STATUTORY INSTRUMENTS

2004 No. 3102

OVERSEAS TERRITORIES

The Trade in Goods (Control) (Overseas Territories) Order 2004

Made - - - - 16th December 2004

At the Court at Buckingham Palace, the 16th day of December 2004

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 16(5) of the Export Control Act 2002(**1**) is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows: —

Citation

1. This Order may be cited as the Trade in Goods (Control) (Overseas Territories) Order 2004.

Extent and interpretation

2.—(1) This Order shall extend to the territories listed in Schedule 1.

(2) In the application of this Order to any of the said territories —

(a) the expression "the Territory" means that territory;

(b) any reference to "the Governor" means the Governor or other officer administering the Government of that territory; and

(c) any reference to the official gazette of a Territory includes a reference to any form in which official information is normally made available in that Territory.

(3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in Schedule 2 or, as applicable, in Schedule 5.

Extension of Order to territories

3. The Trade in Goods (Control) Order 2003(**2**) (the "UK Order"), as modified in Schedule 2, extends to the territories listed in Schedule 1.

(**1**) 2002 c. 28.
(**2**) S.I. 2003/2765.

Guidance about the exercise of functions under this Order

4. Section 9 of the Export Control Act 2002 (guidance about the exercise of functions under control orders), as modified in Schedule 3, extends to the territories listed in Schedule 1.

Modification of Schedule 4 (Restricted Goods)

5.—(1) Where any modification is made to the Schedule to the UK Order, whether before or after the coming into force of this Order in the Territory, the Governor shall, by order published in the official gazette of the Territory, make the like modification to Schedule 4.

(2) An order under paragraph (1) may make transitional provisions in connection with any modification made by the order.

Application to the Sovereign Base Areas of Akrotiri and Dhekelia of provisions relating to penalties for offences and proceedings

6. Schedule 5 shall have effect for the application of articles 9, 10 and 11 of the UK Order, as modified in Schedule 2, to the Sovereign Base Areas of Akrotiri and Dhekelia.

Exercise of powers of the Governor

7. The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate, or authorise the delegation of, any of his powers under this Order to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

TERRITORIES TO WHICH THE ORDER EXTENDS

Anguilla

Bermuda

Cayman Islands

Falkland Islands

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena and Dependencies

South Georgia and the South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 3

PROVISIONS OF THE TRADE IN GOODS (CONTROL) ORDER 2003 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Commencement and application

1.—(1) This Order shall be extended to each Territory listed in Schedule 1 on such day as the Governor may by order, published in the official gazette of the Territory, appoint.

(2) Paragraphs 3(1) and 4 apply to any person within a Territory and paragraph 3(2) applies to any person elsewhere who is a United Kingdom person.

Interpretation

2.—(1) In this Order: —

"to acquire" in relation to "controlled goods", means to buy, hire, borrow or to accept them as a gift, and cognate expressions shall be construed accordingly;

"the Act" means the Export Control Act 2002(**3**);

"controlled goods" means goods used and unused, for the time being listed in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(**4**) as extended to the Territory by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control)(Overseas Territories) Order 2004(**5**), the transfer, acquisition or disposal of which are prohibited by this Order, but does not include goods which are "restricted goods". For the avoidance of doubt, "controlled goods" does not include software and technology;

"country" includes territory;

(**3**) 2002 c. 28.
(**4**) S.I. 2003/2764, as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.
(**5**) S.I. 2004/3101.

"customs authorities" means the authorities which, under the law of the Territory, have responsibility for the control of imports and exports;

"to dispose of" in relation to "controlled goods", means to sell, let on hire, lend or to give them as a gift, and cognate expressions shall be construed accordingly;

"goods in transit" means any controlled goods imported into the Territory for transit or transhipment;

"restricted goods" means goods, both used and unused, specified in Schedule 4 which would otherwise be "controlled goods", the supply and delivery of which are prohibited by this Order;

"a third country" means any country that is not the Territory;

"transfer" means to move "controlled goods" over which one has rights of disposal from one third country to another third country;

"the UK Order" means the Trade in Goods (Control) Order 2003(**6**); and

"United Kingdom person" means a United Kingdom national or a body incorporated or constituted under the law of the Territory, and, for the purposes of this definition, a United Kingdom national is an individual who is ordinarily resident in the Territory and is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas), a person who under the British Nationality Act 1981(**7**) is a British subject, or a British protected person within the meaning of that Act.

