

*Laid before Parliament* 23rd February 2017

*Coming into force* - - 17th March 2017

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a), in relation to matters relating to trade in certain goods, including technical assistance, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment(b).

The Secretary of State makes this Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by sections 3, 4, 5 and 7 of the Export Control Act 2002(c).

#### Citation and commencement

1. This Order may be cited as the Export Control (Amendment) (No. 2) Order 2017 and comes into force on 17th March 2017.

#### Amendments to the Export Control Order 2008

2.—(1) The Export Control Order 2008(d) is amended as follows.

(2) In article 26(6)(a), omit “(except that a licence granted under the torture Regulation may not be a general licence)”.

(3) In article 36(7), for “Article 8(2)” substitute “Article 8(8)”.

(4) After article 36, insert—

#### “Further offences relating to the prohibitions etc. in the torture Regulation

36A.—(1) In this article—

(a) references to “Articles” are references to articles in the torture Regulation; and

(b) “brokering services” and “transit” bear the same meaning as they have in that regulation.

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(a) 1972 c.68; section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(b) S.I. 2006/1461, to which there are amendments not relevant to this Order.

(c) 2002 c.28

(d) S.I. 2008/3231, to which there are amendments not relevant to this Order.

(2) A person who is concerned in an activity prohibited by Article 4a(1) (prohibition of transit), 4b (prohibition of brokering services), 4c (prohibition of training), 4d (trade fairs) or 4e (advertising) commits an offence.

(3) A person who fails to comply with Article 7a(1) (authorisation requirement for certain services) or 7e(1) (authorisation requirement for certain services) commits an offence.

(4) A person who is knowingly concerned in an activity prohibited by Article 4a(1), 4b, 4c, 4d, 4e, 6a (prohibition of transit) or 7d (prohibition of transit) with intent to evade that prohibition commits an offence and may be arrested.

(5) A person who knowingly fails to comply with Article 7a(1) or 7e(1) with intent to evade the requirements in those Articles commits an offence and may be arrested.

(6) A person guilty of an offence under paragraph (2) or (3) is liable upon summary conviction to a fine not exceeding level 3 on the standard scale.

(7) A person guilty of an offence under paragraph (4) or (5) is liable—

(a) on summary conviction—

(i) in England and Wales, to a fine<sup>(a)</sup> or to imprisonment for a term not exceeding three months, or to both;

(ii) in Scotland and Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both;  
or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.”

*Mark Garnier*

Parliamentary Under-Secretary of State for International Trade  
Department for International Trade

20th February 2017

### **EXPLANATORY NOTE**

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

This Order amends the Export Control Order 2008 (S.I. 2008/3231) (the “ECO”) to make provision for the enforcement of trade restrictions in relation to certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment as specified in Regulation (EU) 2016/2134 of the European Parliament and of the Council (OJ L 338, 13.12.2016, p. 1) (the “Amending Regulation”). The Amending Regulation amends Council Regulation (EC) No 1236/2005 (OJ L 200, 30.7.2005, p. 1) (the “torture Regulation”). This Order also makes certain minor and consequential amendments to implement the Amending Regulation.

Article 2(2) of this Order amends the ECO to allow for the issuance of Union General Export Authorisations under the torture Regulation pursuant to Article 1(11) of the Amending Regulation.

Article 2(3) of this Order amends the ECO as a consequential amendment to reflect the amendments to the torture Regulation made by Article 1(11) of the Amending Regulation.

Article 2(4) of this Order inserts into the ECO a number of offences in relation to the prohibitions and authorisation requirements introduced by the Amending Regulation into the torture Regulation.

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(a) The effect of section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) is that the references to the “statutory maximum” in articles 36(3)(a)(i) and 36(6)(a)(i) should be read as though the offence is punishable on summary conviction on or after the date of commencement by a fine of any amount. Section 85 came into force on 12th March 2015 pursuant to article 2 of S.I. 2015/504.

An Impact Assessment has not been prepared in respect of this Order as minimal or no impact on the private or voluntary sectors is foreseen. An Explanatory Memorandum is available alongside the instrument on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website. Copies have also been placed in the Libraries of both Houses of Parliament.

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