

EXPORT CONTROL AND TRADE SANCTIONS POLICY



This document sets out the University's policy governing export controls and trade sanctions

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Executive Sponsor	Chief Operating Officer
Officer Responsible for Policy/ Procedures	General Counsel
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INTRODUCTION AND CONTEXT

Export controls and trade sanctions apply to the University and researchers who engage in the transfer or export of goods, technology, related information, and research. There may be instances where the University and individual academics need an export licence from the ECJU to carry out an activity.

Care is needed because it is a criminal offence to contravene export controls or trade sanctions and the fines that can be imposed against the University and any individuals involved in breaching these laws can be significant.

1. SCOPE OF THE POLICY

1.1 Purpose of the Policy

The purpose of this Policy is to support the University's compliance in relation to UK and other applicable export controls and trade sanctions. Export controls are restrictions on the export and transfer of sensitive goods, technology and related information from the UK to any overseas or offshore locations. Trade sanctions are additional controls and prohibitions on exporting to specified countries.

1.2 What is covered by the Policy

This Policy:

- sets out the principles that all staff, business partners and contractors must follow; and
- provides further guidance on UK export controls and trade sanctions.

1.3 Who is covered by the Policy

All staff, joint venture and business partners, contractors, and suppliers to the University must comply with the Policy.

The Policy does not form part of any contract of employment and may be amended at any time.

1.4 Breach of this Policy

Any breach of this Policy and its associated procedures by staff will be investigated in accordance with the University's disciplinary procedure. A serious breach may amount to gross misconduct and could therefore result in summary dismissal. A breach of export controls and trade sanctions may also result in the staff member being reported by the University to HM Revenue & Customs ("**HMRC**").

Any breach of this Policy and its associated procedures by business partners, contractors and other third parties will be investigated and any breach may result in relevant contracts being terminated and the third party being reported by the University to HMRC.

1.5 Policy Ownership

The Executive has approved this Policy. The Chief Operating Officer is the Executive sponsor and the General Counsel is the officer responsible for the Policy. Any questions about the operation of this Policy or any concerns that the Policy has not been followed should be referred in the first instance to the General Counsel.

2. THE POLICY STATEMENT

The University is committed to complying with applicable export controls and trade sanctions.

The University will identify the export controls and trade sanctions that apply to its goods, technology and data.

The University will verify current trade sanctions before exporting goods or transferring data and know-how overseas.

The University will verify that overseas students have an Academic Technology Approval Scheme certificate (where applicable).

3. DEFINITIONS

The terms set out in this section 3 apply to this Policy.

Controlled item means goods, technology (defined in more detail below), related information, and research that are subject to export controls.

Export controls are the laws which prohibit the transfer outside of the UK of a significant number of goods, technology and related information and research, or which make their transfer subject to strict licence conditions. There are exemptions for information that is in the public domain and basic scientific research but the application of these exemptions needs to be carefully checked.

ECJU means the Export Control Joint Unit who administers the UK's system of export controls and licensing for military and dual-use items and is part of the Department for International Trade.

Technology is used in relation to export controls to mean the information necessary for the development, production or use of goods controlled by the Export Controls regime including but not limited to blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, or manuals and instructions, either written or recorded on other media or devices such as disks, tapes or read-only memories.

Trade sanctions are laws which prohibit or restrict the transfer of goods, technology, related information and research to certain countries and regions. The exemptions applicable to export controls do not apply to trade sanctions.

Weapons of Mass Destruction or WMDs are chemical, biological or nuclear weapons or other nuclear explosive devices.

4. EXPORT CONTROLS

4.1 Items regulated

Export controls principally regulate the export of military items; “dual use” items (non-military items which may also be used for military purposes); animals and animal products from the UK to anywhere in the world. Exports are also controlled if they might be used for WMDs.

A consolidated list of controlled items is available here:

<https://www.gov.uk/government/publications/uk-strategic-export-control-lists-the-consolidated-list-of-strategic-military-and-dual-use-items-that-require-export-authorisation>.

Normally export controls apply to the physical removal of goods or the transfer (by any means) of goods, technology or software, and/or related knowledge (which may include research papers, instructions and oral communications) from the UK to a destination outside the UK. In some circumstances, controls can apply to transfers within the UK when it is known that the ultimate end use is WMD related outside the UK.

