



STATUTORY INSTRUMENTS.

S.I. No. 201 of 2021

EUROPEAN UNION (CONTROL OF TRADE IN GOODS THAT MAY BE
USED FOR TORTURE) REGULATIONS 2021.

EUROPEAN UNION (CONTROL OF TRADE IN GOODS THAT MAY BE USED FOR TORTURE) REGULATIONS 2021.

I, LEO VARADKAR, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving full effect to Regulation (EU) 2019/125 of the European Parliament and of the Council¹, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Control of Trade in Goods that may be used for Torture) Regulations 2021.

2.

(1) In these Regulations –

- (a) “appeals officer” means an officer acting under the authority of the Minister to review a decision to refuse to grant an export authorisation;
- (b) “applicant” means an individual or entity that has applied for an export authorisation;
- (c) “authorisation” means the authorisation that is required under the EU Regulation in order to export such of the goods to which the EU Regulation applies, the export of which may take place under the EU Regulation and which are listed in Annex III of the EU Regulation;
- (d) “EU Regulation” means Regulation (EU) 2019/125 of the European Parliament and of the Council concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment¹ as amended by the European acts specified in Schedule 1;
- (e) “goods to which the EU Regulation applies” means –
 - i. goods, the export of which is prohibited under Article 3 of the EU Regulation, or the import of which is prohibited under Article 4 of the EU Regulation and which are listed in Annex II of the EU Regulation, or
 - ii. goods, the export of which may take place under the EU Regulation and which are listed in Annex III of the EU Regulation;
- (f) “Minister” means the Minister for Enterprise, Trade and Employment.
- (g) “prescribed period” means the time period set out in Regulation 6.

¹ OJ L 30, 31.1.2019, p.1

(2) A word or expression that is used in these Regulations and is also used in the EU Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EU Regulation.

3.

(1) The Minister is the competent authority in the State for the purposes of the EU Regulation and these Regulations.

(2) The Minister is responsible for the obligations provided for in Articles 10(2), 14(3), 15(4), 20(1), 21(3), 23(1), 23(3), 26(1), 26(3) and 33(2) of the EU Regulation.

4.

(1) The Minister may appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of ensuring compliance with the EU Regulation and these Regulations.

(2) The Minister shall furnish an authorised officer with a warrant of his or her appointment and when exercising a power conferred by these Regulations, the authorised officer shall, if requested by a person affected, produce the warrant or a copy of it to that person for inspection.

(3) The Minister may terminate the appointment of an authorised officer whether or not the appointment was for a fixed period.

(4) The appointment of an authorised officer ceases –

- (a) If it is terminated under paragraph (3)
- (b) If it is for a fixed period, on the expiry of that period, or
- (c) If the person appointed as an officer of the Minister, upon the person ceasing to be such an officer.

(5) An authorised officer may, for the purposes of ensuring compliance with the EU Regulation and these Regulations, do one or more of the following:

- (a) Subject to paragraph (6), enter at all reasonable times any place at which the authorised officer has reasonable grounds for believing that books, records or other documents relating to the EU Regulation are kept;
- (b) at such place, inspect and take copies of any books, records or other documents (including books, records or documents stored in non-legible form) that the authorised officer finds in the course of his or her inspection;
- (c) remove any such books, records or other documents from such place and return them for such period as he or she reasonable considers to be necessary for the purposes of this Regulation;
- (d) require any person at the place concerned to give the authorised officer such information and assistance as the authorised officer may reasonably require for the purposes of this Regulation;

(e) require any person at the place concerned to produce to the authorised officer such books, records or other documents (and in the case of books, records or documents stored in non-legible form, a legible reproduction thereof) that are in that person's possession or procurement, or under that person's control, as the authorised officer may reasonably require for the purposes of this Regulation.

(6) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (8) authorising such entry.

(7) Where an authorised officer in the exercise of his or her powers under this Regulation is prevented from entering any place, an application may be made to the District Court under paragraph (8) for a warrant authorising such entry.

