



Department
for Business
Innovation & Skills

**EXPORT CONTROL
ORGANISATION**

Guidance on 'trafficking and
brokering' (trade controls) of
controlled military goods

(Review of Export Control
Legislation 2007)

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Contents

1.	Introduction	4
2.	The Legislation.....	4
3.	The New Structure of Trade Controls	5
4.	Controls on Category A Goods to Non-Embargoed Destinations.....	6
	What specific trade activities need a licence?.....	6
5.	Controls on Category B Goods to Non-Embargoed Destinations.....	7
	What activities need a licence?.....	7
6.	Controls on Category C Goods to Non-Embargoed Destinations.....	7
	What specific activities need a licence?.....	7
7.	Controls on Trade to Embargoed Destinations.....	8
	What goods are controlled and what specific activities need a licence?.....	8
	What destinations do these controls apply to?.....	8
	Does it matter where the activities take place?	9
8.	Types of Trade Licences and How to Apply for Them	9
	How do I apply?	10
	How do I decide which type of licence to use?	10
	Points to bear in mind when applying	11
9.	End-User Documentation.....	11
10.	Frequently Asked Questions.....	12
11.	Contacts for Further Advice	21
	Annex A – EXTRACTS OF THE LEGISLATION DESCRIBING THE CONTROLS THAT APPLY GOODS IN CATEGORIES 'A', 'B' AND 'C' AND EMBARGOED DESTINATIONS	22

Annex B – EXTRACTS FROM THE LEGISLATION DESCRIBING THE GOODS IN CATEGORIES 'A', 'B' AND 'C'	27
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1. Introduction

The Export Control Act 2002 set out a legislative framework for the control of strategic goods and technology. Secondary legislation introduced under that Act included Orders to control – for the first time - trading in controlled goods between two overseas countries, and set out what goods will be covered and the circumstances in which those transactions would be controlled.

The Government, as part of its Review of Export Control Legislation has carried out a phased implementation of changes to controls on trade (often referred to as “trafficking and brokering”). On 1 October 2008, the Government introduced a new structure for trade controls that aligned controlled activities to the risks posed by the goods in question. The new structure consists of category C goods, category B goods and category A goods and the trade activities controlled for each category vary.

In addition, the Government made a commitment to lay a consolidating Order, incorporating the following further changes:

- Move light weapons into category B of the new trade controls. This will bring under control the trading activities of UK persons anywhere in the world in relation to those weapons. On the same date, Unmanned Aerial Vehicles (UAVs) and Long Range Missiles (LRMs) will be moved into category B;
- Adjust the scope of the current legislative exemptions in relation to transit and transshipment so that there is no exemption for category A goods. For category B goods, the exemption for specified destinations of concern will be removed (covered in more detail in a separate guidance note on transshipment controls);

Introduce additional controls on the sole provision of transport for category B goods (separate guidance on this aspect of the controls is available).

This Guidance Note explains the structure under that Order, the Export Control Order 2008 which came into effect on 6 April 2009, as well as the various trade activities which, are prohibited by the Order in the absence of an appropriate Trade Control Licence.

2. The Legislation

The **Export Control Order 2008** revokes all of the following Orders (article 45), together with provisions amending them:

- **The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003** – which was the main piece of legislation controlling the export of strategic goods, the transfer of technology and the provision of technical assistance.

- **The Trade in Goods (Control) Order 2003** – which related the trade in controlled goods from one overseas country to another not subject to any embargo (the Trade in Goods (Categories of Controlled Goods) Order 2008 which set up the new three-tier structure for trade controls is revoked at the same time).
- **The Trade in Controlled Goods (Embargoed Destinations) Order 2004** - which related to trading in controlled goods from one overseas country to another, but only for a schedule of specific destinations; i.e. those which are subject to a full scope European Union (EU), Organization for Security and Co-operation in Europe (OSCE) or UK national embargo; and
- **The Technical Assistance Control Regulations 2006** – which related to the licensing, enforcement and application of penalties in respect to the import of technical assistance related to goods listed in Annex II to Council Regulation (EC) No.1236/2005

The contents of the above Orders, amended as necessary to reflect the outcome of the 2007 review of export control legislation, are now all incorporated into the Export Control Order 2008 (including penalty and licensing provisions relating to Council Regulation (EC) No. 428/2009, the Dual Use Regulation, and Council Regulation (EC) No.1236/2005).

3. The New Structure of Trade Controls

Prior to 1 October 2008, trade controls had a two category structure. As a result of the review of the controls introduced under the Export Control Act 2002 and a public consultation exercise, the Government became convinced that the two-tier structure was no longer the most effective model. The new three-tier structure for trade controls, introduced on 1 October 2008, aligns the activities controlled more closely to the risks posed by the goods in question. The Export Control Order 2008 maintains this structure, with the following categories:

- **Category A goods** consist of cluster munitions, and specially designed components therefor; and certain paramilitary goods whose export the Government has already banned because of evidence of their use in torture. These include electric shock batons, electric-shock belts, leg irons and sting sticks.
- **Category B goods** consist of Small Arms and Light Weapons, Long Range Missiles (LRMs) with a range over 300km (Note: this includes Unmanned Air Vehicles (UAVs) and Man Portable Air Defence Systems (MANPADS) and accessories, ammunition, and specially designed components therefore. "Production" equipment specially designed for MANPADS, field test equipment specially designed for MANPADS and specialised training equipment and simulators for MANPADS are also covered in this category.
- **Category C goods** consist of all goods contained within Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 that do not fall into either of the two categories below, and certain substances for

the purpose of riot control or self-protection and related portable dissemination equipment.

