



United Kingdom
Delegation to the
OSCE

FSC.EMI/258/18

2 July 2018

ENGLISH only

Jaurégasse 12
Vienna
A-1030

Tel: +44 1 716 13 3304
Fax: +44 1 716 13 3900
www.fco.gov.uk

NOTE NO 13/18

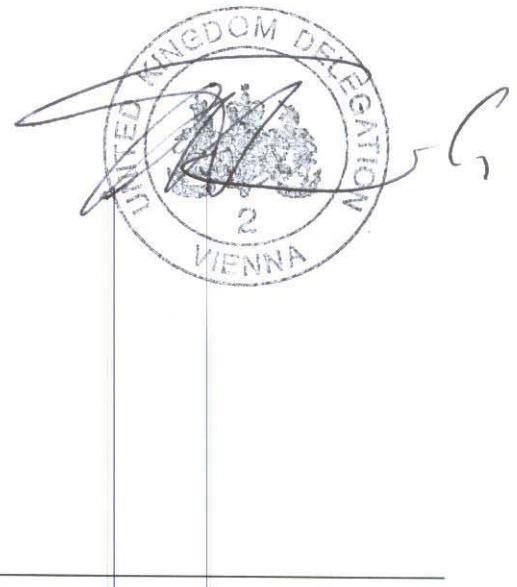
The United Kingdom Delegation to the Organisation for Security and Co-operation in Europe (OSCE) in Vienna presents its compliments to all Permanent Missions and Delegations to the OSCE and the Conflict Prevention Centre, and has the honour to submit the United Kingdom's Questionnaire on the Export of Conventional Arms and Related Technology.

The Permanent Delegation of the United Kingdom to the Organisation for Security and Cooperation in Europe avails itself of this opportunity to renew to all other Delegations to the OSCE and to the Conflict Prevention Centre the assurances of its highest consideration.

UNITED KINGDOM DELEGATION
VIENNA

2 July 2018

To all the Permanent Missions and Delegations to the OSCE in Vienna
To the Conflict Prevention Centre



Questionnaire on Participating States' Policy and/or National Practices
and Procedures for the Export of Conventional Arms and Related Technology

OSCE participating States are requested to provide details of:

1. Their basic principles, policies and/or national practices on the export of conventional arms and related technology.

UK Government policy is to encourage and authorize exports wherever they are compatible with our political, strategic and security interests and in accordance with national and international law and other national and international commitments that the UK has made regarding the export of strategic goods. These obligations and commitments are set out in the UK's Consolidated EU and National Arms Export Licensing Criteria, and are consistent with EU Council Common Position 2008/944/CFSP.

2. Their national legislation governing the export of conventional arms and related technology. If applicable, report changes and/or updates to the data provided in 1995, including any relevant subsidiary legislation.

The Export Control Act 2002 came into force on 1 May 2004, replacing some and extending other previous export control powers and introducing a more transparent framework and increased Parliamentary accountability. Under the Act, a licence is required for arms trafficking and brokering activities which take place wholly or partly in the UK and intangible technology transfers. The provision of technical assistance related to weapons of mass destruction is also controlled. The Export Control Order 2008 replaced the original secondary legislation introduced at the time of the Act, and is now the main legislation outlining the duties and responsibilities of companies for the export of controlled goods.

3. Any international agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party.

Please also refer to the answer to Q1.

The UK is also a party to the guidelines for conventional arms transfers agreed by the permanent five members of the UN Security Council in October 1991, and was a founder member of the Wassenaar Arrangement that came into force on 1 November 1996. The UK has also signed and ratified the Anti-Personnel Mine Ban Convention, prohibiting inter alia the production and transfer of anti-personnel mines; and the Convention on Cluster Munitions, which prohibits inter alia the production and transfer of cluster munitions.

The UK has also banned the transfer of MANPADS to non-state end-users and will only export them to foreign governments or to agents authorized by a Government, in accordance with the agreement reached in the Wassenaar Arrangement on the 'Elements for Export Controls on MANPADS' and OSCE (FSC.DEC.03/04).

The UK has also signed and ratified the Arms Trade Treaty (ATT), which entered into force on 24 December 2014. The Treaty will save lives and reduce human suffering. Exports that would be used for genocide, crimes against humanity or a broad range of war crimes are prohibited. We are currently undergoing the important process of agreeing the structure and rules of procedure for the Treaty and are urging other countries – particularly the largest arms exporters – to accede to the Treaty.

4. The procedures for processing an application to export conventional arms and related technology:
- who is the issuing authority?
 - what other authorities are involved and what is their function?
 - who deals with compliance?

Licences to export arms and other goods subject to control for strategic reasons are granted by the Secretary of State for International Trade (DIT), acting through the Export Control Organisation (ECO).