(8) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that books, records or other documents required by an authorised officer for inspection under this Regulation are held in any place and that such inspection is likely to disclose evidence of a contravention of the EU Regulation, the judge may issue a warrant authorising the authorised officer, accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times within one month from the date of issue of the warrant, on production of the warrant, if requested, to enter (if necessary by the use of reasonable force) the place concerned and perform the functions conferred on an authorised officer under this Regulation.

(9) In this Regulation, "place" includes -

- (a) a dwelling or a part thereof,
- (b) a building or a part thereof, and
- (c) any other premises or part thereof.

5. Where the Minister decides to refuse to grant an export authorisation, the Minister shall notify in writing the applicant of the decision, the reasons for the decision, and of the appeal procedure under Regulation 6.

6. Where a person has been notified of a decision of the Minister to refuse to grant an export authorisation, the person may, not later than 28 working days from the date of the decision, appeal to the Minister.

- (a) An appeal shall be in writing setting out the grounds of the appeal and furnishing such supporting documentation as the applicant may deem necessary. An appeal shall be sent to the Minister by way of prepaid registered post no later than 28 working days from the date of the decision.

- (b) An appeal of a decision to refuse to grant an export authorisation shall be considered by an appeals officer acting under the authority of the Minister.

7. Where an appeal of a decision to refuse to grant an export is made within the prescribed period, the decision remains in effect until the date of determination of the appeal.

8. Upon the date of determination of the appeal under Regulation 6 in relation to a decision to refuse to grant an export authorisation, the appeals officer appointed by the Minister shall either confirm the decision or allow the appeal.

9. If the appeal is allowed in relation to a decision to refuse to grant an export authorisation, the Minister shall grant an export authorisation, the term of which shall be extended by the time from the receipt of the appeal to the date of determination of the appeal.

10. Where the Minister receives an appeal after the prescribed period, the Minister shall, by notice in writing, inform the applicant that his or her appeal has been received after the prescribed period has expired and that the appeal is rejected on that basis.

11.

(1) A person who-

- (a) exports or supplies technical assistance in relation to goods to which the EU Regulation applies contrary to Article 3 of the EU Regulation,
- (b) imports or accepts technical assistance in relation to goods to which the EU Regulation applies contrary to Article 4 of the EU Regulation,
- (c) exports goods to which the EU Regulation applies-
 - (i) without an authorisation, or
 - (ii) otherwise than in compliance with a condition to which the authorisation is subject imposed by the Minister,
- (d) otherwise contravenes a provision of the EU Regulation, or
- (e) for the purpose of obtaining an authorisation for himself or herself or for any other person makes to the competent authority or to any person concerned a statement or representation which is, to his or her knowledge false or misleading

is guilty of an offence.

(2) A person who—

- (a) obstructs or impedes an authorised officer in the exercise of his or her powers under Regulation 4,
- (b) Without reasonable excuse, fails to comply with any requirement made by an authorised officer under Regulation 4 or in purported compliance with such a requirement gives the authorised officer information which is false or misleading in a material respect is guilty of an offence.

is guilty of an offence.

(3) A person guilty of an offence under this Regulation shall be liable –

- (a) On summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or both, or
- (b) On conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or both.

(4) (a) Where-

- (i) an offence under this Regulation is committed by a body corporate and,
- (ii) is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person who was either-
 - (I) a director, manager, secretary or other officer of the body corporate, or
 - (II) a person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

- (b) Where the affairs of a body corporate are managed by its members paragraph (a) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if he or she were a director or manager of the body corporate.

12. European Communities (Control of Trade in Goods That May Be Used for Torture) Regulations 2019 (S.I. No. 455 of 2019) are revoked.



GIVEN under my Official Seal,
27 April, 2021.

LEO VARADKAR,
Minister for Enterprise, Trade and Employment.

Schedule 1

1. Commission Delegated Regulation (EU) 2021/139 of 4 December 2020²

² OJ L 43, 8.2.2021, p.5

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