Exporting can take place via physical or electronic means and includes:

- being shipped or freighted overseas (including carriage of a laptop, a smartphone, or a memory stick on a trip for example);
- any electronic transfer (such as fax, email, telephone, text message or video conference) from within the UK to a person or place abroad;
- accessing controlled technology held on an intranet while overseas; and
- oral transmission by telephone or in the course of a presentation to persons located outside the UK could be within the scope where the detail about the technology is contained in a document and is read out or communicated.

Uploading controlled technology to cloud-based storage is not considered a licensable transfer if it is subsequently downloaded or accessed only by persons in the UK. However, controlled technology uploaded by persons in the UK to a server in the UK, or sent electronically to overseas file storage, and consequently downloaded or accessed overseas by an intended recipient (including UK persons), is a transfer and a licence will be required. The destination of the transfer will be the location of the intended recipients.

4.2 Licences

Where goods, technology or information are controlled, the University will require a licence to export (including temporary exports). All UK and foreign persons based in the UK need a licence if they wish to transfer controlled technology overseas which they have created or acquired in the UK or brought into the UK from overseas.

For the purposes of demonstration, a licence will be needed to transfer controlled technology when bidding or tendering for an overseas contract through to contract fulfilment and training materials for maintenance and servicing.

Additionally, export licences are required for provision of technical assistance for Weapons of Mass Destruction end-use (see “End-use Controls” below).

An export health certificate is needed to export live animals and animal products.

There are three principle forms of licence:

- **Open General Export Licence** or **OGEL** – there are a number of “open” and general licences against which exporters can register to export, subject to compliance with the OGEL's terms and conditions.

- **Standard Individual Export Licence or SIEL** - a licence that must be applied for where there is not an OGEL. This licence allows export of a specified amount and value of goods to a specific destination for a specified amount of time. The licence for permanent exports will generally be valid for two years and for temporary exports (i.e. exhibition, trial or evaluation) for one year.
- **Open Individual Export Licence or OIE** - this licence is specific to the individual exporter. It covers multiple shipments not limited by value or quantity to a specified consignee or consignees in one or more countries.

Registering against an OGEL or applying for SIEL/OIEL is done through the "SPIRE" system.

4.3 Establishing the requirement for a licence

The UK maintains a Goods Checker to help to establish if items are controlled and identify the appropriate control entry ("rating") and an OGEL Checker to identify if an appropriate OGEL exists: <https://www.ecochecker.trade.gov.uk/spirefox5live/fox/spire/>.

If an appropriate OGEL exists, the University must ensure that it can meet all the terms and conditions, before registering the OGEL. If either no OGEL's exist or the University cannot meet all the terms and conditions, the University will need to apply for a SIEL/OIEL.

The UK Government uses the "SPIRE" system for registrations against an OGEL or for applying for SIEL or OIEL: <https://www.spire.trade.gov.uk/spire/fox/espire/LOGIN/login>.

4.4 Exemptions

Items can be exempt from export controls if the export consists of:

- **Information already in the public domain.** To be in the public domain the information, technology or research has to be freely available (no account is taken of restrictions arising solely from copyright). As an example, inclusion of information in a book, website or exhibition would be considered as "public domain" but where there is restricted access, for example if registration is needed to access the website where the information is displayed), the item would no longer be in the public domain.
- **Dissemination of basic scientific research.** The term "basic scientific research" is defined as experimental or theoretical work undertaken principally to acquire knowledge of the fundamental principles or phenomena or observable facts and not primarily directed towards a specific practical aim or objective.

These exemptions do not apply in the case of end-use controls. Where activity could be exempt from export controls either as basic scientific research or under the public domain exemption, if this activity in question is likely to fall within the WMD end use controls and these will, in effect, take priority over the exemption and apply instead.

Therefore, if the technology is on the UK Consolidated List and an exemption applies, no licence is needed. However, if you have been informed, or are aware or suspect WMD end use, the item is still controlled and a licence may be required.

