United Kingdom: National legislation on transfer of arms, military equipment and dual-use goods and technology

**Strategic Export Control Legislation**

The basic statutory framework for export controls is set out in the Export Control Act 2002 (the “2002 Act”) which is administered by the Secretary of State for Business, Innovation and Skills. The 2002 Act includes powers to:

- impose controls on exports from the UK;
- impose controls on the transfer of technology from the UK and by UK persons anywhere by any means (other than by the export of goods);
- impose controls on the provision of technical assistance overseas;
- impose controls on the acquisition, disposal or movement of goods or on activities which facilitate such acquisition, disposal or movement (this is often referred to as trafficking and brokering or simply as “trade”);
- apply measures in order to give effect to EU legislation on controls on dual-use items (i.e. items with a civil and potential military application).

These powers are exercised through Orders (secondary legislation) made by the Secretary of State. Historically a number of Orders have been made relating to transfers of arms, military equipment and dual-use goods and technology. These are now consolidated into one order, the Export Control Order 2008 (SI. 2008/3231) (the “2008 Order”) which came into force on 6 April 2009. The 2008 Order is the main piece of domestic export control legislation. It covers export and transfer controls (Part 2), technical assistance controls (Part 3) and trade (“trafficking and brokering”) controls (Part 4). It deals with licensing in Part 5, and Part 6 sets out provisions for enforcement of the controls, including offences and penalties.

There are a number of important pieces of directly applicable EU legislation applying to strategic export controls, where regulation of the export from the EU of these items falls within the EU’s Common Commercial Policy. In some cases elements of this legislation is implemented or is supplemented by provisions of the 2008 Order. The most important EU legislation includes:-

- Council Regulation (EC) 428/2009 of setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (the “Dual-Use Regulation”). The Dual-Use Regulation sets out the rules for control of exports from the EU of items listed in Annex I (the “EU Dual-Use List”); and sets out the rules for transfers within the EU of items listed in Annex IV. The Dual-Use Regulation also contains controls on non-listed items subject to control where they are or may be intended for use in connection with Weapons of Mass Destruction (WMD) or for certain military end-uses – the so-called WMD and Military End-Use controls.

- EU Decisions and Regulations giving effect to United Nations Security Council Resolutions in relation to sanctions against individual countries and/or giving effect to EU sanctions against individual countries.

In addition, there is also a body of EU internal market measures dealing with intra-EU trade in strategic goods:
The Intra-Community Transfers (ICT) Directive 2009/43/EC covering the transfer of defence equipment within the EU. It aims at facilitating the movement of defence goods within the EU while recognising that such transfers must remain subject to national controls. The provisions to give effect in the UK to the requirements of the ICT Directive came into force on 10 August 2012 through amendments to the Export Control Order 2008.


Assessment of Export Licence Applications

All individual licence applications for transfers of arms, military equipment and dual-use goods and technology must be submitted electronically to the Export Control Organisation (ECO) in the Department for Business, Innovation and Skills (BIS). The formal decision to grant or refuse, or to suspend or revoke, a licence is taken by BIS based in accordance with announced policy and on advice received from other relevant Government Departments, principally the Foreign and Commonwealth Office and Ministry of Defence.

The principle policy against which all arms export licences are assessed is the Consolidated EU and National Arms Export Licensing Criteria (the “Consolidated Criteria”) which were announced to Parliament on 26 October 2000. This sets out eight criteria against which export licence applications (ELA) are assessed, including the UK’s international obligations and commitments; the risk that the proposed export might be used for internal repression or would provoke or prolong conflict or aggravate existing tensions within the destination country, or would be used aggressively against another country or to assert a territorial claim; the potential effect on the national security of the UK and other friendly States; the risk of diversion to undesirable end-uses; and the effect on sustainable development. The full text of the Consolidated Criteria is available at https://www.gov.uk/assessment-of-export-licence-applications-criteria-and-policy

The Criteria are not applied mechanistically; rather each application is assessed on a case-by-case basis taking into account all the relevant facts and circumstances of that particular case. A licence would not be granted if to do so would be a breach of the Criteria. The UK Government publishes information on licences granted, refused and revoked its Quarterly and Annual Reports on Strategic Export Controls (http://www.exportcontroldb.bis.gov.uk).

From time to time other policies are announced to Parliament and these are applied alongside the Consolidated Criteria.

Further Information

Further information on the UK’s legislation, regulations and procedures are available in the Government’s Annual Reports on Strategic Export Controls and on the relevant pages of the UK Government’s website (https://www.gov.uk/beginners-guide-to-export-controls)