

FSi  
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## UK Export Controls

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# Introductions

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# Topics

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- 1) Overview
- 2) End-use controls
- 3) Security release
- 4) Export licensing
- 5) Trade/brokering
- 6) Investment



# Topics

- 1) **Overview**
- 2) End-use controls
- 3) Security release
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# UK Policy

- ▶ *“The objective of export controls is to facilitate responsible exports”*
- ▶ *“The legitimate international trade in military equipment and technology, as well as in dual-use items, enables governments to protect citizens, to preserve law and order against terrorists and criminals, and to defend against external threats.”*

HM Government

# THE LAW

- ▶ **International**

- ▶ United Nations
- ▶ Treaties

- ▶ **UK Law**

- ▶ Export Control Act 2002 and Export Control Order 2008
- ▶ The Assimilated Dual-Use Regulation (former EU Reg 428/2009)
- ▶ Sanctions Act and Regulations



# Penalties



Ignorance is not an excuse



Warning letter



Revocation of licence



Seizing of goods



Penalty of up to 3x the value of the goods



Compound penalties - no limit



Jail: up to 10 years and unlimited fines for a deliberate act with intent to evade controls

# Recent penalties

- ▶ August 2023 - **£67,001.31** for the attempted export of goods in breach of The Russia (Sanctions) (EU Exit) Regulations 2019
- ▶ September 2023 - **£1,000** for the attempted export of Dual Use goods
- ▶ September 2023 - **£9,088.99** for the unlicensed exports of Dual Use goods



# What's new?

- ▶ **Not much** on military export controls
- ▶ The focus is on **Russia sanctions and emerging dual-use technologies** quantum, cryogenic, semiconductor, additive manufacturing equipment and advanced materials, beyond Wassenaar lists
- ▶ **AUKUS**: may lead to some relaxation of export controls between the parties
- ▶ **UK-EU collaboration**: U.K. Labour Party wants a defense and security pact with the EU and deals with Germany and France. But not committed to joining the European Defence Fund (as Norway has done) or to aligning with any joint procurement initiatives for bulk ammunition orders

# Topics

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# End-Use: Weapons of Mass Destruction

## No transaction shall proceed if

- ▶ you are informed
- ▶ you know
- ▶ you suspect

that any item to be transferred or exported, including technical assistance and domestic transactions, may be used for a WMD programme

**WMD** = nuclear, chemical and biological weapons and the missiles that can deliver them



## End Use: Military

A licence is required for the export of unlisted items if the exporter is informed by the authorities (or aware) that the items may be intended for either:

- a) a military end-use in country subject to an arms embargo.
- b) for use in military items exported without authorisation.

Since May 2022, this includes use by para-military, police, security or intelligence forces or agencies, and bodies involved in procurement, R&D or production for such forces or agencies.

At the same time, China, Hong Kong and Macau were added to the list of embargoed countries



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# UK Security Controls

- 1) Security Grading
- 2) Exhibition Clearance
- 3) F680
- 4) Security Transportation Plan
- 5) Facility Security Clearance
- 6) F1686



# Private Venture (PV) Security Grading

- ▶ **MOD funding:** security grading identified in the Security Aspects Letter
- ▶ **UK PV:** obtained from the MOD Defence Security and Resilience Team
- ▶ **Foreign PV:** items developed outside of the UK without any UK funding. Security grading advice should be sought from the Government of the Original Equipment Manufacturer (OEM).

# PV Exhibition Clearance

- ▶ **MOD Funding:** identified in the contract Security Aspects Letter (SAL); no requirement to apply using the PV/Ex process.
- ▶ **UK PV:** apply via SPIRE.
- ▶ **Foreign PV:** should be as determined by the national Government of the OEM and/or other International Defence Organisations,



# F680



- ▶ For the control of the release by industry, including in their marketing campaigns to foreign end-users, of equipment or information with a classification of OFFICIAL-SENSITIVE or above.

# Activities covered by F680s

- ▶ Market Survey/Initial Discussions/Promotion
- ▶ Demonstration in the UK
- ▶ Demonstration Overseas
- ▶ Training
- ▶ Through Life Support (i.e. maintenance and repair)
- ▶ Evaluation of software



# Security Transportation Plan

- ▶ All UK material graded SECRET or above and internationally classified material graded CONFIDENTIAL and above require a Security Transportation Plan (STP) to be approved prior to export.