The ECO also has responsibility for ensuring that exporters are in compliance with the conditions of General and Global licences, including maintaining proper records.

The ECO forms the largest part of the recently created Export Control Joint Unit (ECJU). The ECJU was set up by the Government in July 2016 to bring together staff from the Department for International Trade (ECO staff), the Foreign & Commonwealth Office (FCO) and the Ministry of Defence (MOD). The creation of ECJU has centralised expertise and removed duplication, helping us to provide a high quality service to business.

All relevant licence applications are circulated to advisers in other Government Departments. These include wider FCO and MOD staff and also the Department for International Development (DFID). FCO has sole responsibility for considering the foreign policy implications of any proposed export or supply of controlled goods and technology. This includes ensuring that recommendations on export licences given to DIT are consistent with overall FCO policy for defence exports and consistent with the UK's international obligations and commitments (including in relation to arms embargoes). FCO also has an interest in human rights issues and internal repression records of recipient countries.

MOD has sole responsibility for considering the potential risk to the security of the UK, British forces overseas and our allies for any proposed export or supply. The MOD also considers the risk of diversion of goods and technology to third countries of potential concern; provides military, technical and equipment security advice; and provides advice on bilateral defence relations generally. The MOD is also the lead Department for the Form 680 process which allows industry to seek Government approval for the release of classified information or supply of classified defence equipment overseas.

DFID provides advice on certain applications and considers the economic and development impact of the proposed export on the recipient country.

HM Revenue and Customs working with the Border Force are responsible for the enforcement of export controls and the investigation of suspected offences.

5. Lists of conventional weaponry under national export controls and the basis for their control. If applicable, report changes and/or updates to the data provided in 1995.

Please also refer to the answer to Q2.

The UK ‘Military List’ is contained in Schedule 2 of the Export Control Order 2008 and includes all items on the Wassenaar Arrangement Munitions List and EU Common Military List, as well as certain other goods for which the UK controls exports for reasons of national policy.

6. Principles and national regulations on the destination or end-user of the equipment. Is there a complete *erga omnes* system or a published list of
 - destinations of concern?
 - embargoed countries?
 - differentiation between destinations (e.g., is there any preferential treatment of (groups of) countries)?

Please also refer to the answer to Q19.

All licence applications to export conventional arms are considered on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria, irrespective of their destination. Criterion One specifies that a licence should be refused if approval would be inconsistent with the UK’s commitments to enforce UN, OSCE and EU arms embargoes, or with any other national embargoes and other commitments relating to the application of strategic export controls.

7. Requirements for the provision of an end-user certificate in an export license application, or of non-re-exportation clauses, or of any other type of certification before and after delivery for conventional arms export contracts. If applicable, please specify any verification of the end-user certificate and/or non-re-exportation clauses before and after delivery.

Individual export licence applications must be supported by an end-user undertaking before a licence can be granted or, in cases where the consignee is a government body, a copy of the relevant part of the official purchase order. All end-user undertakings include a declaration by the end-user that they will not re-export or transfer the goods to a destination subject to an embargo imposed by the UN, OSCE or EU where to do so would be a breach of that embargo.

In addition, the UK regularly conducts checks at the licensing stage in cases where it wishes to confirm that the end-user documentation is accurate. For Open Individual Export Licences (OIELs) in particular, end-user undertakings (or a copy of the official purchase order) must be obtained within 30 days of each export. These do not need to be presented to DIT but must be made available for inspection if required.

8. National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures.

The terms “transit” and “transshipment” have specific meanings for customs purposes. However for export control purposes they are taken to mean simply “goods passing through the UK from one overseas destination en route to another overseas destination”.

A licence is not required for the majority of transits or transshipments through the UK provided certain conditions are met. If any of the conditions cannot be met, then an export licence is required.

The conditions are that the goods remain on board a ship or aircraft for the period that they remain in the UK, or are goods on a through bill of lading or through air waybill, and in either case are exported within 30 days of their importation. The goods in question must have been originally exported in accordance with the laws of the originating country, and the destination of the goods must be the same as that declared prior to their original export.

The exceptions to the above – i.e. where an export licence is always required for transit and transshipment - apply to:

- **Anti-personnel mines and components designed especially for them; a range of torture equipment; cluster munitions; and related equipment, software and technology to all destinations;**
- **Certain Small Arms and Light Weapons and their ammunition; MANPADS and Long-Range Missiles; and certain other conventional weapons and their components (as specified in Part B of Schedule 1 to the Export Control Order 2008) to a further list of sensitive destinations.**
- **Any military goods to an embargoed destination.**

9. The procedures governing companies wishing to export arms. Are companies obliged to seek official governmental authority to enter into contract negotiations or to sign contracts with foreign customers?