(2) Any reference in this Order to time after an event is a reference to a period of that length of time beginning on the day after that event.

Supply and delivery of restricted goods

3.—(1) Subject to the provisions of this Order, no person shall directly or indirectly —

(a) supply or deliver;

(b) agree to supply or deliver; or

(c) do any act calculated to promote the supply or delivery of,

any restricted goods, where that person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly —

(a) supply or deliver;

(b) agree to supply or deliver; or

(c) do any act calculated to promote the supply or delivery of,

any restricted goods, where that person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country.

(3) Sub-paragraph (1) applies to any act, or any part of any act, done in the Territory.

(4) Sub-paragraph (2) applies to any act, or any part of any act, done outside the Territory.

(5) Sub-paragraphs (1) and (2) do not apply to any restricted goods that are present in the Territory unless they are goods in transit.

(6) For the purpose of sub-paragraphs (1) and (2), restricted goods that are goods in transit shall be considered to be located in a third country.

(**6**) S.I. 2003/2765.
(**7**) 1981 c. 61.

(7) Nothing in sub-paragraph (1) or (2) shall be taken to prohibit any activities authorised by a licence in writing granted under this Order or under any other order made under the Act, provided that all the conditions attaching to the licence are complied with.

(8) Nothing in sub-paragraph (1)(b) or (c) or (2)(b) or (c) shall apply where the supply or delivery of the restricted goods to the person or place concerned is authorised by a licence in writing granted under this Order or under any other order made under the Act.

Transfer, acquisition or disposal of controlled goods

4.—(1) Subject to the provisions of this Order, no person shall —

(a) arrange the transfer of controlled goods from one third country to another third country; or

(b) acquire or dispose, or agree to acquire or dispose, of any controlled goods, where that person knows or has reason to believe that such an acquisition or disposal will or may result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no person shall —

(a) arrange or negotiate; or

(b) agree to arrange or negotiate,

a contract for the acquisition or disposal of any controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(3) Subject to the provisions of this Order, no person shall in return for a fee, commission or other consideration —

(a) do any act; or

(b) agree to do any act,

calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(4) Sub-paragraphs (1), (2) and (3) apply to any act, or any part of any act, done in the Territory.

(5) Sub-paragraphs (1), (2) and (3) shall not apply to any person whose sole involvement in relation to the transfer, acquisition or disposal of any controlled goods is to provide or agree to provide —

(a) transportation services,

(b) financing or financial services,

(c) insurance or reinsurance services, or

(d) general advertising or promotion services.

(6) Sub-paragraphs (1), (2) and (3) do not apply to controlled goods that are present in the Territory unless they are goods in transit.

(7) For the purposes of sub-paragraphs (1), (2) and (3), controlled goods that are goods in transit shall be considered to be located in a third country.

(8) Nothing in sub-paragraph (1), (2) or (3) shall be taken to prohibit any activities authorised by a licence in writing granted under this Order or under any other order made under the Act, provided that all conditions attaching to the licence are complied with.

LICENCES

Granting and revocation of licences etc

5.—(1) The Governor may grant licences authorising any act that would otherwise be prohibited under this Order.

(2) Any licence granted by the Governor in pursuance of this Order may be —

(a) either general or individual;

(b) limited so as to expire on a specified date unless renewed; and

(c) subject to, or without, conditions and any such condition may require any act or omission before or after the doing of the act authorised under that licence.

(3) Any licence granted under this Order shall be in writing and may be amended, suspended or revoked by the Governor at any time and in such circumstances and on such terms as he thinks fit by serving a notice to that effect on the holder of the licence.