4.5 Teaching

Export controls can impact on teaching. Normally undergraduate teaching is outside the scope of export controls for two reasons. First, undergraduate teaching generally does not normally address controlled technology. Second, material used for undergraduate teaching is generally in the public domain and teaching often disseminates "basic scientific research".

The same may not be true of post-graduate teaching. If the postgraduate teaching is the area of a listed technology, a licence is required if it involves export (i.e. sending material from the UK) of unpublished information which would be required and necessary for the use, development or production of listed items.

There are some circumstances where export controls affect all teaching including transfer of information within the UK. For example, end use controls would apply if the academic had been informed, was aware or had reason to suspect that a student intended to use the knowledge for WMD purposes.

Particular consideration should be given to course notes. While such information is generally in the public domain (and thus decontrolled), if the academic (i.e. the exporter) for example had been informed that that information was intended for a WMD end use, a licence would in principle be required for the teaching.

4.6 End-use controls

End use controls apply if the University knows or suspects that the knowledge, good or technology (whatever its capabilities and regardless of whether it is listed as a controlled item) is to be used for:

- military purposes in a country subject to embargoes or sanctions; or
- WMD purposes such as:
 - nominally civil nuclear programmes suspected of being intended to support nuclear ambitions;
 - ballistic and cruise missiles, including unmanned large aerial vehicles, space launch vehicles and sounding rockets; or
 - support from WMD programmes, such as providing goods or consultancy to support activities which house the programmes, even if the technology is itself ubiquitous.

Even if a member of staff's work does not seem to relate to one of the strategic control lists, the University will need to carefully consider whether there are any WMD or military end use concerns about any third party recipient.

Staff are asked to be particularly alert when working with parties from certain countries which are either subject to arms, trade or other sanctions, embargoes or when there are concerns about military/weaponry/terrorist activities.

5. TRADE SANCTIONS

5.1 The restrictions

Trade Sanctions are controls placed on specific countries or territories which place restrictions on:

- the importing, exporting and movement of goods and technology;
- the provision and supply of services; and
- the involvement of UK people in these activities.

These restrictions also extend to the provision of technical assistance relating to any sanctioned, embargoed or controlled items. Technical assistance means any technical support related to repairs, development, manufacture, assembly, testing, use, maintenance or any other technical service.

5.2 Identification of affected countries

The UK Government maintains the list of countries subject to trade restrictions and the specific controls applicable to those countries: <https://www.gov.uk/guidance/current-arms-embargoes-and-other-restrictions>.

By means of an example, as at December 2020, there were arms embargos, restrictions on the transfer of goods for end-use by the military (including goods that could be used for internal repression) and technical assistance restrictions in place for the following countries:

Afghanistan	Democratic Republic of the Congo	Russia
Argentina	Gambia	Senegal
Armenia	Ghana	Sierra Leone
Azerbaijan	Guinea	Somalia
Belarus	Guinea-Bissau	South Sudan
Benin	Iran	Sudan
Burkina Faso	Iraq	Syria
Burma (Myanmar)	Lebanon	Togo
Cape Verde	Liberia	Venezuela
Central African Republic	Libya	Zimbabwe
China	Mali	
Cote d'Ivoire (Ivory Coast)	Niger	
Democratic People's Republic of Korea (North Korea)	Nigeria	

By means of an example, as at December 2020, there were non-arms related trade restrictions and technical assistance restrictions impacting on the transfer of know-how to the following countries and sectors:

Burma (Myanmar) – telecommunications	Somalia – charcoal
Democratic People's Republic of Korea (North Korea) – gold, precious metals and diamonds	Syria – telecommunications, oil and petroleum, jet fuel, cultural goods, energy, luxury goods, gold, precious metals and diamonds
Iran – nuclear	Ukraine (Crimea and Sevastopol) – transport, telecommunications, energy, natural resources, infrastructure, tourism and real estate
Iraq – cultural goods	Venezuela – telecommunications
Russia – oil and gas	

5.3 Exemptions

The export control exemptions for information that is in the public domain and the transfer of basic scientific research **do not** apply to the provision of “technical assistance” under trade sanctions, and therefore extra care is needed when dealing with a country/territory that is subject to trade sanctions.

