



Number 1 of 2008

CONTROL OF EXPORTS ACT 2008

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[No. 1.] *Control of Exports Act 2008.* [2008.]

ACTS REFERRED TO

Control of Exports Act 1983

1983, No. 35



Number 1 of 2008

CONTROL OF EXPORTS ACT 2008

AN ACT TO PROVIDE FOR THE CONTROL OF THE EXPORTATION OF GOODS AND TECHNOLOGY AND THE CONTROL OF THE PROVISION OF BROKERING ACTIVITIES AND TECHNICAL ASSISTANCE, TO PROVIDE FOR THE CONTROL OF TECHNICAL ASSISTANCE RELATED TO CERTAIN MILITARY END-USERS AS PROVIDED FOR BY THE COUNCIL OF THE EUROPEAN UNION IN THE COUNCIL JOINT ACTION OF 22 JUNE 2000 AND FOR THE CONTROL OF ARMS BROKERING AS PROVIDED FOR BY THE COUNCIL OF THE EUROPEAN UNION IN THE COUNCIL COMMON POSITION 2003/468/CFSP OF 23 JUNE 2003 AND TO PROVIDE FOR RELATED MATTERS.

[27th February, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

“brokering activities” has the same meaning as it has in Council Common Position 2003/468/CFSP¹ of 23 June 2003 on the control of arms brokering;

“exportation”, unless the context otherwise requires, means exportation from the State and includes the transfer by electronic means of software and technology and the exportation of goods brought into the State for re-export;

“licence” means a licence issued under *section 6*;

“Minister” means the Minister for Enterprise, Trade and Employment;

“software” has the same meaning as it has in Council Regulation (EC) No. 1334/2000² of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology;

“technical assistance” has the same meaning as it has in Council Joint Action of 22 June 2000³ concerning the control of technical assistance related to certain military end-users;

¹O.J. No. L156, 25.06.2003 p.79

²O.J. No. L159, 30.06.2000 p.159

³O.J. No. L159, 30.06.2000 p.216

“technology” has the same meaning as it has in Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology.

Laying of orders and regulations before Houses of Oireachtas.

2.—Every order or regulation under this Act, other than an order under *section 12(2)*, shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the order or regulation.

Controls on brokering activities.

3.—(1) Whenever and so often as the Minister thinks appropriate, having regard to the purposes of this Act, and subject to such exceptions (if any) as he or she thinks proper, the Minister may by order prohibit or regulate the provision, except under and in accordance with a licence, of such class or classes of brokering activities as may be specified in the order.

(2) An order under *subsection (1)* applies to brokering activities undertaken—

(a) in the State, and

(b) outside the State, if the brokering activities concerned are undertaken by—

(i) an individual who is a citizen of Ireland, or

(ii) a company within the meaning of the Companies Acts.

(3) Nothing in this section shall be construed as applying to brokering activities undertaken wholly inside one or more than one other Member State.

(4) Nothing in this section shall be construed as applying to brokering activities undertaken outside the State pursuant to a licence or other similar document duly issued by another Member State authorising such activities.

Controls on export of goods and technology.

4.—Whenever and so often as the Minister thinks appropriate, having regard to the purposes of this Act, and subject to such exceptions (if any) as he or she thinks proper, the Minister may by order prohibit or regulate the exportation, except under and in accordance with a licence, of such class or classes of goods and technology as may be specified in the order.

Controls on technical assistance.

5.—(1) Whenever and so often as the Minister thinks appropriate, having regard to the purposes of this Act, and subject to such exceptions (if any) as he or she thinks proper, the Minister may by order prohibit or regulate the provision outside the State, except under and in accordance with a licence, of such class or classes of technical assistance as may be specified in the order.

(2) An order under *subsection (1)* does not apply to the provision of technical assistance to a person in—

- (a) another Member State, or
- (b) such other country or territory as may be specified in the order.

6.—(1) The Minister may, at his or her discretion, grant or refuse Licences. to grant a licence for the purpose of *section 3, 4 or 5* on such terms and conditions as may be specified in the licence.

(2) An application for a licence shall be in such form and contain such information as the Minister may specify.