Registration with the Governor

6.—(1) Not later than 30 days after any person first does any act under the authority of any general licence granted by the Governor that does not provide otherwise, that person shall give to the Governor written notice of his name and the address at which copies of the records referred to in paragraph 7(1) may be inspected by any person authorised by the Governor or the customs authorities under paragraph 7(4).

(2) A person who has given to the Governor written notice of particulars under sub-paragraph (1) shall, not later than 30 days after any change in those particulars, give to the Governor written notice of the changed particulars.

Record keeping and inspection

7.—(1) Any person who does any act under the authority of any general licence under this Order shall keep registers or records in accordance with this paragraph.

(2) The registers or records shall contain sufficient detail as may be necessary to allow the following information to be identified —

(a) a description of the restricted or controlled goods that have been supplied, delivered, transferred, acquired or disposed of, or for which arrangements or negotiations for their acquisition or disposal have been made or entered into;

(b) the date or the period of time over which the relevant activities relating to the supply, delivery, transfer, acquisition or disposal of the restricted or controlled goods were carried out;

(c) the quantity of the restricted or controlled goods;

(d) the name and address of the end-user of the restricted or controlled goods;

(e) the name and address of the supplier of the restricted or controlled goods; and

(f) any further information required to be kept by the Governor.

(3) The registers or records referred to in sub-paragraph (1) shall be kept for at least 4 years from the end of the calendar year in which the authorised act took place.

(4) The person referred to in sub-paragraph (1) shall permit any such records to be inspected and copied by any person authorised by the Governor or the customs authorities.

(5) Any person authorised by the Governor or the customs authorities shall have the right, on producing, if required to do so, a duly authenticated document showing his authority, at any

reasonable hour to enter for the purpose of sub-paragraph (4) the premises, the address of which has been most recently notified to the Governor under paragraph 6.

(6) Where the registers or records required to be maintained under this paragraph are kept in a form which is not legible the person required under sub-paragraph (1) to maintain such records shall at the request of the person authorised by the Governor or the customs authorities, as the case may be, reproduce such registers or records in a legible form.

Licence refusals etc. and appeals

8.—(1) In the event that the Governor decides not to grant a licence under this Order to any person who has applied for a licence, that person shall be provided with a written notification setting out the reason or reasons for the decision.

(2) In the event that the Governor decides to suspend a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the terms of the suspension and the reason or reasons for the decision.

(3) In the event that the Governor decides to revoke a licence that has been granted under this Order, the licence holder shall be provided with a written notification setting out the reason or reasons for the decision.

(4) Any person who has had a licence application refused under paragraph 5 or who has had a licence suspended or revoked under that paragraph shall have 28 calendar days from the date of the written notification in which to submit an appeal in writing to the Governor.

(5) Any appeal submitted under sub-paragraph (4) shall specify the grounds on which that appeal is made and may provide further information or arguments in support of the appeal.

(6) Pending determination of any appeal submitted under sub-paragraph (4), any decision taken by the Governor shall continue to have effect.

GENERAL

Offences and penalties

9.—(1) Any person who contravenes a prohibition in paragraph 3 or 4 shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or the equivalent.

(2) Any person knowingly concerned in the supply, delivery, transfer, acquisition or disposal of any restricted or controlled goods with intent to evade any prohibition or restriction in paragraph 3(1) or 4 shall be guilty of an offence.

(3) Any person knowingly concerned in the supply or delivery of any restricted goods with intent to evade any prohibition or restriction in paragraph 3(2) shall be guilty of an offence.

(4) A person guilty of an offence under sub-paragraph (2) or (3) shall be liable —

(a) on summary conviction to a fine not exceeding £5,000 or the equivalent or to imprisonment for a term not exceeding six months, or to both; or

(b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both.

(5) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(7) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

(8) No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

Misleading applications for licences etc.

10.—(1) Where for the purpose of obtaining a licence under this Order any person either —

(a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular; or

(b) recklessly makes any statement or furnishes any document or information which is false in a material particular,

he shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) shall be liable —

(a) on summary conviction to a fine not exceeding £5,000 or the equivalent; or

(b) on conviction on indictment, to a fine of any amount, or to imprisonment for a term not exceeding two years, or to both,

and any licence which may have been granted by the Governor in connection with the application for which the false statement was made or the false document or information was furnished shall be void as from the time it was granted.

