

A Brief Introduction to UK Export Controls

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Why do we have export controls?

- To promote global security through strategic export controls, facilitating responsible exports
- We control the irresponsible export of arms, ammunition and related materiel which could contribute to regional instability or internal repression, and goods intended for civil purposes which can also contribute to the destabilising build-up of conventional arms or the development of weapons of mass destruction and the missiles to deliver them.

Legislation

- Export Control Act 2002
 - Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (the “Main Order”)
 - Trade in Goods (Control) Order 2003
 - Trade in Controlled Goods (Embargoed Destinations) Order 2004
 - Export of Radioactive Sources (Control) Order 2006
- Council Regulation (EC) No. 1334/2000 (the Dual Use Reg)
- Council Regulation (EC) No. 1236/2005 (the “torture Reg”)
- Sanctions Orders

Where do the controls come from?

- Various international bodies, treaties and conventions
- UK foreign policy and defence interests
- The Military List is agreed by the Wassenaar Arrangement
- The Dual-Use lists are compiled from:
 - Wassenaar Arrangement (WA)
 - Missile Technology Control Regime (MTCR)
 - Nuclear Suppliers Group (NSG)
 - Chemical Weapons Convention (CWC)
 - Australia Group (AG)

What goods are affected?

- ‘Military List’
 - Military, security and para-military goods, software and technology and arms, ammunition and related materiel (nomenclature: MLxx or PLxx)
 - Explosive –related goods and technology (nomenclature PL8001)
 - Typically anything specially designed or modified for military use
 - Found in Schedule 1 to the Main Order
 - Require a licence for export to any destination

What goods are affected?

- Dual-Use Goods, Software and Technology
 - These are so called as they have military AND civil applications
 - Most are specified in the Annexes to the EC Reg but there are some additional national dual-use controls (found in Schedule 2 to the Main Order – nomenclature PL90xx)
 - Technical parameters must be met
 - Require a licence for export outside the EC – in most cases
 - Nomenclature – < 5 digit unique identifying entry code

What is Technology?

- “Technology” is a defined term (It means specific ‘information’ necessary for the “development”, “production” or “use” of “goods” or “software”)
- Technology includes specifications, engineering drawings, manufacturing instructions, manuals, user instructions, etc
- Technology (and software) can be transferred by physical or electronic means e.g. email, VPNs, shared data environments...
- Exclusions for information “in the public domain”, for “basic scientific research” and for patent applications

Controlled Activities

- The export or transfer of listed goods, software or technology from the UK – this applies to military and dual-use goods
- The Trade in listed military goods
 - ‘Trade’ is the UK involvement in deals which result in the movement of military goods from one third country to another.
- WMD end-use controls
 - Goods, software or technology must meet the definition of “any relevant use”
 - Need to know, have been informed, or in some cases suspect, that the goods, software or technology will be so used

Licences

- If the export, trade or WMD controls affect your goods, software or technology, a licence will be required to continue with your activities
- Types of licence:
 - Open General Licences
 - Standard Individual Licences
 - Open Individual Licences
- Decision to issue/refuse a licence is taken in accordance with the 'Consolidated Criteria'
- DTI is the licensing authority but decisions are taken on the advice of FCO, MOD & in certain cases DFID

Enforcement and Compliance

- For the physical shipment of goods under a SIEL, the licence must be presented to HMRC
- For Open Licences, commercial documentation accompanying the shipment must clearly state the licence being used
- Companies registered for open general licences, who hold open individual or trade licences, or who hold SIELs for electronic transfers only, will receive a compliance visit from the ECO
- In all cases, HMRC are the investigating and prosecuting authority

Points to Consider:

- Understand if/where/why your goods are controlled
- Think about associated software and technology
- Consider the different means by which software and technology can be transferred
- Consider all your company's activities - Trade Controls
- Know your customer - WMD controls
- Every export is an import...*and vice versa*
- Transshipment issues
- Record keeping and Compliance
- Staff training and awareness

Help and Advice

- <http://www.dti.gov.uk/europeandtrade/strategic-export-control/index.html>
- email helpline eco.help@dti.gsi.gov.uk
- Notices to Exporters and Export Control Bulletin
- Awareness Seminars
- Rating enquiry service
- GoodsChecker and OgelChecker Tools