

OVERVIEW TO SUPPLEMENTARY GUIDANCE NOTES ON TRADE IN CONTROLLED GOODS (INCLUDING TRADE TO EMBARGOED DESTINATIONS); TRANSFER ABROAD OF CONTROLLED TECHNOLOGY & SOFTWARE FOR MILITARY GOODS; TRANSFER BY ANY MEANS OF TECHNOLOGY OR THE PROVISION OF TECHNICAL ASSISTANCE INTENDED FOR USE IN CONNECTION WITH WMD OR RELATED MISSILE PROGRAMME

The Export Control Act 2002 was brought into force on 1st May 2004. The Act replaces the existing export control powers contained within the Import, Export and Customs Powers (Defence) Act 1939 legislation on strategic export controls, provides for a more transparent framework and increased Parliamentary accountability.

The Act also gives powers to extend the present controls. The Government has introduced new secondary legislation, which comes into force at the same time as the Act, which consolidates the previous secondary legislation and imposes a new range of controls. These new controls are explained in detail in the supplementary guidance notes. For more information on the policy background you may also wish to consult the Government's proposals for secondary legislation under the Export Control Act (<http://www.official-documents.co.uk/document/cm59/5988/5988.pdf>).

The new secondary legislation replaces the Export of Goods (Control) Order (EG(C)O)1994, as amended, and the Dual-Use Items (Export Control) Regulations (DUEC) 2000, as amended. Those controls are reproduced in the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 . This Order also provides for new controls on: -

- transfers of technology and software for military goods by electronic means
- transfers by any means of technology in connection with a WMD programme
- technical assistance in connection with a WMD programme

The Trade in Goods (Control) Order provides for new controls on trade (trafficking and brokering) in military, paramilitary and certain other goods between countries outside the UK.

The Trade in Controlled Goods (Embargoed Destination) Order 2004 provides for new controls on trade in military and certain other goods from any place outside the UK to the destination specified in the Order. The Order will be used for OSCE, EU, non-binding UN, and national embargoes.

The new controls are widely drawn and industry will need to be aware of their scope, and have in place systems to ensure that electronic transfers of technology for military goods, transfers, by any means, of technology related to WMD or trade activities do not take place without appropriate licence coverage.

The DTI has extended the range of open general licences so that many of the less sensitive transactions caught by the new controls will not require an individual licence. For example, most trading activities in respect of military goods moved to or from OECD countries will be within the scope of the Open General Trade Control Licence. Many electronic, non-WMD related transfers will be covered by the open general licences on transfers of technology for military goods. The open general licences may be viewed at <http://www.dti.gov.uk/export.control/ogelicences.htm>

If the open general licences do not provide appropriate licence coverage, an 'open' or 'standard' individual licence application will need to be made. As with current practice, applications will be judged on a case-by-case basis against the Consolidated Criteria, though it is unlikely that we would approve licences for trade in equipment which is banned because of evidence of its use in torture, or goods to embargoed destinations.

We will not require industry to keep records of every electronic transfer or every trade transaction made under an open licence. There are broad, minimum legal requirements for record keeping, and the supplementary guidance notes (found on the ECO website) explain how these will apply in respect of the new controls. In addition we advise industry to have systems for training staff and monitoring licensable activity in these new areas in place. Compliance officers will look at these systems when they visit.

Industry should be aware that some of the trade controls apply to UK persons anywhere in the world, as well as to activities carried out wholly or partly in the UK.

It is also important to note that a trade licence will need to be in place before you start to put together the transaction, not after the contract is negotiated.

ECO will be able to give advice on the new controls, and where necessary a rating of the licensibility of an export <http://www.dti.gov.uk/export.control/applying/ratenq.htm>. It may also be necessary to attend an awareness seminar - further details can be found at <http://www.dti.gov.uk/export.control/awareness.htm> . The guidance notes themselves will be updated on a regular basis as necessary.

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Every effort has been made to ensure the information in this guidance is accurate. However it does not in any way take precedence over the actual legislation.

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