# Facility Security Clearances

- ▶ Where a foreign company is named as the recipient in a MOD Form 680 application it may be necessary for MOD to seek confirmation of a Facility Security Clearance (FSC) from the authorities in the location where the foreign company is located.
- ▶ Confirmation of an FSC is always required at SECRET and above. It is also required at OFFICIAL-SENSITIVE for certain destinations and for internationally classified material.



# F1686

- ▶ To sub-contract or collaborate with an overseas contractor on work with a UK MOD programme involving OFFICIAL-SENSITIVE and above
- ▶ When this applies, a MOD Form 680 is not required.

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# Departments involved in export control

## Licence Assessment

- ▶ Export Control Joint Unit (ECJU), Department for Business and Trade
- ▶ Foreign, Commonwealth & Development Office
- ▶ Ministry of Defence
- ▶ National Cyber Security Centre.

## Licence Enforcement

- ▶ HM Revenue and Customs
- ▶ Border Force
- ▶ UK Prosecution Authorities

# Military Items

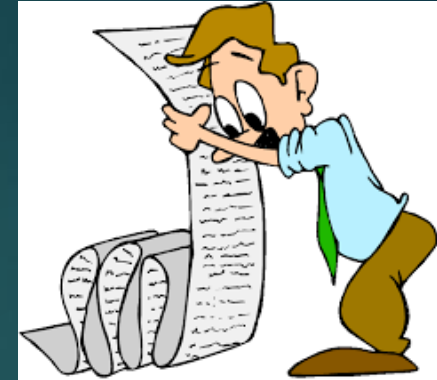
- ▶ Any item specially designed or modified for military use





# UK Military List

- ▶ ML1 and ML2 – All rifled and smooth bore weapons & components
- ▶ ML3 - Ammunition and components for ML1, ML2 and ML12
- ▶ ML4 - Bombs, grenades, rockets, missiles, components and accessories
- ▶ ML5 - Devices for fire control, components and accessories and countermeasure equipment
- ▶ ML6 - Ground vehicles and components
- ▶ ML7 and ML8 - Explosives and chemicals
- ▶ ML9 - Vessels, special naval equipment, accessories and components
- ▶ ML10 - Aircraft, unmanned airborne vehicles, aero-engines
- ▶ ML11 – Guidance/navigation equipment, electronic equipment
- ▶ ML12 - High kinetic energy weapons
- ▶ ML13 - Armour plate, body armour, military helmets
- ▶ ML14 - Simulators and training equipment
- ▶ ML15 - Imaging equipment
- ▶ ML16 - Forging, castings and unfinished products
- ▶ ML17 - Miscellaneous goods including diving equipment, ferries, containers
- ▶ ML18 - Production equipment
- ▶ ML19 – Directed-energy weapons
- ▶ ML20 - Superconductors
- ▶ ML21 - Software for listed goods
- ▶ ML22 - Technology for listed goods
- ▶ PL5017 - Equipment and test models
- ▶ PL5001 - Paramilitary goods



# The Strategic Export Licensing Criteria

1. UK's International Commitments
  2. Human Rights and IHL
  3. Internal Situation of recipient country
  4. Regional Stability
  5. National Security of UK and allies
  6. Behaviour of recipient country including terrorism
  7. Diversion to undesirable end-use/r
  8. Economic Sustainability
- + Other Factors – commercial, political, strategic

# Licensing to Saudi Arabia

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- ▶ On 06 June 2023 the UK High Court handed down its judgement dismissing an NGO's challenge to the government's decision to restart licensing of military exports to Saudi Arabia for possible use in the conflict in Yemen.
- ▶ Applications for Saudi Arabia are assessed for possible use in the conflict in Yemen against a revised methodology which considers whether there is a clear risk the equipment might be used to commit or facilitate a serious violation of International Humanitarian Law.

# 3 main types of licence

- ❑ **Open General Licence:**
  - ❑ unlimited quantities of pre-defined items to certain countries
- ❑ **Standard Individual Licence:**
  - ❑ specific quantity of specific goods to specific end user
- ❑ **Open Individual Licence:**
  - ❑ unlimited quantities of applied-for items to applied-for end-users and countries



# OGELs: Common conditions

- ▶ Register on SPIRE
- ▶ Consignee or End-user Undertaking
- ▶ MOD F680 for items classified 'Official-Sensitive' or above
- ▶ State name of the licence on export documentation
- ▶ Report annually
- ▶ Keep records
- ▶ Subject to government compliance visits



# Military OGELs: Country-specific

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- ▶ certified companies: EU
- ▶ military goods and technology: India
- ▶ exports under the US-UK defence trade co-operation treaty

