

Export Controls: In-depth

Summary

Export controls are governed by certain criteria laid down by the UK Government in conjunction with EU and international policy in general. They apply to high-technology goods, products specially designed or modified for military purposes, certain chemical precursors and items that could be used in connection with weapons of mass destruction.

This topic provides a summary of the current controls and shows how to check with the relevant government department whether a proposed export requires approval under these rules.

In Practice

How Export Controls Operate

It is estimated that only about 5% of UK exports are subject to export control but if you are an exporter of high-technology goods, goods specially designed or modified for military purposes, certain chemical precursors, or products that can be used in connection with weapons of mass destruction (WMDs) eg, chemical, biological or nuclear weapons (or the means of delivering the same), you must maintain a compliance procedure that will keep you within the law. Contravention of the export licensing system is a breach of the law and is subject to penalties of varying severity up to a maximum of 10 years' imprisonment.

The full control lists are accessible through the Department for Business, Innovation and Skills (BIS) Export Control Organisation (ECO) pages of the www.gov.uk website.

Government Policy on Arms Export

The Consolidated EU and National Arms Export Licensing Criteria spell out the Government's attitude to the export of arms and other controlled goods. The eight criteria are as follows.

1. "Respect for the UK's international commitments, in particular sanctions decreed by the United Nations (UN) Security Council and those decreed by the European Union, agreements on non-proliferation and other subjects, as well as other international obligations."
2. "The respect of human rights and fundamental freedoms in the country of final destination."
3. "The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts."
4. "Preservation of regional peace, security and stability."
5. "The national security of the UK, of territories whose external relations are the UK's responsibility, and of allies, EU Member States and other friendly countries."
6. "The behaviour of the buyer country with regard to the international community as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law."
7. "The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions."
8. "The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources."

What the Controls Cover

Apart from the categories of goods and technology that are traditionally controlled, in May 2004 the Export Control Act brought the following activities under control. These controls are covered in the current Export Control Order 2008 (as amended).

Intangible Transfer of “Controlled” Technology and Software

This relates in the main to military list products, including certain paramilitary products. Technology means specific information necessary for the “development”, “production” or “use” of “goods” or “software”. Each of these terms is further defined in the legislation.

This control is intended to close a loophole in the law relating to military goods, in that tangible technology in physical form was controlled but not technology transferred to overseas parties by fax, email, telephone or other electronic means.

Trade (Trafficking and Brokering)

Two orders cover the following classes of goods:

- military goods (UK military list), including certain missiles and their components
- paramilitary goods banned because of their use in torture
- military goods to embargoed destinations.

This control gave a legal basis for prosecution, particularly of arms and weapon dealers, where the goods are traded between countries outside the UK but where some, or all, of the activity in arranging or facilitating the activity takes place within the UK.

Weapons of Mass Destruction (WMD) Activity

The new legislation reflected the Government’s “zero tolerance” of activity contributing in any way towards trade in this unacceptable area. Powers to prosecute under the new act apply to UK nationals wherever they may be in the world and will extend to those who are only marginally involved, eg transportation providers, advertising agents, financial service providers, etc. Technical assistance given anywhere in the world in connection with WMD is subject to licence approval.

Strategic export controls imposed both nationally and by the EU in the case of dual-use goods apply to a wide range of goods and technologies, including:

- military equipment such as arms, ammunition, bombs, tanks, imaging devices, military aircraft and warships
- nuclear-related items, including nuclear materials, nuclear reactors and nuclear processing plant
- dual-use items, ie items designed for civil use but which can be used for military purposes; these include certain:
 - materials
 - machine tools
 - electronic equipment
 - computers
 - telecommunication equipment
 - cryptographic goods
 - sensors and radar, navigation and avionics equipment
 - marine equipment
 - space and propulsion equipment
- chemical weapon precursors and related equipment and technology
- certain micro-organisms, biological equipment and technology
- goods used in programmes involved in WMD and missiles used for their delivery.