(3) A licence shall remain in force for a specified period or, if earlier, until duly revoked.

(4) A licence issued under section 3 of the Control of Exports Act 1983 shall be deemed to be a licence duly granted under *subsection (1)* and shall remain in force for the period specified in the licence, or, if earlier, until duly revoked.

(5) Where the Minister refuses to grant a licence to a person—

- (a) the person shall be notified of such refusal and the reasons for such refusal, and
- (b) the person may appeal the refusal in accordance with regulations under *subsection (6)*.

(6) The Minister may make regulations for the purposes of this section.

(7) Without prejudice to the generality of *subsection (6)*, regulations under this section may provide for all or any of the following:

- (a) the form and manner in which an application for a licence may be made (including provision for on-line applications);
- (b) the form and manner in which a licence may be renewed (including provision for on-line applications for renewal);
- (c) requirements for applicants to furnish such additional information or particulars relating to the application as may be specified;
- (d) the period in which an application shall be dealt with;
- (e) the manner in which an applicant may be notified of the decision on the application;
- (f) the duration of a licence;
- (g) the circumstances in which a licence may be revoked;
- (h) a right of appeal against—
 - (i) a refusal of an application for a licence,
 - (ii) a refusal of an application to renew a licence, and
 - (iii) the revocation of a licence;

- (i) the procedures for hearing and determining appeals (including time limits for lodging and hearing appeals);
- (j) the fees (if any) to be paid for applying for a licence or the renewal of a licence or the making of an appeal under this Act and the time and manner in which such fees shall be paid;
- (k) the keeping of records relating to applications;
- (l) the implementation by licence holders of appropriate internal compliance procedures;
- (m) the making of returns by licence holders.

(8) A person shall not, in relation to an application for a licence (including an application to renew a licence) or in relation to an appeal arising from such application, make a statement in writing which to his or her knowledge is false or misleading in a material respect.

Authorised officers. 7.—(1) In this section—

“authorised officer” means—

- (a) a person appointed under *subsection (2)*, or
- (b) an officer of Customs and Excise;

“premises” means any place or vehicle;

“record” includes, in addition to a record in writing—

- (a) a disc, tape, sound-track or other device, including an electronic device, in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (b) a film, tape or other device, including an electronic device, in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form,
- (c) a photograph,

and any reference to a copy of a record includes—

- (i) in the case of a record to which *paragraph (a)* applies, a transcript of the sounds or signals embodied in it,
- (ii) in the case of a record to which *paragraph (b)* applies, a still reproduction of the images embodied in it, and
- (iii) in the case of a record to which *paragraphs (a) and (b)* apply, such a transcript together with such a still reproduction;

“vehicle” means any conveyance in or by which any person or thing, or both, is transported which is designed for use on land, or in water or in the air, or in more than one of those ways, and includes—

- (a) part of a vehicle,
- (b) an article designed as a vehicle but not capable of functioning as a vehicle,
- (c) a skip or other container designed for use or used for carriage on a vehicle, or
- (d) a trailer designed for use or used with a vehicle.

(2) For the purposes of this Act the Minister may, in writing, appoint to be authorised officers—

- (a) such and so many of his or her officers, and
- (b) for such purposes as the Minister may specify, such and so many other persons.

(3) (a) A warrant of appointment as an authorised officer shall be issued to every person appointed under *subsection (2)*.

(b) Whenever a person is exercising any function conferred on him or her as an authorised officer such person shall, if requested by a person affected—

- (i) in the case of a person appointed under *subsection (2)*, produce his or her warrant, or
- (ii) in the case of an officer of Customs and Excise, produce his or her authorisation as such an officer,

to the person so requesting.

(4) The Minister may at any time terminate an appointment as an authorised officer, whether or not the appointment was for a fixed period.

(5) An appointment as an authorised officer shall cease—

- (a) where the Minister terminates it pursuant to *subsection (4)*,
- (b) where it is for a fixed period, on the expiry of that period, or
- (c) where the person appointed is an officer of the Minister, upon he or she ceasing to be such an officer.