Broadly, trading, or any act calculated to support that trading is controlled unless, because of the lesser risk generated by the goods in question, some acts can be exempted. Thus the full range of controls applies to category A goods, but their scope is reduced for category B and reduced still further for category C. Please note that stricter controls apply to all controlled goods when going to **embargoed** destinations. Please refer to section 7 for more information.

For definitions of Small Arms, Light Weapons, MANPADs, Cluster Munitions, and associated equipment, please refer to the Frequently Asked Questions in section 10.

There is further guidance documentation produced by the ECO on MANPADs published on <https://www.gov.uk>.

4. Controls on Category A Goods to Non-Embargoed Destinations

What specific trade activities need a licence?

The full list of category A goods is contained in Part 1 of Schedule 1 to the Export Control Order 2008.

For category A goods a trade licence is required for any of the following activities, where undertaken by any company or person from within the UK (whether or not they are a UK person) or by any UK person operating overseas (see the FAQs in section 10 for what a UK person is), and whether directly or indirectly:

- Supplying or delivering, agreeing to supply or deliver, or doing any act calculated to promote the supply or delivery of Category A goods where that person knows or has reason to believe that their action or actions will, or may, result in the removal of those goods from one third country to another.

Unlike trading in category C and B goods, there are no exemptions for those whose sole involvement is in transportation services, financing or financial services, insurance or reinsurance services or general advertising and promotion (such as displaying category A goods at trade fairs or advertising them in periodicals). Therefore, anyone involved in the provision of these services requires a licence.

These strict controls reflect the fact that the supply of many of these goods is inherently undesirable. Licences will not normally be granted for any trade in paramilitary goods listed because of evidence of their use in torture. However, as with physical exports of such goods, there will be rare circumstances in which one might be granted, (e.g. for the export of equipment for museum or exhibition display).

5. Controls on Category B Goods to Non-Embargoed Destinations

What activities need a licence?

Category B goods are goods where there is legitimate trade, but which, on the basis of international consensus, have been identified as being of heightened concern. Therefore, the trading activities of UK persons anywhere in the world are still controlled for category B, but the range of supporting activities controlled is not as large as for category A goods, with some activities not controlled at all, and others only controlled where payment is received. In other words, the starting point is the same as for category A goods (see above) but certain exemptions apply.

Unlike for category A goods, a licence is not required for category B goods if a person's **sole involvement** in the transaction is to provide financing or financial services, insurance or reinsurance services; or general advertising or promotion services. In addition, a licence is not required if a person's sole involvement is a

"contract promotion activity"¹ where a payment² is not received. However, controls **do apply** to the sole provision of the transport of Category B goods between two third countries in limited circumstances (separate guidance is available).

6. Controls on Category C Goods to Non-Embargoed Destinations

What specific activities need a licence?

Reflecting the lower degree of risk, these controls are not fully extra-territorial; they apply in respect of trade from any one overseas country to any other overseas country **where any part of the activity takes place in the UK**. This means that, for example a person who agrees to arrange the supply of category C goods from one overseas country to another while he or she is in the UK, but actually makes the arrangements for the supply while he or she is abroad, would still need a licence. The controls on trade in category C goods do not apply, however, to the activities of UK persons undertaken wholly overseas.

Subject to the above, a trade control licence is required for a person to directly or indirectly:

- (i) Agree to supply or deliver; or

¹ A "contract promotion activity" means any act calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or movement of goods or any agreement to do such an act.

² "Payment" includes a payment in money or money's worth or in kind whether referable to a particular act or made from time to time but does not include a payment made by way of wages or salary. See also the FAQs in section 10.

- (ii) Do any act calculated to promote the supply or delivery of

category C goods, where the person is aware or has reason to believe that to do so will, or may, result in the removal of these goods from one third country to another third country. A licence is not required if a person's **sole involvement** in a transaction is the provision of transportation services, financing or financial services, insurance or reinsurance services or general advertising or promotion services. In addition, as for category B goods, an export licence is not required for "contract promotion activity" where payment is not received.

The controls just apply to movements of equipment between third countries (including where the goods pass through the UK in transit). This means that trade licences are not required for trading activities relating to exports from the United Kingdom as these are already covered by the UK export licensing system. Neither do the controls apply to the provision of Technical Assistance (unless, of course, that involves the movement of 'military goods').

7. Controls on Trade to Embargoed Destinations

What goods are controlled and what specific activities need a licence?