Failure to comply with licence conditions

11.—(1) Subject to sub-paragraph (3), any person who —

(a) has done any act under the authority of a licence granted by the Governor under this Order, and

(b) fails to comply with —

(i) any conditions attaching to that licence;

(ii) any obligation under paragraph 6; or

(iii) any obligation under paragraph 7,

shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (1) shall be liable —

(a) on summary conviction to a fine not exceeding £5,000 or the equivalent; or

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

(3) No person shall be guilty of an offence under sub-paragraph (1) where —

(a) the licence condition in question had been previously modified by the Governor; and

(b) the alleged failure to comply would not have been a failure had the licence not been so modified; and

(c) the condition with which he failed to comply was modified by the Governor after the doing of the act authorised by the licence.

Application of customs and excise law

12.—(1) It shall be the duty of the customs authorities to take such action as they consider appropriate to secure the enforcement of paragraphs 3, 4, 10 and 11 and any obligation arising under paragraph 7 insofar as the obligation relates to the powers of the customs authorities.

(2) The provisions of the law of the Territory relating to proceedings for offences, mitigation of penalties, proof and other matters in respect of the control of imports and exports apply in relation to offences and penalties under this Order, and proceedings for such offences, as they apply in relation to offences and penalties and proceedings for offences under those provisions.

(3) For the purposes of this Order, offences other than those in respect of which a duty is imposed upon the customs authorities by virtue of sub-paragraph (1) shall not be offences in respect of which, under any law of the Territory relating to the control of imports and exports, proceedings may be taken only by, or by order of, the customs authorities.

Use and disclosure of information

13.—(1) This paragraph applies to information which is held by —

(a) the Governor; or

(b) the customs authorities,

in connection with the operation of controls imposed by this Order, on activities which facilitate or are otherwise connected with the supply or delivery of restricted goods or the transfer, acquisition or disposal of controlled goods.

(2) Information to which this paragraph applies may be used for the purposes of, or for any purposes connected with —

(a) the exercise of functions in relation to any control imposed by this Order or by any other order made under the Act;

(b) giving effect to any European Community or other international obligation of the United Kingdom;

(c) facilitating the exercise by an authority or international organisation outside the Territory of functions which correspond to functions conferred by or in connection with any activity subject to control by this Order or any other order made under the Act; and

may be disclosed to any person for use for these purposes.

(3) No disclosure of information shall be made by virtue of this paragraph unless the making of the disclosure is proportionate to the object of the disclosure.

(4) For the purposes of this paragraph, "information" is any information that relates to a particular business or other activity carried on by a person.

(5) Nothing in this paragraph shall be taken to affect any power to disclose information that exists apart from this paragraph.

(6) The information that may be disclosed by virtue of this paragraph includes information obtained before the commencement of this Order.

Service of notices

14. Any notice to be given by any person under this Order may be given by an agent of that person and shall be sent by post or delivered to the Governor at an address specified in the official gazette of the Territory.

SCHEDULE 3

Article 4

SECTION 9 OF THE EXPORT CONTROL ACT 2002 AS EXTENDED TO THE OVERSEAS TERRITORIES LISTED IN SCHEDULE 1

Section 9 of the Export Control Act 2002 extends to each of the territories listed in Schedule 1, modified as follows:

"**9.**—(1) This section applies to licensing powers and other functions conferred on any person by the Trade in Goods (Control) (Overseas Territories) Order 2004 in the territories to which that Order extends.

(2) The Governor shall publish in such manner as he may think fit any guidance given and published (or treated as given and published) by the Secretary of State under this section as it applies in the United Kingdom relevant to the exercise of the powers and other functions to which this section applies in the Territory, with such exceptions and modifications as appear to the Governor to be appropriate.

(3) Any person exercising a licensing power or other function to which this section applies shall have regard to any guidance which relates to that power or other function.

(4) In the application of this section to any of the said territories, "the Territory" means that territory and "the Governor" means the Governor or other officer administering the Government of that territory.".