6. US EXPORT CONTROLS AND TRADE SANCTIONS

6.1 The framework

US Export Controls may also apply to goods, technology and know-how which came to the University from the US, and US trade sanctions may apply to US persons who work for or who are based at the University. US export controls are contained within three legal frameworks. These frameworks are the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and the Department of the Treasury’s Office of Foreign Asset Control’s (OFAC).

6.2 Export Administration Regulations (EAR)

The EAR relates to exports/re-exports of a variety of dual-use goods and technology. This is the primary set of regulations governing whether these types of goods and technology require a licence. Technology in the EAR is defined as the information necessary for the development, production or use of a product. Such information can take the form of “technical assistance” or “technical data”. “Technical assistance” can involve the transfer of technology through instruction, training, or consulting services, and may involve the transfer of technical data. “Technical data” may take the form of blueprints, diagrams, models or engineering designs and specifications. A significant exemption to controls on the export of technical data is that publicly available technology and software is not subject to the EAR. Due to the broad reach of the EAR, the U.S government may also exert jurisdiction over certain transactions outside of the U.S.

6.3 Commodity control list

To determine whether licensing requirements are applicable to the export of dual use products or technology you need to identify whether that product or technology is listed in the Commodity Control List (CCL) which is the section of the EAR in which commodities, software and technology are categorised. If the CCL indicates that a licence is required, it will be essential to determine whether a licence exemption applies. Numerous exemptions are available for the export and re-export of technical data and software.

6.4 International Traffic in Arms Regulations (ITAR)

The ITAR regulates the exports of goods, related technical data and services identified on the U.S. Munitions List. When the document refers to technical data it is referring to information required for the development, production or use of defence articles. There is an exemption which applies here, this is for information concerning general scientific, mathematical or engineering principles taught in education institutions.

6.5 Treasury’s Office of Foreign Asset Control’s (OFAC)

The OFAC is targeted at certain countries and a substantial number of specially designated nationals. It administers comprehensive embargoes on transactions which involve specific countries.

6.6 Sanctions

A criminal infringement of the EAR (U.S export control law) could result in a fine of up to \$1 million and up to 20 years imprisonment. Civil violations can result in penalties of up to \$250,000 or twice the value of the relevant transaction. Breaches of U.S sanctions can also result in a fine ranging from \$65,000 for civil violations to \$20 million and up to 30 years imprisonment for criminal violations.

7. ACADEMIC TECHNOLOGY APPROVAL SCHEME (ATAS)

7.1 Students

ATAS is operated by the Foreign, Commonwealth & Development Office (FCDO) and runs in parallel to export controls and immigration legislation and must also be adhered to by the University. ATAS places obligations on certain international students who are studying at postgraduate level in certain sensitive subjects to be authorised to do so. Students who are nationals of the following countries do not require an ATAS certificate - EU countries, the European Economic Area (EEA), Australia, Canada, Japan, New Zealand, Singapore, South Korea, Switzerland or the United States of America.

7.2 Researchers

In January 2021, HM Government announced from 21 May 2021, researchers will also be required to hold an ATAS certificate before applying for a visa to conduct activities on UK soil that could result in the intangible transfer of technology (ITT) to WMD and advanced conventional weapons technology programmes of concern. The purpose of the expansion is to introduce relevant vetting to ensure that higher education providers do not inadvertently support foreign military programmes of concern. All subject areas requiring ATAS for students will now also be required for researchers.

HM Government defines a researcher as an individual conducting investigation into a problem or situation, where the intention is to identify facts and/or opinions that will assist in solving the problem or dealing with the situation. A researcher may be working independently or as part of team.

All visiting researchers will need to apply under ATAS before they begin any research subject to ATAS. They will not need to do so before making a visa application but must have a valid certificate before beginning their research in the UK.

The extended regime will apply to any individual entering the UK to undertake research in one of the listed areas and will include (but not be limited to) post-doctoral researchers, visiting researchers and academic staff. ATAS certificates will be required for the following routes if the individual will be undertaking research at PhD level or above in an area which currently require ATAS as postgraduate level:

- Skilled worker
- Government authorised exchange worker
- International agreement worker
- Intra-company transfer

8. IMPLEMENTATION

This Policy is implemented by the Compliance Procedures.



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