Full scope embargoes normally apply, at a minimum, to all military and paramilitary goods. Article 20 of the Export Control Order 2008, which sets out what trade controls apply in respect of embargoed destinations, therefore applies to all goods subject to trade controls (that is, category A goods, category B goods and category C goods). This means that trading in any of these goods requires a licence if the destination country is embargoed.

The controls on trade to embargoed destinations closely match those applying to category A goods (see section 4) and cover the same range of activities, although in one respect they are tighter: there is only a defence if the relevant person can show that they did not know or had no reason to suppose that the goods were destined for an embargoed destination (article 34(2)). As with category A goods there are no exemptions for those whose sole involvement is in the provision of transportation services, financing or financial services, insurance or reinsurance services or general advertising or promotion services. Therefore, anyone involved in provision of these services or trade in connection with embargoed destinations needs a licence in advance.

Again, the controls just apply to movements of equipment between third countries (including where the goods pass through the UK in transit).

What destinations do these controls apply to?

These provisions are modelled on controls already in place in orders made under the United Nations Act 1946 which implement binding UN resolutions relating to sanctions and embargoes. The Export Control Order 2008 applies to trade in controlled goods from any

destination outside the UK to destinations subject to a full scope EU, OSCE or UK national arms embargo.

Whenever a full embargo is imposed these controls apply to trading, irrespective of whether the embargo itself requires the United Kingdom to impose trade as well as export controls, and will apply for the duration of the embargo. Similarly, the Order will be amended if any destination subsequently becomes subject to any embargo. The current list of destinations subject to the Order is listed in Parts 1 and 2 of Schedule 4 to the Order, available on-line.

Does it matter where the activities take place?

No. These controls are extra-territorial in nature, which means that, as with trade in Category B and A goods, they apply both to activities that take place in the UK and to the activities of United Kingdom persons anywhere else in the world.

8. Types of Trade Licences and How to Apply for Them

Dependent upon the circumstances, the Export Control Organisation (ECO) can issue one of three types of licence to authorise the trading activities described above:

- Standard Individual Trade Control Licences (SITCLs);
- Open Individual Trade Control Licences (OITCLs); and
- Open General Trade Control Licences (OGTCLs).

A **SITCL** is specific to a named trader and covers involvement in trading a set quantity of specific goods between a specific source and destination country with a specified consignor, consignee and end-user. SITCLs will normally be valid for two years. Upon expiry either by time or because the activity has taken place the licence ceases to be valid. Should further similar activity take place, a further licence must be applied for.

An **OITCL** is specific to a named trader and covers involvement in trading of specific goods between specific source and destination countries and/or specified consignors, consignees and end-users, but is not normally quantity specific.

There are two separate **OGTCLs** that allow trade in most military goods between specified countries; the Open General Trade Control Licence (Category C Goods) and the Open General Trade Control Licence (Small Arms and Light Weapons). These OGTCLs reflect the three tiers of trade controls, which replaced the “controlled” and “restricted” categories on 1 October 2008.

Trading in small arms and light weapons is covered by the Open General Trade Control Licence (Small Arms and Light Weapons) whether carried out from within the UK or by UK persons operating overseas. This works on the same basis as the old OGTCL and permits trade from and to certain countries. However, as these goods are of heightened concern, the number of destination countries excluded from this OGTCL has been extended. Details

of the countries covered by the new Small Arms and Light Weapons OGTCL are provided on the licence.

The old OGTCL has been amended to cover category C goods only, to become the Open General Trade Control Licence (Category C Goods), but in all other respects – for example, its structure, underlying rules, and the countries covered - remains the same.

Registration with the ECO for use of either OGTCL must be made within 30 days of the first use. All Open General Licences, including the OGTCLs, remain in force until they are suspended or revoked, although their provisions may be varied at any time and the ECO can also suspend a user's ability to use an OGL (including the OGTCLs). Where you cannot comply with the conditions of the OGTCLs, you must apply for an OITCL or SITCL as appropriate.

How do I apply?

All applications for a SITCL and OITCL or registration for either of the OGTCLs should be made via SPIRE (ECO's fully electronic system for processing licence applications). You can register to use SPIRE at <https://www.spire.bis.gov.uk> **As SPIRE is a web based system you can apply or register for a licence from anywhere in the world with access to the World Wide Web.**

How do I decide which type of licence to use?

If you are intending to trade in category C or B goods to a **non-embargoed destination**, you should first consider whether either of the OGTCLs (published on <https://www.gov.uk>) covers the proposed activity and whether you are able to comply with their conditions. If the OGTCLs do not cover the proposed activity, you should then consider whether that activity might be covered by any of your existing OITCLs, or whether you need to apply for one (you should however note that there may be circumstances where it will not be possible to issue an OITCL).

If neither an OGTCL nor any of your OITCLs covers the proposed activity (or if an OITCL application has been turned down), then you should apply for a SITCL. Applications for SITCLs will be considered on a case by case basis, against the Consolidated EU and National Arms Export Licensing Criteria (published on <https://www.gov.uk>). If you are intending to trade in category A goods, or in any controlled goods to an **embargoed destination** you should apply for SITCLs. This is because strict controls apply in these instances, to reflect the sensitivity of these goods or destinations, and so cases will need to be carefully considered on a case-by-case basis. Consequently, Open General Licences do not cover these supplies, and OITCLs would not normally be appropriate; but whilst SITCL applications would tend to be refused, there might be rare circumstances in which a licence might be granted (e.g. for the trading of torture or execution equipment for museum or exhibition display; or of military equipment for humanitarian use or use by a peacekeeping force).