# Military OGELs: programmes

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- ▶ joint strike fighter: F-35 Lightning II
- ▶ Turkish Aerospace Industries TF-X programme
- ▶ exports or transfers in support of UK government defence contracts
- ▶ A400M collaborative programme
- ▶ collaborative project Typhoon

# Military OGELs: 'Temporary'

- ▶ export for exhibition
- ▶ export for demonstration
- ▶ export after exhibition or demonstration
- ▶ export after repair/replacement under warranty
- ▶ export for repair/replacement under warranty

# Military OGELs: 'Broad scope'

- ▶ PCBs and components for military goods
- ▶ military components
- ▶ military goods, software and technology
- ▶ military goods, software and technology: government or NATO end-use
- ▶ software and source code for military goods
- ▶ access overseas to software and technology: individual use only
- ▶ technology for military goods

# OGEL: PCBs and components

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- ▶ **Excludes:** WMD, Customs Free Zone, OFFICIAL-SENSITIVE or above
- ▶ **Includes:** most components for ML5, ML6, ML9, ML10 (not UAVs), ML11 (not certain guidance sets), ML14, ML15d, ML17b,d,j,k,l,m
- ▶ **Items:** bare PCBs, cables, fasteners, switches, hoses, clamps, etc
- ▶ **Destinations:** all except UK arms-embargoed countries



# OGEL: Military goods, software and technology (1)

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- ▶ **All except:** ML1,2,3,8,12,13,19,20 and certain exceptions under ML4 (landmines, MANPADS), complete items under ML9, 10; other high risk items
- ▶ **Main destinations:** (1) Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Netherlands, New Zealand, **Norway**, Spain, Sweden, United Kingdom, USA. **Any end-user, or any government for re-export to their own armed forces, or direct to such armed forces**
- ▶ **Other destinations:** (2) Bulgaria, Croatia, Cyprus, Czech Republic, Estonia Greece Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Switzerland (including Liechtenstein). **Only if re-exported from a country in (1) for government or NATO end-users, not sent directly from the UK**

# OGEL: Military goods, software and technology (2)

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## Conditions

- ▶ Not for incorporation into other items for export to any other destinations
- ▶ OFFICIAL-SENSITIVE or above: MOD approval or F680, etc
- ▶ Consignee undertaking or contract from a government in a para (1) destination

# Consignee Undertaking

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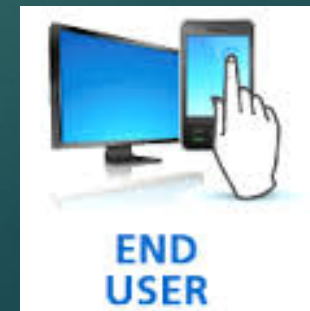
- ▶ Goods to be supplied are...; for purpose...; delivery address... We certify the items are:
- 1) for \*my/our own use and will not be re-exported or sold for export either in their current state or after incorporation.
  - 2) for end-use in one or more of the following countries, either in their current state or after incorporation: (para 1 destinations)
  - 3) for re-export, either in their current state or after incorporation, for the end-use of the Government of the following countries, or a NATO organisation in one of those countries: (para 2)
  - 4) for export to, and for the sole use of the [ ] armed forces deployed in [ ].
  - 5) for use by the [ ] Government, including use by its own armed forces deployed in any destination except an arms embargoed destination

# Standard Individual Export Licences (SIELs)

- ▶ gives permission to export
  - ▶ specific items
  - ▶ specific quantities and values of each item
  - ▶ specific consignees and end users
- ▶ Original end-user documentation, completed by the end-user company overseas, must be included with your application.

# End-User Undertakings

- ▶ completed by the end-user, or stockist/distributor (these each have separate templates)
- ▶ All forms need to:
  - ▶ be signed and dated by the end-user themselves. Electronic signatures are valid
  - ▶ On headed paper
  - ▶ include a description of the goods, their intended use and where they will be used or based





# Open Individual Export Licences

## OIELs

- ▶ Allow:
  - ▶ a named exporter
  - ▶ multiple shipments
  - ▶ of specific goods: up to 20
  - ▶ to specific destinations
  - ▶ no quantity limit (but check provisos)
- ▶ Valid 5 years
- ▶ Needs evidence of future exports
- ▶ Requires Consignee Undertaking
- ▶ If rejected, you can still apply for a SIEL

# Processing Target Times ECJU Service Code

## ▶ SIEL applications

- ▶ 70% within 20 working days (actual: 62%)
- ▶ 99% within 60 working days
- ▶ Appeals within 30 days
- ▶ Median processing time 13-16 days

## ▶ OIEL applications

- ▶ 60% within 60 working days

## ▶ OGEL Registrations

- ▶ you will receive an acknowledgement from the ECJU in due course. You can use the OGEL from the moment you submit the registration.