Companies are not generally required to seek UK Government authority to enter into contract negotiations or to sign contracts with foreign customers. However, companies must seek authority from the MOD if they wish to release UK classified information. Provisions are in place relating to the controls on the trafficking and brokering of such goods.

10. Policy on the revocation of export licences once they have been approved; please list any published regulations.

The Export Control Order 2008 permits the Secretary of State for International Trade to amend, suspend or revoke licences that he has granted. The imposition of trade sanctions or an arms embargo are two clear examples where a revocation might occur; a significant deterioration in the internal security situation of the recipient country or a serious increase in regional tensions are others. There are no specific restrictions on the reasons for which licences may be revoked. However, the general principles of UK administrative law control the circumstances and manner in which they can be revoked. Exporters have the right of appeal for licences that are revoked.

11. The penal and administrative implications for any exporter failing to comply with national controls. If applicable, report changes and/or updates to the data provided in 1995.

There are a range of penalties in place for exporters failing to comply with export controls. These are set out in the Export Control Order 2008 and Custom and Excise

Management Act 1979. HM Revenue and Customs are the UK enforcement authority and have wide-ranging powers at their disposal. The maximum penalty for illegal export of conventional arms is 10 years imprisonment.

12. Any circumstances in which the export of arms does not require an export licence.

Export controls on arms and other military goods do not apply to the Crown, where the Crown retains ownership of the items. In addition, various visiting forces and international organisations are exempt from export control.

13. Licences for temporary export (e.g., demonstrations or testing), the period allowed and any special conditions attached to the licence, including verification of return procedures.

Licences for temporary exports are normally valid for 12 months. A condition for such licences is that the goods must be returned to the UK within 12 months of the date of the licence. Holders of temporary licences have to confirm in writing to the ECO that the goods have been returned.

14. Licence documents and any standard conditions attached to it (copies to be provided).

Copies of the current export licence application forms, with details of standard conditions, have been provided with previous returns and remain unchanged.

15. Different types (e.g. individual, general, restricted, full, permanent, etc.) of licences and what they are used for.

The following licences are available for strategic controlled goods:

Standard Individual Export Licence (SIEL)

A SIEL is granted to an individual exporter and allows the export of a specified quantity of specified goods to a specified consignee or end-user as set out in the licence. The licence is usually valid for up to 2 years or until the specified quantity of goods has been shipped, whichever is sooner.

Open Individual Export Licence (OIEL)

This licence is granted to an individual exporter and allows multiple shipments of specified goods to specified destinations. The licence is generally valid for up to 5 years. OIELs are usually only granted for lower-risk transactions where the exporter can demonstrate good compliance with export controls and a genuine business need for this type of licence. Holders of OIELs are subject to periodic compliance inspections by the ECO.

Open General Export Licence (OGEL)

An OGEL allows the export of specific goods by any exporter to a range of destinations, as set out in the licence itself. The combination of goods and destinations permitted on each OGEL have been carefully assessed against the Consolidated Criteria. Exporters must register for these licences and adhere to all terms and conditions. All registered users of OGELs are subject to periodic compliance inspections by the ECO

16. Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.

Please also refer to the answer to Q4.

The ECO provides an End-User Advisory Service to provide exporters with advice on licensability. The ECO has also developed a range of self-help software tools to help exporters make their own assessment about the licensability of goods. The Government does not provide advice on the likelihood of approval for a possible transaction, other than in limited circumstances through the Form 680 process operated by the MOD.

17. The average number of export licences issued annually and the staff engaged in the export licensing procedure.

In 2017, 13,332 Standard Individual Export Licences and 406 Open Individual Export Licences were issued. In 2016 these figures were 13,735 and 334 respectively.

The ECJU comprises 100 staff, of which 80 are ECO staff, 12 FCO and 8 MOD staff. Other Government Departments (including wider MOD and FCO staff) are also involved in the export licensing process but there is no centrally held estimate for the total number of people involved.

18. Any other relevant information pertaining to the export of conventional arms and related technology, e.g., additional laws, reports to Parliament, special procedures for certain goods.

This information is available in the UK Government's 2017 Annual Report on Strategic Export Controls and published quarterly reports. DIT also manages an online searchable database that allows users to produce their own reports from export and trade licensing statistics. The database is available at:

<https://www.exportcontroldb.trade.gov.uk/sdb2/fox/sdb/>

19. Are all guidelines governing conventional arms transfers nationally published?

Such information can be found using the GOV.UK website at:

<https://www.gov.uk/beginners-guide-to-export-controls>

NB: Participating States that do not export conventional arms and related technology will so inform all other participating States.