Points to bear in mind when applying

Remember to give as much notice as possible prior to any licensable activity and to include as detailed a description as possible of the proposed activity, equipment and transaction details together with relevant technical specifications and end-user documentation as appropriate for the type of licence you require.

When applying for licence coverage for controlled activities remember to ensure that your application covers all your potential requirements. You may need to apply for more than one licence to catch all aspects of a particular project or venture (e.g. physical exports of goods, intangible transfers of technology, trafficking and brokering activities). Where more than one type of licence is required it would be advantageous for processing purposes if they could be applied for simultaneously with a covering letter, or, if not possible, that the individual applications are cross-referenced.

9. End-User Documentation

Acceptable end user supporting documentation is required when applying for a SITCL and when making use of an issued OITCL. When making use of the OGTCLs, registers or records need to contain sufficient details as to allow information on the description of the goods, the date or the period of time over which the relevant activities were carried out, the quantity of the goods, the name and address of the consignee and, if known, the end-user of the goods and the name and address of the supplier of the goods, to be identified.

We recognise that the format of End-User Undertakings required for exports of goods from the UK may not always be appropriate for all the licensable activity covered by the trade controls. However, some form of supporting documentation from the goods recipient will be required. It is not necessary for a new document to be drawn up; we can often accept documentation that has already been generated for commercial purposes, such as Government Purchase Orders, relevant extracts from Government contracts and copies of any End User Undertakings generated by the goods recipient to the authorities of the exporting nation, provided that it includes a full description of the goods (quantity and values), details of the supplier, the goods recipient and the applicant.

In cases where the proposed trade has yet to be fully scoped out, other forms of documentation may be acceptable and will be considered on a case-by-case basis. In these circumstances you should contact the Special Casework Licensing Unit for further advice (see contact details below). Similarly, if there are any particular documentary requirements for an OITCL, these will be listed among the conditions.

Supporting documentation for OITCLs should be obtained for each end user before the licensable activity takes place and then retained until requested by ECO or H.M. Revenue & Customs, or inspected by ECO's Compliance Unit. There is no general requirement for end use documentation to be sent to ECO while the licence is extant.

NB: The fact that you have been granted a UK Trade Licence does not remove the requirement for you to obtain the permission of the authorities of the appropriate countries to remove or receive goods from or to that territory as necessary.

For arrangements about record keeping and compliance please refer to the terms of the licence or download the “Compliance Visits Explained” document which is published <https://www.gov.uk>.

10. Frequently Asked Questions

i. Why were changes to controls on trade needed?

Because it became clear that whilst there remained a need to apply the most rigorous controls to a limited range of equipment whose supply is inherently undesirable (these are category A goods), there is another distinct category of goods (these are category B goods) for which the risks posed justified extra controls, but not to the full extent previously applied to “restricted goods”. The three-tiered structure for trade controls thus allows the Government to more accurately align trade controls to risk. Where controls have been tightened – i.e. in respect of Small Arms and Light Weapons, MANPADs, and Cluster Munitions - the clear benefit will be to enable the Government to control, and where necessary refuse, UK involvement in the trading of these weapons of heightened concern, and thus ensure that unscrupulous traders cannot pursue deals that concern the UK simply by carrying out the business from another country.

ii. What is the definition of Small Arms and Light Weapons?

For the purposes of the Export Control Order 2008 only, Small Arms and Light Weapons are defined as:

1. “Goods” specified in entry ML1.a., ML1.b., ML1.c. or ML2 in Schedule 2 of the Export Control Order 2008, that are designed to be carried, operated and fired by an individual or by three or fewer individuals acting together, other than—
 - “goods” specified in entry ML2.b. in that Schedule; and
 - mortars with a calibre of 100mm or more.
2. Accessories specified in entry ML1d that are capable of being used in connection with those weapons;
3. Ammunition that is capable of being fired or launched by those weapons
4. Equipment specified in entry ML4.b. in Schedule 2 that is—
 - specially designed for firing or launching rockets, grenades, missiles or other explosive devices; and
 - designed to be carried, operated and fired by an individual or by three or fewer individuals acting together.