Do My Goods Need a Licence?

To help exporters determine whether their goods require a licence, the ECO has a web-based search tool called “Goods Checker”. This helps exporters decide whether their goods, software or technology are controlled by UK or EU strategic export control legislation.

Users must register with ECO before they use the search function and will be given a password. Having achieved a “rating”, exporters can use “OGEL Checker” to determine whether a General Licence covers the export of their goods to the destination required.

Types of Export Licence

Standard Individual Export Licence (SIEL)

This allows export of a specified amount and value of goods to a specific destination for a specified amount of time. The licence for permanent exports will generally be valid for two years and for temporary exports (ie exhibition, trial or evaluation) for one year.

Open Individual Export Licence (OIEL)

This licence is specific to the individual exporter. It covers multiple shipments not limited by value or quantity to a specified consignee or consignees in one or more countries. It does not have to be produced at export points but the licence number must be annotated on the shipping invoice. Electronic declarations under New Export System (NES) must bear the licence number. Customs points throughout the UK receive notification of all OIELs from the licensing authority. Companies using OIELs to export will be audited regularly by the ECO.

Open General Export Licence (OGEL)

This licence allows the export of specified controlled goods by any UK exporter without the need to apply for a specific SIEL or OIEL.

OGELs allow exporters to export different classes of goods to specified destinations and also may exclude certain classes of goods to certain destinations. The title of the particular OGEL you are using must be recorded on the shipping declarations.

To help you check if an OGEL applies to your goods or technology and the destination to which you wish to supply you can use the web-based search tool, known as the OGEL Checker, available on the ECO website. Before you start to use OGEL Checker you must know the Control List entry reference(s), also known as “the rating”, that apply to your goods, software or technology. If you don’t know the Control List entry already you can probably find it by using the Goods Checker. In addition, you will need to check if your company has been informed that an end-use control applies. You will also need to have made reasonable enquiries as to the proposed end-use of the items, particularly if they could – or you suspect they could – be used for WMD. Companies using OGELs to export will be audited regularly by the ECO.

Types of OGEL

The following are all the current categories for UK OGELs.

- Military Goods
- Dual use Goods
- Trade Controls
- Transshipment
- Other.

For guidance on how to comply with and register for OGELs, see the *Guidance Note on Open General Licences and the Union General Export Authorisation* on the ECOsection of GOV.UK. For more general information on licences see *A Beginners Guide to Controls Administered by ECO* on the same site.

Union General Export Authorisation (UGEA)

The UGEA is the EU equivalent of an OGEL, and concerns the control of exports of dual-use items and technology. They are EU-wide licences valid in all 28 Member States of the EU. There are six UGEAs. The following countries are covered under the UGEA – EU001 which covers all dual-use goods except those described in Annex IV:

- Australia
- Canada
- Japan
- New Zealand
- Norway
- Switzerland (including Liechtenstein)
- USA.

EU002 – export of certain Dual-Use Items to certain destinations

- Countries: Argentina, Iceland, South Africa, South Korea, Turkey

EU003 — Export After Repair/Replacement

- Long list of approved destinations

EU004 — Temporary Export for Exhibition or Fair

- 28 approved destinations

EU005 — Telecommunications

- Countries: Argentina, China (including Hong Kong), Russia, South Africa, South Korea, Turkey, Ukraine

EU006 — Chemicals

- Countries: Argentina, Iceland, South Korea, Turkey, Ukraine

Whose responsibility is it to check whether to use a particular OGEL or EU GEA?

It is your responsibility if you are the exporter to ensure that you are using the correct licence whether that it is an OGEL, EU GEA (or if an appropriate open licence does not meet your exporting requirements then you must apply for a Standard Individual Export Licence (SIEL) or an Open Individual Export Licence (OIEL) as appropriate.

