

Do I need a licence?

A brief guide to controls administered by the Export Control Organisation

This document aims to give you a brief guide to the controls administered by the Export Control Organisation (ECO) of the Department of Trade and Industry (DTI) and explains what types of licence are available and how you should apply for a licence where one is needed. You can obtain further information and help from ECO's Helpline or by visiting ECO's Website; details of both are given at the end of this publication.

Why are exports controlled?

Governments control the export of goods and technology for a variety of reasons. In particular irresponsible transfers of arms, ammunition and related materiel can contribute to internal repression or regional instability while goods intended for civil purposes can also contribute to the development of weapons of mass destruction and the missiles to deliver them. If the export from the United Kingdom of particular goods or technology is subject to control then those goods or technology may not legally be exported without a licence.

Many of the United Kingdom's controls on the export of military and dual-use items are embodied in various international commitments, and there are therefore similar controls in many other countries. The export of other types of goods and certain activities are subject to control as well for example as a result of the imposition of United Nations (UN) trade sanctions or a UN arms embargo against particular countries or regions.

Licences to export arms and other goods controlled for strategic reasons, are issued by the Secretary of State for Trade & Industry acting through ECO. All relevant individual licence applications are circulated by the DTI to other Government Departments with an interest as determined by those departments in line with their own policy responsibilities. ECO also issues licences for exports and some other activities only controlled because of UN measures.

What controls are in force?

To help exporters and their legal advisers to be aware of the controls, ECO publishes a Note on Current Strategic Export Control Legislation setting out the current strategic export controls administered by ECO. These comprise legislation listing the arms, military, paramilitary, security equipment and dual-use items whose export is subject to control to all destinations and items whose export is subject to control in relation to certain destinations only. A licence is not needed to export most dual-use items to other Member States of the European Union but exporters must keep records. However, a licence is required to export some particularly sensitive dual-use items to other Member States.

In addition, there is a wide-ranging end-use or “catch-all” control covering all goods linked to weapons of mass destruction programmes and controls on Military End Use.

Copies of the legislation imposing the above controls are available from The Stationery Office. Further information on UN trade sanctions is available from ECO’s Sanctions Licensing Unit.

Further details of the controls administered by ECO and the Supplementary Notice are available from ECO’s Helpline and ECO’s Website.

What do the controls cover?

Strategic export controls apply to a wide range of goods, components and spare parts, and technology, including the following:

- 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, i.e. items designed for civil use but which can be used for military purposes such as certain materials, machine tools, electronic equipment, computers, telecommunication equipment, cryptographic goods, sensors and radar, navigation and avionics equipment, marine equipment and space and propulsion equipment;
- chemical weapons precursors, and related equipment and technology;
- certain micro-organisms, biological equipment and technology; and
- goods used in programmes involved in weapons of mass destruction and missiles used for their delivery.

Some exports and other activities are only controlled where particular destinations are involved, for example where a UN arms embargo, EU or UN trade sanctions apply.

What types of Licences are there ?

Standard Individual Export Licences (SIELs) generally allow shipments of specified goods to a specified consignee up to the quantity specified by the licence. Such licences are generally valid for two years where the export will be permanent; where the export is temporary, for example for the purposes of demonstration, trial or evaluation, the licence is generally valid for one year only and the goods must be returned before the licence expires.

A licence is not required for the majority of transshipments through the UK from one country to another. Most other transshipments can be made under one of the Open General Transshipment Licences in force, provided that the relevant conditions are met; where this is not the case, an individual transshipment licence is required.

An Open Individual Export Licence (OIEL) is specific to an individual exporter and covers multiple shipments of specified goods to specified destinations and/or, in some cases, specified consignees. OIELs covering military goods or technology are valid for two years. OIELs covering other goods are valid for three years. There are no Open Individual Transshipment Licences.

A Global Project Licence (GPL) is similar in nature to an OIEL. It simplifies the arrangements for licensing military goods and technologies between Framework Agreement (FA) partners (i.e. France, Italy, Sweden, Spain and Germany) participating in collaborative defence projects. They can be used for exports involving both Government collaborative projects and those where an industrial collaboration has taken place and will generally be valid for the length of the particular project

Open General Export Licences (OGELs) allow the export of specified controlled goods by any exporter, removing the need for exporters to apply for an individual licence, providing the shipment and destinations are eligible and the conditions are met. Exporters must register with ECO before they make use of most OGELs. There are also a small number of Open General Transshipment Licences (OGTLs), for which registration is not required. All Open General Licences remain in force until they are revoked. Various types of licence exist in respect of exports and other activities only controlled because of a UN trade or arms embargo.

