

2019 No. 989

CUSTOMS

The Export Control (Amendment) Order 2019

<i>Made</i> - - - -	<i>4th June 2019</i>
<i>Laid before Parliament</i>	<i>6th June 2019</i>
<i>Coming into force</i> - -	<i>30th June 2019</i>

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 measures 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).

It appears to the Secretary of State that it is expedient for references in this Order to Regulation (EU) 2019/125 of the European Parliament and of the Council of 16th January 2019(c), or to any provision of that regulation, to be construed as references to that instrument or to any such provision as amended from time to time.

The Secretary of State, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to the European Communities Act 1972(d) and sections 1, 2, 5 and 7 of the Export Control Act 2002(e), makes the following Order:

Citation and Commencement

1. This Order may be cited as the Export Control (Amendment) Order 2019 and comes into force on 30th June 2019.

Amendments to the Export Control Order 2008

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

(2) In Article 2(1) (interpretation), for the definition of “the torture Regulation”, substitute—

“the torture Regulation” means Regulation (EU) 2019/125 of the European Parliament and of the Council of 16th January 2019 as amended from time to time;”

(a) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), section 3(3) and the Schedule, Part 1.
(b) See the European Communities (Designation) (No. 2) Order 2006 (S.I. 2006/1461).
(c) OJ No. L30, 31.01.2019, p. 1-57.
(d) Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28.
(e) 2002 c. 28; sections 1(5), 2(5), 5(2) and 7(2)(c) were amended by Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043) Part 2, Article 6(2)(c) and section 5(3) was amended by Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), Schedule 1, Part 1, paragraph 1.
(f) S.I. 2008/3231, amended by S.I. 2010/2007; there are other amending instruments but none is relevant.

(3) In Article 36 (offences relating to prohibitions and restrictions in the torture Regulation), in paragraph (7), for “Article 8(8)” (types of authorisation and issuing authorities), substitute “Article 20(8)”.

- (4) In Article 36A (further offences relating to the prohibitions etc. in the torture Regulation)—
- (a) for the reference to “Article 4a(1)” (prohibition of transit of goods listed in Annex 2) in each place it occurs, substitute “Article 5(1)”;
 - (b) for the reference to “Article 4b” (prohibition of brokering services) in each place it occurs, substitute “Article 6”;
 - (c) for the reference to “Article 4c” (prohibition of training) in each place it occurs, substitute “Article 7”;
 - (d) for the reference to “Article 4d” (trade fairs) in each place it occurs, substitute “Article 8”;
 - (e) for the reference to “Article 4e” (advertising) in each place it occurs, substitute “Article 9”;
 - (f) for the reference to “Article 6a” (prohibition of transit of goods listed in Annex 3), substitute “Article 13”;
 - (g) for the reference to “Article 7a(1)” (authorisation requirement for certain services) in each place it occurs, substitute “Article 15(1)”;
 - (h) for the reference to “Article 7d” (prohibition of transit of goods listed in Annex 4), substitute “Article 18”; and
 - (i) for the reference to “Article 7e(1)” (authorisation for certain services) in each place it occurs, substitute “Article 19(1)”.

(5) In Schedule 2 (military goods, software and technology)—

- (a) under the heading “Definitions”, in the definition of “required”, omit “and the intended use of “technology” is irrelevant to whether it is “required””;
- (b) under the heading “Military, Security and Para-military Goods, Software and Technology and Arms, Ammunition and related Material” –
 - (i) for the entry ML1.d. including the Note to that entry, substitute—

“d. Accessories designed for firearms specified in ML1.a., ML1.b. or ML1.c., as follows:
1. Detachable cartridge magazines;
2. Sound suppressors or moderators;
3. Special gun-mountings;
4. Flash suppressors;
5. Optical weapon-sights with electronic image processing;
6. Optical weapon-sights specially designed for military use.”
;

- (ii) in the entry ML8.a., before the Note, insert—

“42. EDNA (Ethylenedinitramine) (CAS 505-71-5);”;

- (iii) in the entry ML8.c.1., for the Note, substitute—

“Note 1: ML8.c.1. does not apply to the following “aircraft” fuels: JP-4, JP-5, and JP-8.
Note 2: “Aircraft” fuels controlled in ML8.c.1. are finished goods, not their constituents.”;

- (iv) in the Note to the entry ML8.c.10.b., omit “to JP-4, JP-8,”;