SCHEDULE 4

Article 5

RESTRICTED GOODS

The following are restricted goods for the purposes of this Order:

Certain Security and Para-Military Police Equipment

1. Any good falling within paragraph c. or g. of PL5001 in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(**8**) as extended to the Territory by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004(**9**).

Certain Missiles

2. Missiles capable of a range of 300km or more, and specially designed components therefor.

SCHEDULE 5

Article 6

APPLICATION TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA OF PROVISIONS RELATING TO PENALTIES FOR OFFENCES AND PROCEEDINGS

1. Any person who commits an offence under paragraph 9(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or the equivalent.

(**8**) S.I. 2003/2764 as amended by S.I. 2004/1050, 2004/2561 and 2004/2741.
(**9**) S.I. 2004/3101.

2. Any person who commits an offence under paragraph 9(2) or (3) of Schedule 2 shall be liable on conviction –

(1) if tried on information before the Senior Judge's Court, to a fine of any amount, or to imprisonment for a term not exceeding ten years, or to both;

(2) if tried before the Judge's Court, to a fine not exceeding £5,000 or the equivalent, or to imprisonment for a term not exceeding six months, or to both.

3. Any person who commits an offence under paragraph 10(1) or 11(1) of Schedule 2 is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine of any amount.

4. Where a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly

5. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

6. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction where that person is for the time being.

7. No proceedings for an offence under this Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions, but this sub-paragraph shall not prevent the arrest, or the issue or the execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings has not been obtained.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Export Control Act 2002 (2002 c. 28) (the Act), extends with modifications the Trade in Goods (Control) Order 2003 (S.I.2003/2765) (the UK Order) to the territories listed in Schedule 1. It controls the trade between one overseas country and another of military and para-military goods and specified missiles for the time being listed in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I. 2003/2764, as amended by S.I. 2004/1050, 2004/2561 and 2004/2741) as extended to those overseas territories by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004 (S.I. 2004/3101). In this Order these goods are referred to as "controlled goods". Further controls are imposed on "restricted goods" as listed in Schedule 4. The controls in this Order do not apply to software or technology or to activities connected to trade in controlled goods that are situated in a territory (with the exception of goods in transit via the territory).

In relation to restricted goods, paragraph 3 of Schedule 2 prohibits any person within a territory, or a United Kingdom person (as defined in the Order) elsewhere, from supplying or delivering, or doing any act calculated to promote the supply or delivery of, restricted goods without a licence from the Governor (or a licence granted under any other order made under the Act).

In relation to controlled goods, paragraph 4 of Schedule 2 prohibits any person in a territory from transferring, acquiring or disposing, or arranging or negotiating a contract for the acquisition or disposal, of controlled goods without a licence from the Governor (or a licence granted under any other order made under the Act). In addition, the provisions on controlled goods prohibit any person in a territory in return for a fee, commission or other consideration from doing any act or agreeing to do any act, without a licence, which would promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods where that person knows or has reason to believe that the goods will be moved from one third country to another third country.

Schedule 2 exempts persons whose sole involvement in the movement of controlled goods from one overseas country to another is to provide transport, finance, insurance or general advertising or promotion services.

The remaining paragraphs in Schedule 2 do the following:

Paragraphs 5-7 provide for the issuing of licences by the Governor, registration, record keeping and inspection and licence refusals and appeals;

Paragraphs 8-12 provide for offences, enforcement and penalties for the breach of the controls;

Paragraph 13 sets out the purposes for which information obtained by the Governor, or the customs authorities, can be disclosed; and

Paragraph 14 states the address where notices to be given by any person under this Order are to be sent.

Schedule 3 extends with modifications the provisions of section 9 of the Export Control Act 2002 to the territories listed in Schedule 1.

Schedule 4 to this Order sets out the goods which are restricted under this Order and article 5 provides for the Governor to make modifications to Schedule 4 in the event of modifications to the Schedule to the UK Order.

Schedule 5 provides for offences, enforcement and penalties for the breach of the controls in respect of the Sovereign Base Areas of Akrotiri and Dhekelia.