Contract Licence

For long-running contracts that are planned to exceed the validity period of a normal export licence (SIEL or OIEL), a contract licence can be negotiated with the licensing authority allowing exports to be made over the life of the contract.

Global Project Licence

Intended to benefit multi-nation framework agreements for the supply of weapon or defence systems, this licence allows for the export and import between the parties of equipment, parts, accessories, etc, usually with no limit on quantity and value. More information about this fairly rare type of licence is available from ECO.

SPIRE

The Shared Primary Information Resource Environment (SPIRE) is ECO's system for processing licence applications. It went live in September 2007, replacing all other licence application systems. In 2015, the ECO started a project looking at replacing/upgrading SPIRE.

SPIRE also allows traders to register for the use of OGELs and apply for a rating request. It has been aligned with CHIEF (the UK Customs system for handling import and export declarations) for Automatic Licence Verification (ALV) of BIS export licences.

After a company has registered on SPIRE, a letter will be sent to the company secretary for confirmation that the party entering the details onto SPIRE is approved to do so. You will need to set up your company details on SPIRE to allow you to register for the use of OGELs, request export licence ratings and apply for export licences (all types) online. The SPIRE website also contains details on how to register your company.

Box 44 on the C88/SAD/NES will have to be coded correctly to show which type of licence is being used and, very importantly, if it is a SIEL the export declaration has to be correctly decremented, ie the quantity for each specific licence line item must be correctly recorded.

Sanctions and Embargoes

The UN, EU and national governments are empowered to bring sanctions and embargoes to bear on a particular country for a variety of reasons, usually involving regional conflicts and transgressions of international conventions. The Foreign and Commonwealth Office (FCO) and the BIS-ECO website are the most easily accessible sources of information. Also, enquiries in this respect can be addressed to the Sanctions Unit at BIS.

Compliance Code

ECO has a comprehensive Compliance Code of Practice. This document gives invaluable advice on such matters as introducing a climate of export control compliance within your company, how to recognise and deal with suspicious enquiries from overseas, etc.

Users of OIELs and OGELs will need to be aware that their records can be audited by the Compliance Unit of the ECO. To satisfy this audit, exporters will need to demonstrate their understanding of the control legislation, and show that adequate safeguards are in place within the company and that good records are maintained for examination by the authorities.

Amendment to the Relevant Legislation

In June 2008, ECO announced changes to its Export of Goods, Transfer of Technology, and Provision of Technical Assistance (Control) Order 2003 (the 2003 Order) as a result of the Wassenaar Arrangement review. The relevant amendment first appeared in the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Amendment) Order 2008 (SI 2008 No. 1281) (the Amending Order) which in December 2008 became the Export of Goods Order 2008 (SI 2008 No. 3231). Amendments have been made to this Order since 2008, the latest being in April 2015. The Export Control (Amendment) (No. 2) Order 2015 (SI 2015 No. 940) made changes to Schedule 1, 2 and 3 of the Order.

The Export of Goods Control Order 2008 (as amended) covers the following.

UK Military List

Prohibited goods, software and technology; military, security and paramilitary goods, software and technology and arms, ammunition and related material.

UK Explosive-related List

Prohibited dual-use explosive-related goods and technology.

UK Dual-use List

Prohibited dual-use goods, software and technology.

Dual-use items are goods, software or technology (documents, diagrams, etc) that can be used for both civil and military applications. They can range from raw materials and components to complete systems, eg aluminium alloys, bearings or lasers. They could also be items used in the production or development of military goods, eg machine tools, chemical manufacturing equipment and computers.

EU Human Rights List (Annexes 11 and 111 of the 2005 EC Regulation)

Prohibited Goods to non-EU Member States that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

UK National Security and Paramilitary List

Prohibited security and para-military goods to destinations in EU Member States.

UK National Radioactive Sources List

Prohibited radioactive sources.