- (v) in the entry ML8.e.16., before “nitratomethylmethyloxetane”, insert “(”;
- (vi) in the entry ML8.e., at the end of the numbered list, insert—

“21 TMETN (Trimethylolethane trinitrate) (CAS 3032-55-1);”;

- (vii) for the entry ML8.f.5., substitute “Lead beta-resorcylate (CAS 20936-32-7) or copper beta-resorcylate (CAS 70983-44-7)”;
- (viii) in the entry ML10.f., omit Technical Note 2;
- (ix) in the entry ML13.a., for “N.B. For body armour plate, see ML13.d.2.”, substitute “N.B. For body armour plates, see ML13.d.2.”;
- (x) for the entry ML17.1., substitute “ISO intermodal containers or demountable vehicle bodies (i.e., swap bodies), specially designed or modified for military use;”;
- (xi) in the entry ML17.o., for “and”, substitute “or”; and
- (xii) in the entry ML20.b., for “(rotating machinery and transformers)”, substitute “(rotating machinery or transformers)”.

(6) In Schedule 4 (countries and destinations subject to stricter export or trade controls), in Part 2 (embargoed and subject to transit control for military goods), omit “Eritrea”(a).

Revocation of the Export Control (Eritrea and Miscellaneous Amendments) Order 2011 and saving

3. The Export Control (Eritrea and Miscellaneous Amendments) Order 2011(b) is revoked save for the amendment made to Schedule 2 to the Export Control Order 2008 by article 8 (amendment to the 2008 Order).

Signed by authority of the Secretary of State

Graham Stuart
Parliamentary Under-Secretary of State for Investment
Department for International Trade

4th June 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Export Control Order 2008 (S.I. 2008/3231) (“the 2008 Order”).

Article 2(2) replaces references in the 2008 Order to Council Regulation (EC) No 1236/2005, which concerned trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment with references to Regulation (EU) 2019/125 of the European Parliament and of the Council, which codifies and replaces that Regulation (OJ L 30, 31.01.2019, p. 1-57). Articles 2(3) and 2(4) amend Articles 36 and 36A of the 2008 Order to ensure that the offences relating to prohibitions and restrictions accurately cross-refer to the relevant provisions of Regulation (EU) 2019/125.

Article 2(5) amends Schedule 2 to the 2008 Order which lists military goods, software and technology subject to export controls (“the UK list”). The content of the UK list reflects both domestic controls and an international export regime known as the Wassenaar Arrangement. This regime is given effect to in the European Union through the Common Military List, the most

(a) The reference to Eritrea was inserted by S.I. 2010/2007, article 3(a).
(b) S.I. 2011/1296.

recent updated version of which was adopted by the Council of the European Union on 26th February 2018 (OJ C 98, 15.03.2018, p.1) (“the CML”).

The amendments to Schedule 2 to the 2008 Order implement Commission Directive (EU) 2019/514 of 14th March 2019 amending Directive 2009/43/EC of the European Parliament and of the Council as regards the list of defence-related products (OJ L 89, 29.03.2019, p. 1) (“the amending Directive”). Directive 2009/43/EC (OJ L 146, 10.6.2009, p.1) simplifies the terms and conditions of transfers within the European Union of defence-related products listed in the Annex to that Directive, which corresponds to the CML. The CML was updated in 2018 and the amending Directive makes the necessary changes to the Annex to Directive 2009/43/EC to bring it into line with the updated CML.

Article 2(6) amends Schedule 4 to the 2008 Order to remove Eritrea from the list of countries at Part 2 of Schedule 4 which lists countries and destinations embargoed and subject to transit control for military goods. Article 3 revokes the Export Control (Eritrea and Miscellaneous Amendments) Order 2011 (S.I. 2011/1296) to the extent it made provision for offences to enforce the sanctions measures set out in Council Regulation (EU) No. 667/2010 of 26th July 2010 (OJ L 195, 27.07.2010, p. 16-24). This is in line with the lifting of sanctions against Eritrea by the United Nations and the European Union.

An Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen. An Explanatory Memorandum and a transposition note are available from the Export Control Organisation, 3 Whitehall Place, London SW1A 2AW and, also, are published alongside the instrument on the www.legislation.gov.uk website. In addition, copies have been placed in the Libraries of both Houses of Parliament.

© Crown copyright 2019

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£4.90

UK201906051008 06/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/989>

ISBN 978-0-11-118752-4



9 780111 187524