Community General Export Authorisation (CGEA) is the community equivalent of an OGEL. The CGEA can be found in Annex II to Council (EC) Regulation No 1334/2000 (O.J.L 159, 30/06/2000, p1). Further guidance is available on the ECO website and Helpline. CGEA allows the export from the Community of dual-use items specified in Annex I to the Regulation other than those specified in Annex IV or entries 0C001; 0C002; 0D001; 0E001; 1A102; 1C351; 1C352; 1C353; 1C354; 7E104; 9A009a or 9A117. The licence is valid to ten specified destinations and as with OGELs use of the CGEA is subject to the exporter being able to satisfy the conditions contained within the licence or specified in national legislation. Similarly as with OGELs exporters must register with ECO before they use the CGEA.

How can I decide if I need a Licence?

You should seek legal advice, as necessary, where you are intending to make an export, irrespective of the destination. You should compare the specifications of the product concerned with the descriptions set out in the legislation to determine whether or not they are listed. Some controls apply to certain destinations only and where this is the case it is stated in the legislation. In addition unlisted goods and technology are subject to control if you are aware or suspect that they are intended to be used in connection with weapons of mass destruction or missiles to deliver them, or, if you have been informed that they are or may be intended to be used or such purposes.

Where the export of goods is involved, you might wish to seek advice from us by completing an export rating request form, which is available from the ECO's Helpline and on our website. Completed forms should be sent to the ECO at the address given below, together with all relevant technical information and specifications of the products and details of the intended destinations. We will then advise you whether or not in our view, on the information provided, the products are controlled.

Where UN trade sanctions or a binding UN arms embargo applies, the supply or delivery to the country concerned of arms and related materiel and any other prohibited goods may be subject to control whether it would take place from the UK or anywhere else in the world. Such embargoes may also include a prohibition on related activities such as acts calculated to promote the supply or delivery of such goods. You should always first examine the relevant Orders in Council implementing the UN measures carefully and seek legal advice as necessary.

How do I apply for a Licence?

The ELATE software for submitting SIEL applications has been replaced by ECO's new licensing system ELVIS (Electronic Licensing via the Internet System). ELVIS applications with supporting documentation can be submitted over the Internet once you have registered with the Government Gateway. The software is also available on CD-ROM.

An electronic form on CD-ROM is also available for OIEL applications. The form is based on ELATE and known as OLLIE (Open Licensing Liasing with Industry Electronically). We will continue to accept paper applications.

Where UN trade sanctions apply, there is no standard application form given the range of activities that may be controlled. You should first contact the Sanctions Licensing Unit (Telephone 020 7215 0594/0595 or fax on 020 7215 0593).

When should I submit my application?

You should submit any necessary licence application as early as possible and, where the export or supply of goods/technology is likely to be involved, as soon as there is a possibility that you will secure the relevant contract but before you make any contractual commitment. Where a UN trade or arms embargo apply, you may need to apply for a licence to communicate even before entering into contractual discussions.

How long will it take to process my application?

Standard individual export licence applications (SIELAs) are circulated to other government departments, principally FCO and MOD. The Government's aim is to provide a substantive response within 20 working days of receipt of the application. However, some cases will take longer to process than others; there will be occasions when these targets cannot be achieved, and the ECO's target is therefore to process 70% of cases within this period. We will also aim to process 95% of all applications within 60 working days.

These targets apply as soon as full documentation in support of the application has been provided by the applicant. All applications are processed expeditiously and with care. Because of this, in all cases, we advise applicants for export licences not to enter into a binding contract or to start special production until an export licence has been issued. We also encourage exporters to apply for licences at the earliest opportunity.

These standards do not apply to applications for Open Individual Export Licences, because of the very wide variation in the goods and country coverage of such licences, nor do they apply to applications for licences to export goods which are subject to UN sanctions

Are applications sometimes refused?

Once we have received your application, and all necessary supporting information, your application will be considered carefully. A licence may or may not be issued. All applications for a licence to export arms and other goods on the Military List are considered against the criteria announced by the Foreign Secretary in July 1997 and, since June 1998, the EU Code of Conduct on Arms Exports. Both sets of criteria are also used to assess applications for licences to export dual-use goods where there are grounds for believing that the end-user would be the armed forces or internal security forces of the recipient country. Applications which do not meet the criteria are refused. An export licence will not be issued if there is a clearly identifiable risk that the proposed export might be used for internal repression or international aggression. Among the factors taken into account will be the destination, the parties involved and the nature of the goods or technology concerned, and the use to which they could be put.