5. Rockets, grenades, missiles and other explosive devices that are –

- Specified in entry ML4 to Schedule 2; and
- Capable of being fired or launched from equipment falling within paragraph 13 (ie point 4 above)

6. Hand grenades - Grenades specified in entry ML4 in Schedule 2 that are designed to be thrown.

Where the specifications are covered by the above definition we expect small arms to include, but not be limited to:

Control Entry Heading or Rating	
ML1a or ML1b	air guns
ML1a	assault rifles
ML1a	chain guns
ML1a	combination rifle-shotguns
ML1a or ML1b	deactivated “weapons”
ML1a	General purpose machine guns
ML1a or ML2a	heavy machine guns
ML1a	machine pistols
ML1a	Pistols
ML1a	replica “weapons”
ML1a or ML1b	replica vintage guns
ML1a	revolvers
ML1a	Rifles
ML1a	semi-automatic pistols
ML1a or ML2a	sniper rifles
ML1a	sporting pistols

Control Entry Heading or Rating	
ML1a or ML2a	sporting rifles
ML1a	submachine guns
ML1a, ML1b or ML2a	veterinary/tranquillising rifles
ML1a, ML1b or ML2a	vintage guns
ML1b	Combat shotguns
ML1b or ML2a	shotguns
ML1d	gun silencers
ML1d	gun mountings
ML1d (or ML2c where incorporated in weapon)	Weapon day and night sights weapon night sights weapon sights
ML1d	clips for “weapons”
ML1d	flash suppressers
ML2a	anti-riot guns
ML3a	ammunition for veterinary/tranquillising rifles
ML3a	ammunition for wall and door breaching projectile launchers
ML3a	blank ammunition
ML3a	crowd control ammunition
ML3a	inert ammunition
ML3a	non-sporting shotgun ammunition
ML3a	small arms ammunition

Control Entry Heading or Rating	
ML3a	sporting gun ammunition
ML3a	tear gas/irritant ammunition

Where the specifications are covered by the above definition we expect light weapons to include, but not be limited to:

Control Entry Heading or Rating	ARS	Notes	Actual Examples
ML1a	Aircraft machine guns	1	
ML1a	Chain guns	1	
ML1a	Heavy machine guns		MG-34 with Lafette-34 mount, or DShk-38
ML1d	Gun mounting		Lafette-34 mount
ML2a	Aircraft Cannons	1	
ML2a	Anti-aircraft guns		Type 96 25mm AT/AA gun
ML2a	Anti-armour weapons		.55 inch Boys Anti-tank rifle
ML2a & ML4a	Deactivated " <i>light weapons</i> "		
ML2a & ML4a	Deactivated " <i>light weapons</i> " for weapons training simulators		
ML2a	Grenade launchers		HK GMG, or AGS-30
ML2a	Military flamethrowers		M2-2 flamethrower
ML2a	Heavy machine guns		25mm XM307
ML2a	Mortars		81mm L16 Mortar

Control Entry Heading or Rating	ARS	Notes	Actual Examples
ML2a	Projectile launchers		
ML2a	Recoilless rifles		57mm M18A1
ML2a	Small calibre artillery		WWI 37mm Mle "infantry gun"
ML4a & ML4b	Anti-armour missiles	3	Milan, LAW
ML4a	Anti-armour rocket		RPG-7V1
ML4a	Anti-structure rockets		LASM
ML4a & ML4b	Man Portable Air Defence System (MANPADS)	2	Stinger

Notes:

1 - Where the aircraft machine gun, cannon, or chain gun can be configured for use as a light weapon, i.e. carried, operated and fired by an individual or by three or fewer individuals acting together.

2 - ML4b for launching equipment.

iii. How does the test of "designed to be carried, operated and fired by an individual or by three or fewer individuals acting together" work for judging whether equipment is a "light weapon"?

The important point here is that the equipment is controlled on the basis of its design. If a weapon was designed so that, in normal circumstances, it would need a crew of four or more to carry, operate and fire it, then it will not be controlled simply because, in extreme circumstances, it might be possible to do so with less people. Those trading in these weapons should be able to make this judgement relatively easily by consulting manufacturers brochures or publicly available information on the internet, since the crew size is an important consideration in marketing and selling weapons.

iv. In what circumstances is trading in accessories or ammunition for these weapons controlled?

When the ammunition or accessories are capable of being used in connection with weapons that are themselves controlled. Clearly, it would not be reasonable to expect those trading goods between two overseas countries to know or find out precisely what weapon ammunition or accessories will be used in connection with. But traders can reasonably be expected to judge whether the ammunition or accessories have the right size, nature and attributes to be used in weapons such as those listed in the above tables. If they do, then the trading is controlled.

v. What about vintage and replica weapons. Do the extra controls apply to them as well?

Vintage and replica weapons are also controlled if their specifications are covered by the definition above.

vi. What about small arms or light weapons that have been deactivated?

Unless small arms or light weapons are certified as having been deactivated by a UK Proof House, they are controlled (provided their specifications are covered by the definition above).

vii. What is the definition of Man Portable Air Defensive Systems (MANPADS)?

For the purposes of The Export Control Order 2008 only, MANPADS are defined as:

“Man-portable air defence systems (MANPADS), as follows:

- (a) Surface-to-air missile systems designed to be man-portable and carried and fired by a single individual;
- (b) Surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.”

The following MANPADS related items are also controlled:

- Missiles for MANPADS.
- ‘Production’ equipment specially designed for MANPADS. ‘Production’ means all production stages (e.g., product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance).
- Field test equipment specially designed for MANPADS.
- Specialised training equipment and simulators for MANPADS.
- Components specially designed for goods described above.