EC Regulations Annex 1

List of dual-use items and technology prohibited from export to non-EU Member States. The list is divided into 10 categories:

- Category 0: Nuclear Materials, Facilities and Equipment
- Category 1: Materials, Chemicals, Micro-Organisms and Toxins
- Category 2: Materials Processing
- Category 3: Electronics
- Category 4: Computers
- Category 5: Telecommunications and Information Security
- Category 6: Sensors and Lasers
- Category 7: Navigation and Avionics
- Category 8: Marine
- Category 9: Aerospace and Propulsion.

Union General Export Authorisation (Annex 11 of the EC Regulation)

Dual-use items included in the Union General Export Authorisation (UGEA) Annex IV require an export licence to all destinations, including those in an EU Member State.

Certain other categories of goods may require export authorisation from other public bodies as below.

- Antiques and works of art — authority required from the Department of Culture, Media and Sport (tel: 020 7211 6166).
- Precursor chemicals and reagents used in drug manufacture and certain dangerous drugs — contact the Home Office (tel: 020 7273 3484 or 2620).
- Certain chemicals (mainly pesticides) require a Prior Informed Consent (PIC) before exportation — contact the Health and Safety Executive (tel: 020 7717 6286).
- Prescription drugs, medicine control — Department of Health (tel: 020 7273 0616).
- Export of certain live animals — Defra, www.defra.gov.uk/animalh/int-trade/gen-inf/contacts.
- Food, International Agriculture and Technology Centre — www.theiatc.org.
- Export certificates for a range of food and drink products — contact Defra.
- Plants, plant products, seeds — contact Defra.
- Veterinary medicinal products — contact the Veterinary Medicines Directorate, www.vmd.gov.uk

Further Information

Organisations

Department for Environment, Food & Rural Affairs (Defra)

<https://www.gov.uk/government/organisations/department-for-environment-food-r...>

Defra is the government department that deals with waste, water and other environmental issues. It consults on new regulations and provides guidance on legislation and best practice.

Department for Digital, Culture, Media & Sport (DCMS)

<http://www.gov.uk/dcms>

The DCMS is a UK government department that aims to promote quality of life through sporting activities, and to champion the tourism and leisure industries. It also deals with citizenship and citizenship tests and ceremonies. It is supported by 43 agencies and public bodies.

Export Control Organisation (ECO)

<http://www.gov.uk/about-the-export-control-organisation>

The first point of contact for all export control matters, including SPIRE. The ECO is responsible for legislating, assessing and issuing export licences for specific categories of “controlled” goods. This encompasses a wide range of items including so-called dual-use goods, torture goods and radioactive sources, as well as military items.

International Agri-Technology Centre

<http://www.theiatc.org>

The IATC is a government-supported organisation dedicated to promoting UK skills and expertise in the agri-food and related technologies sector.

Home Office

<https://www.gov.uk/government/organisations/home-office>

The Home Office is the government department responsible for internal affairs in England and Wales. It deals with issues such as passports and immigration, drugs and crime policies, and counter-terrorism.

Health and Safety Executive (HSE)

<http://www.hse.gov.uk>

The HSE is responsible for the regulation of the risks to health and safety arising from work activity in England, Scotland and Wales, except in certain businesses (regarded as lower risk), which are the responsibility of local authorities. Its roles are to prevent work-related death, injury or ill health. It is an enforcement agency for transport of dangerous goods issues by road and rail.

Department of Health and Social Care (DHSC)

<http://www.gov.uk/government/organisations/department-of-health-and-social-care>

The Department of Health and Social Care (DHSC) helps people to live better for longer. We lead, shape and fund health and social care in England, making sure people have the support, care and treatment they need, with the compassion, respect and dignity they deserve.

Veterinary Medicines Directorate

<https://www.gov.uk/government/organisations/veterinary-medicines-directorate>

The Veterinary Medicines Directorate is the Executive Agency responsible for issues concerning the use and manufacture of veterinary medicines in the UK.



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