If your application is refused you may appeal. The appeal must be submitted within 28 calendar days of the date of the refusal letter and should, where possible, include any additional information or arguments which may not have been available at the time of the original application and which could materially affect the refusal decision.

The appeal and any new information provided are circulated to advisory departments to be considered independently at a more senior level than the original application. Within the Export Control Organisation, the appeal is dealt with by the Director of Export Control, unless the original application was considered at his/her or a higher level, in which case appropriate alternative arrangements would be made to ensure independent consideration of the appeal.

Our aim is to provide a decision on appeals within 30 working days from receipt of all the relevant information from the appellant. The target does not apply to appeals concerning goods which are subject to UN Sanctions. If you have any questions about the appeal system please contact the ECO Helpline.

Are Licences ever revoked or varied?

Yes. Circumstances which may give rise to revocation or variation include major events such as war, political upheaval, or if new information comes to light about a particular export. It may be necessary to revoke or vary a licence if an arms embargo is imposed against a particular destination. You should also note that if the European Community implements sanctions on the export of dual-use and related items, by way of legislation that is binding on individuals, that legislation may have the effect of restricting the extent of an existing licence to export such goods.

What happens if I export without a Licence?

Exporting controlled goods or technology without a valid licence is a criminal offence. The goods can be seized by Customs and Excise and offenders can be fined and/or imprisoned. Making false statements in connection with a licence application is also a criminal offence. In addition licences for the export of military goods and dual-use and related goods issued on the basis of false information are not valid. If you export goods or undertake an activity subject to UN trade sanctions or a UN arms embargo, without the necessary licence, you will also have committed an offence.

Do the controls ever change?

Yes, and you should always ensure that you comply with the requirements in place at the time. Details of changes to UK export controls are made by statutory instruments available from the Stationery Office, while changes to EC export control legislation or EU trade sanctions are published in the Official Journal of the European Communities.

ECO publishes Notices to Exporters in the Thursday edition of Lloyd's Register (available from major newsagents). In order to receive electronically all future Notices to Exporters; announcements regarding export control; new guidance material, new and revised Open General Licences and copies of revised or new ECO promotional material please send your e-mail, contact name, telephone and company details to the Awareness section ECO (address as Helpline) or web.comments@dti.gsi.gov.uk. Alternatively application for this system can be made via the website.

Information is also available from the ECO Helpline and ECO's Website.

Changes relating to UN arms embargoes or UN trade sanctions are made by Orders in Council under the United Nations Act 1946, again available from The Stationery Office.

Can I get help with setting up export control procedures in my company?

Yes. The Export Control Compliance Code of Practice gives guidelines. This Code and training materials are available from the ECO Helpline.

Where can I get further information on export controls, ELVIS and OLLIE CD-ROMs, licence application forms and the Open General Licences issued by ECO, as well as a more detailed guide to export controls?

Please write, fax, telephone or email:

The ECO Helpline;

Department of Trade and Industry;

4th Floor, 4 Abbey Orchard Street

London SW1P 2HT

Tel: 020 7215 8070 Monday to Friday between 0900 and 1700 (message service available out-of hours)

Fax: 020 7215 0558

email: eco.help@dti.gsi.gov.uk

Alternatively, you might like to visit ECO's Website

<http://www.dti.gov.uk/export.control>

N.B. Exports may be subject to control under legislation other than that administered by the ECO:

For information concerning export controls on antiques and works of art, please contact the Department of Culture, Media & Sport on 020 7211 6166.

Precursor chemicals and reagents used in the drug manufacture and certain dangerous drugs, contact Home Office (020 7273 3484 or 2620)

Certain chemicals (mainly pesticides) require a Prior Informed Consent (PIC) before exportation, Health and Safety Executive (020 7717 6286)

Prescription Drugs, Medicine Control at Department of Health (020 7273 0616)

Protected species of wildlife and flowers, Wildlife and Registration Service, DETR (01179 372 8168)

Export of certain live animals, DEFRA <http://www.defra.gov.uk/animalh/int-trade/gen-inf/contacts.htm>

Disclaimer

This publication is for information purposes only and has no force in law. Where legal advice is required, exporters should make their own arrangements.