There is further guidance documentation produced by the ECO on MANPADs (see <https://www.gov.uk>).

viii. What is the definition of a Cluster Munitions?

For the purposes of the Export Control Order 2008 only, Cluster Munitions are conventional munitions designed to disperse or release other conventional munitions weighing less than 20kg each, which are not self propelled and which are designed to function by detonating an explosive charge prior to, on or after impact. Both the cluster munitions and their submunitions are caught by the controls as are bomblets designed to be dispersed or released by a dispenser affixed to an aircraft rather than by a cluster munition as such.

There are a number of exclusions (e.g. for munitions designed to produce electrical or electronic effects), and the definitional provisions are set out exhaustively in Schedule 1 to the Export Control Order 2008

ix. What is meant by a UK person?

The term “United Kingdom person” as used in the Order, is defined in s.11 of the Export Control Act 2002 as a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom. A United Kingdom national is an individual who is—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
- (c) a British protected person within the meaning of that Act.

This includes dual nationals.

x. So does that mean that, as a UK or dual national, I have to apply for licences even though I no longer live in the UK?

Yes. If you are a UK national, even if you have other nationalities, the trade controls apply to you. However please bear in mind that you may be able to use the OGTCLs.

xi. If that is the case, then how do I apply for a licence from overseas?

Licence applications are processed on SPIRE – <https://www.spire.bis.gov.uk>. This is a web based system so you can apply for a licence from anywhere in the world with access to the World Wide Web.

xii. How am I affected if my only involvement is to provide transport, finance, or insurance/re-insurance?

This depends on what category of goods you are transporting, financing or insuring, and their intended destination. Sole provision of these services is only controlled for all “controlled goods” as defined in the Export Control Order 2008 when going to embargoed destinations, or for trade in category A goods. However, if the goods to be transported, or the destination country, do fall within those parameters, then any act calculated to transport, finance, or insure the goods is covered. For Category B goods, only the sole provision of transport is controlled and even then only in certain circumstances (separate

guidance is available). Category C controls do not extend to the sole provision of any of these services.

xiii. Does it matter whether I get paid for an activity that is linked to a trading activity?

For Category A goods, no. If you supply or deliver, agree to supply or deliver, or do any act calculated to promote the supply or delivery of those goods, and you have reason to believe that your actions will or may result in the removal of those goods from one third country to another third country, then your activity is licensable. For Category B and C goods, there is an exemption for “contract promotion activity” (defined as “any act calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or movement of goods or any agreement to do such an act”) where it is carried out “otherwise than for payment”.

It is important to remember that the act of trading goods between two third countries is not “contract promotion activity”. “Contract promotion activity” is quite far removed from trading and relates to some acts which could arguably lead to the trading being agreed. The most common example is where a company is approached to supply goods between two third countries but cannot do so and so passes the sales lead on to another company without receiving payment. If the goods in question fall into Category B or C, that act of passing on is not controlled.

xiv. How do I decide whether I have received “payment” for a contract promotion activity?

Payment in money, money’s worth or in kind is “payment”, regardless of whether it in respect of particular acts or is made more generally on a periodic basis, such as the payment of an annual retainer. If you are remunerated in any of these ways, then your contract promotion activity is licensable. However, the activities of waged or salaried employees who undertake, usually as part of a wider range of duties, acts which might constitute “contract promotion activity” are not controlled. So for example, an individual who was paid money for each sales lead passed on on an annual basis would be conducting a licensed activity; but a company employee who passed sales leads on as part of their broader role for which they received a salary, would not be.

xv. Does an agreement have to be a formal or written one?

No. It can be oral and informal.

xvi. What is the difference between *general and active or targeted advertising* in relation to promotional activities?

For the purpose of the trade controls:

- **General advertising** is where the advertising is not directed at one individual/company and is not intended to close a deal i.e. its main objective is to gain people’s interest. An example of general advertising may include a stand at a trade fair with promotional materials such as posters or brochures; or an advert in a periodical magazine.

- **Active/Targeted advertising** is typically, where the advertising is specifically aimed at an individual/s or company/ies with the intention of closing a deal (in this case for the cross border transfer of Category B goods). An example of active or targeted advertising may include a specific visit to a customer's premises to establish the terms of a potential future supply, or an application as part of a tendering exercise.

xvii. What is the practical impact of moving Long Range Missiles (including UAVs) from Category A to Category B?

Licences are no longer required for the general advertising or promotion of these goods. So you will no longer require a licence to display them at a UK trade fair or advertise them in a magazine, for example.

xviii. What if the goods in the third country are transferred before I get a licence, in circumstances beyond my control?

You may not engage in any controlled activities without a licence. It is therefore, vital to ensure that all staff likely to be engaged in such activities are made aware of the controls. If you subsequently discover that you are involved in a trading activity for which you should have applied for a licence, you should notify the ECO as soon as possible for advice.

xix. How long will applications take to process?