(6) Nothing in *subsection (5)* shall be construed so as to prevent the Minister from re-appointing as an authorised officer a person to whom that subsection relates.

(7) Subject to *subsection (10)*, an authorised officer may, for the purposes of this Act (if necessary by the use of reasonable force) at all reasonable times, enter any premises and—

- (a) require the production of any—
 - (i) licence, or

- (ii) document or record, that he or she believes on reasonable grounds to be evidence of the exportation of goods or technology or the provision of brokering activities or technical assistance,

and inspect any such licence, document or record and, in the case of such licence, document or record being in a non-legible form, to produce or to facilitate the production of such licence, document or record in a legible form and take copies of or extracts from or remove and retain any such licence, document or record, for such period as may be reasonable for their examination or for the purposes of any proceedings in relation to an offence under this Act,

- (b) require a person to give to the authorised officer such information as he or she may reasonably require for the purposes of his or her functions under this Act,
- (c) carry out, or cause to be carried out, such examinations, tests, inspections and checks of the premises, goods or technology or any other article at the premises as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (d) take samples of goods or technology found at the premises for the purposes of analysis and examination, as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (e) secure for later inspection any premises or part of any premises or any equipment found at such premises for such period as may reasonably be necessary for the purposes of his or her functions under this Act,
- (f) exercise such other powers as may be necessary to ensure compliance with this Act.

(8) Where, upon reasonable grounds, an authorised officer believes that a person has committed an offence under this Act he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(9) An authorised officer may be assisted in the exercise of his or her functions under this Act by such other person as the authorised officer considers necessary, including a member of the Garda Síochána.

(10) An authorised officer shall not, except with the consent of the occupier or person in charge, enter a private dwelling unless he or she has obtained a warrant in accordance with *subsection (11)*.

(11) Without prejudice to the powers conferred on an authorised officer by or under any other provision of this section, if a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting that—

- (a) there is information or records required by an authorised officer for the purpose of this Act held in, at or on any premises, or
- (b) there are goods or technology or any other article that an authorised officer requires to inspect for the purposes of

this Act, or that such an inspection is likely to disclose evidence of a contravention of this Act,

then the judge may issue a warrant authorising an authorised officer, accompanied if necessary, by other authorised officers or other persons including members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, to enter the premises, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer by or under this Act.

(12) An application for a warrant under *subsection (11)* shall be made to the judge of the District Court in the district court district in which the premises is situated.

(13) A person commits an offence if he or she—

(a) obstructs or impedes—

(i) an authorised officer in the exercise of his or her powers under this section, or

(ii) a person assisting an authorised officer pursuant to *subsection (9)*,

(b) without reasonable excuse, refuses or fails to comply with a requirement made under *subsection (7)(b)* or *(8)*,

(c) makes a statement or furnishes information to an authorised officer which, to his or her knowledge, is false or misleading in a material respect, or

(d) alters, suppresses or destroys any documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce.

8.—(1) A person who—

Offences.

(a) contravenes an order under *section 3, 4* or *5*,

(b) contravenes the terms of a licence,

(c) contravenes a regulation under *section 6(6)*, or

(d) contravenes *section 6(8)*,

commits an offence and is liable—

(i) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months, or to both, or

(ii) on conviction on indictment—

(I) to a fine not exceeding the greater of €10,000,000 or, where relevant, 3 times the value of the goods or technology concerned in respect of which the offence was committed, or

(II) to imprisonment for a term not exceeding 5 years,

or to both such fine and such imprisonment.

(2) A person who commits an offence under *section 7(13)* is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years, or to both.

(3) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Annual Report.

9.—The Minister shall, as soon as practicable after the end of each year (beginning with the year ending 31 December 2008) prepare and lay before each House of the Oireachtas a report on the operation in the preceding year of matters within this Act.

Expenses.

10.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Repeal and saver.

11.—(1) The Control of Exports Act 1983 is repealed.

(2) Notwithstanding *subsection (1)*, the Control of Exports Order 2005 (S.I. No. 884 of 2005) continues in force after the commencement of that subsection.

Short title and commencement.

12.—(1) This Act may be cited as the Control of Exports Act 2008.

(2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.