**If ECJU send you a Request for Information (RFI), the clock stops - you have 20 days to respond**



# Primary reasons for Requests for Further Information

Query	Cause(s)
EUU	EUU and ELA contain contradictory information. Out of date, unsigned, not possible to determine who signed, no letter head, electronic signature
Tech Specs.	does not include the relevant assessment parameters from the related control entry
Goods Descriptions	does not describe the goods fully
Third Parties	There are third parties / ultimate end users listed on the EUU that are not listed on the application.
Incorporation	Knowing when your consignee is your end user because they are incorporating or integrating your goods.

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## 'Trade, Trafficking and Brokering' =

activities which result in the movement of military goods from one third country to another





# Trade Controls: Category A



- ▶ Goods the supply of which is inherently undesirable:
  - ▶ Cluster munitions, explosive submunitions, bomblets
  - ▶ Certain para-military and human rights/torture goods
- ▶ Activities which directly or indirectly:
  - ▶ Supply or deliver
  - ▶ Any act calculated to promote the supply or delivery
- ▶ Activities in the UK and by UK persons anywhere in the world

# Trade Controls: Category B



Goods of heightened concern but which are traded legitimately:

- ▶ small arms and light weapons, hand grenades, missiles including Unmanned Aerial Vehicles (UAVs) with a range over 300 kilometres, Man Portable Defence Systems (MANPADs), and anti-vehicle mines
- ▶ Main platforms: tanks, armoured, large-calibre artillery systems, combat aircraft, warships, missiles

# Trade Controls: Category B



Controlled activities – in the UK and by UK persons anywhere in the world:

- ▶ Arrange, or negotiate a contract for, transfer, acquisition or disposal
- ▶ Provide transport services (the exact level of control depends on the activity)
- ▶ Any act calculated to promote...
- ▶ Exemptions:
  - ▶ if sole involvement is to provide financing or financial services, insurance or re-insurance service, general advertising or promotion services
  - ▶ a 'contract promotion activity' where a payment is not received.

# Trade Controls: Category C



Goods not of heightened concern:

- ▶ military and explosives-related goods not in Cats A and B; certain agents for riot control and their portable dissemination equipment

Activities – applies only if carried out in the UK (ie **not** worldwide):

- ▶ Arrange, or negotiate a contract for, transfer, acquisition or disposal
- ▶ Any act calculated to promote...

Exemptions:

- ▶ sole involvement in transportation, financing, insurance, promotion
- ▶ Contract promotion activity unless in return for payment

# Trade Control Licences



Similar to export licences. Apply through SPIRE

- ▶ **4 Open General Trade Control Licences** (OGTCL) – one covers all Cat C goods
- ▶ **Open Individual Trade Control Licence** (OITCL): specified trader, items (but not quantities), source and destination countries, consignors, consignees and end users. Valid 2 years
- ▶ **Standard Individual Trade Control Licence** (SITCL): specified trader, items, quantity, source and destination countries, consignor, consignee and end user. Valid 2 years



# Transit and Transshipment

- ▶ Transit through the UK or transshipment with a view to re-exportation
- ▶ Licence requirements depend on the nature of the goods, their destination and other circumstances



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## National Security and Investment Act 2022

- UK Government can restrict, block or unwind an acquisition of a UK company or UK assets (e.g. IP) if it poses a risk to national security
- Mandatory notifications for certain sectors (but not for assets). Acquirers can make voluntary notifications
- The government can investigate any proposed or completed acquisition



# National Security and Investment Act

- **If a person will acquire, or increase their existing share, over 25% of a UK company.**
- **If a person will gain control over qualifying assets** - e.g. through acquiring UK IP

# National Security and Investment Act

## **Mandatory notification sectors:**

- Defence, Military and Dual-Use
- Advanced Materials
- Advanced Robotics
- Artificial Intelligence
- Civil Nuclear
- Communications
- Computing Hardware
- Cryptographic Authentication
- Data Infrastructure
- Energy
- Quantum Technologies
- Satellite and Space
- Synthetic Biology
- Transport
- Critical suppliers to government and emergency services



# Conclusions

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- 2) End-use controls
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# Thank You!



# Questions/Discussion