All licence applications will be processed in the usual way with the aim currently of completing the process within 20 working days on 70% of Standard Individual Trade Control Licences (SITCLs). The target for Open Individual Trade Control Licences (OITCLs), because of their generally wide-ranging nature, is 60 working days on 60% of applications. You should also bear in mind that this target applies only when we are in receipt of all documentation necessary to be able to process. There is, of course, no 'processing' associated with Open General Licences (OGLs), but you must register their use with the ECO Compliance Unit.

xx. Can applications be refused?

Yes. All applications are considered on a case-by-case basis by our various advisers against the Consolidated EU and National Arms Export Licensing Criteria and other announced policy, and taking into account the Government's commitments and international obligations. Among the factors taken into account in assessing applications will be the destinations and parties involved, the nature of the goods concerned, and the uses to which they could be put, as well as any other relevant information. There have been and will continue to be occasions when applications will be refused following the assessment process.

xxi. If an application is refused, is there a right of appeal?

If an OITCL is refused there is no right of appeal since it is still open to the applicant to apply for a SITCL. If a SITCL is refused, a reason for the refusal will be provided, and the right to appeal will be offered.

xxii. Can licences be granted for embargoed destinations?

Licences would not normally be granted for trade to an embargoed destination, however, as with exports, there will be very rare circumstances in which a licence might be issued, for instance for trade in military equipment for humanitarian use or peacekeeping forces.

xxiii. What happens if I trade without a licence?

Trading in any of the goods or to any of the destinations described above without a valid licence is a criminal offence. Offenders can be fined and/or imprisoned. In addition, making false statements in connection with a licence application is also a criminal offence. The maximum penalty for the most serious offences is set at 10 years.

If you find that you have inadvertently traded without appropriate licence cover you should let the ECO know as soon as possible. The ECO will normally advise that you make a voluntary declaration about the mistake to HMRC. It is, therefore, important that companies and individuals take advantage of the various training opportunities that the ECO provide and ensure that they themselves have adequate training, awareness, procedural and security strategies in place.

xxiv. Can existing OIELs for physical exports from the UK be extended to cover trade?

No. OIELs only permit exports from the UK to a single list of destinations. Separate applications will have to be made for trade licences, specifying the source and destination countries to be included on the licence.

11. Contacts for Further Advice

Further information and help on export and trade controls can be obtained from:

Export Control Organisation Helpline
3rd Floor
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 4594

Fax: 020 7215 0531

Email: eco.help@bis.gsi.gov.uk

(The general enquiry telephone helpline service is usually available between 9:30am and 5:30pm Monday to Friday but a voicemail will be available outside those times. We will ring you back if you leave your details.)

For queries on using SPIRE contact:

Tel: 020 7215 4594

Email: spire@bis.gsi.gov.uk

Further information can be obtained online from: <https://www.gov.uk>

Annex A – EXTRACTS OF THE LEGISLATION DESCRIBING THE CONTROLS THAT APPLY GOODS IN CATEGORIES ‘A’, ‘B’ AND ‘C’ AND EMBARGOED DESTINATIONS

The following is an extract from the legislation describing controls that apply to Category (A, B, and C) and Embargoed destinations under the Trade Controls. The full export controls order can be accessed via the link on <https://www.gov.uk> or via <http://www.legislation.gov.uk>.

STATUTORY INSTRUMENTS

2008 No. 3231

CUSTOMS

The Export Control Order 2008

Made	- - - -	15 th December 2008
Laid before Parliament		17 th December 2008
Coming into force	- -	6 th April 2009

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽³⁾ in relation to—

- (a) measures relating to trade in dual-use items, including the transmission of software or technology in intangible form⁽⁴⁾; and
- (b) matters relating to trade in certain goods, including technical assistance, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment⁽⁵⁾.

It appears to the Secretary of State that it is expedient for the references in this Order to Council Regulation (EC) No 1334/2000⁽⁶⁾, Council Regulation (EC) No 1236/2005⁽⁷⁾, Article 3 of Council Regulation (EEC) No 2913/92⁽⁸⁾ and Article 3 of Council Regulation

⁽³⁾ 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1).

⁽⁴⁾ S.I. 2000/1813.

⁽⁵⁾ S.I. 2006/1461.

⁽⁶⁾ OJ No L 159, 30.6.2000, p1; relevant amending instruments are Council Regulation (EC) No 2432/2001 (OJ No L 338, 20.12.2001, p1) and Council Regulation (EC) No 1167/2008 (OJ No L 325, 3.12.2008, p1).

⁽⁷⁾ OJ No L 200, 30.7.2005, p1, to which there are amendments not relevant to this Order.

⁽⁸⁾ OJ No L 302, 19.10.1992, p1; relevant amending instruments are the Act of Accession of Austria, Sweden and Finland (OJ No C 241, 29.8.1994, p21) adapted by Council Decision 95/1/EC, Euratom, ECSC (OJ No L 1, 1.1.2005, p1), Regulation (EC) No 82/97 of the European Parliament and of the Council (OJ No L 17, 21.1.1997, p1), the Act concerning the conditions of accession of the Czech Republic and others and Council Regulation (EC) No 1791/2006 (OJ No L 363, 20.12.2006, p1).

(EC) No 450/2008⁽⁹⁾ to be construed as references to those instruments and provisions as amended from time to time.

To the extent that this Order regulates any of the activities listed in section 8(1) of the Export Control Act 2002⁽¹⁰⁾, the Secretary of State, having considered the reasons for the relevant controls and the need to respect the freedom to carry on the relevant activities, has determined that such regulation is necessary in the circumstances prevailing at the time of this Order.

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, by paragraph 1A of Schedule 2 to that Act⁽¹¹⁾ and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002, makes the following Order:

PART 1

INTRODUCTORY

Citation and commencement

1. This Order may be cited as the Export Control Order 2008 and shall come into force on 6th April 2009.

Interpretation

- 2.—(1) In this Order, the following expressions have the meanings given below, save where an expression is also defined in a Schedule where it has, for the purposes of that Schedule, that meaning—

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing vehicle or helicopter;

“category A goods” means goods specified in Part 1 of Schedule 1;

“category B goods” means goods specified in Part 2 of Schedule 1;

“category C goods” means—

- (a) military goods other than goods specified in Schedule 1;
 - (b) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance;
- “contract promotion activity” means any act calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or movement of goods or any agreement to do such an act;
- “payment” includes a payment in money or money’s worth or in kind whether referable to a particular act or made from time to time but does not include a payment made by way of wages or salary;

⁽⁹⁾ OJ No L 145, 4.6.2008, p1.

⁽¹⁰⁾ 2002 c. 28.

⁽¹¹⁾ Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28.

PART 2

TRADE CONTROLS

Embargoed destinations

20.—(2) This article applies to—

- (a) persons carrying out activities in the United Kingdom; and
- (b) United Kingdom persons.

(2) Subject to articles 25 and 26, no person to whom this article applies shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of

any goods subject to trade controls from one third country to another third country that is an embargoed destination.

Category A goods

21.—(3) This article applies to—

- (a) persons carrying out activities in the United Kingdom; and
- (b) United Kingdom persons.

(2) Subject to articles 24, 25 and 26, no person to whom this article applies shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of

any category A goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.

Category B goods

22.—(4) This article applies to—

- (a) persons carrying out activities in the United Kingdom; and
- (b) United Kingdom persons.

(2) Subject to paragraphs (3), (4) and (7) and to articles 25 and 26, no person to whom this article applies shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of

any category B goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.

(3) Nothing in this article shall be taken to prohibit the provision of—

- (a) financing or financial services;
- (b) insurance or reinsurance services; or
- (c) general advertising or promotion services

by a person whose only involvement in the activities described in paragraph (2) is to provide or agree to provide such services.

(4) A person (“the transporter”) whose only involvement in the activities described in paragraph (2) is to provide or agree to provide transportation services in relation to category B goods (“the relevant goods”) only contravenes the prohibition in this article if paragraph (5) or (6) applies.

(5) This paragraph applies if the transporter arranges the removal of the relevant goods from one third country to another third country.

(6) This paragraph applies if the transporter, otherwise than in the course of providing services to another person—

- (a) to whom this article applies; and
- (b) who has agreed to provide transportation services in relation to the relevant goods,

removes or agrees to remove the relevant goods from one third country to another third country.

(7) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out otherwise than for payment.

Category C goods

23.—(1) Subject to paragraphs (2) and (3) and to articles 24, 25 and 26, no person shall directly or indirectly—

- (a) agree to supply or deliver; or
- (b) do any act calculated to promote the supply or delivery of

any category C goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.

(2) Nothing in this article shall be taken to prohibit the provision of—

- (a) transportation services;
- (b) financing or financial services;
- (c) insurance or reinsurance services; or
- (d) general advertising or promotion services

by a person whose only involvement in the activities described in paragraph (1) is to provide or agree to provide such services.

(3) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out otherwise than for payment.

Exception for movement of goods within the customs territory

24. Nothing in article 21 or 23 shall be taken to prohibit activities related to the movement of the following goods within the customs territory—

- (a) the goods listed in paragraph 1 of Schedule 1;

- (b) individual cuffs;
- (c) shackles except those shackles which have an overall dimension including chain, when measured from the outer edge of one cuff to the outer edge of the other cuff, of between 240mm and 280mm when locked and have not been modified to cause physical pain or suffering;
- (d) the goods listed in paragraphs 2(b), (c) and (d) and 4 of Schedule 1;
- (e) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance;
- (f) pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4);
- (g) oleoresin capsicum (OC) (CAS 8023-77-6).

Exception for activities carried out in the Isle of Man

25. Nothing in this Part shall be taken to prohibit activities carried out in the Isle of Man.

Annex B – EXTRACTS FROM THE LEGISLATION DESCRIBING THE GOODS IN CATEGORIES ‘A’, ‘B’ AND ‘C’

The following is an extract from the new legislation covering the provision of transport in respect of the movement of Category A, B, and C goods from one third country to another third country. The full export controls order can be accessed via the link on <https://www.gov.uk> or via <http://www.legislation.gov.uk>.

SCHEDULE 1

Articles 2, 24

GOODS SUBJECT TO STRICTER EXPORT AND TRADE CONTROLS

Note: In this Schedule, defined terms are printed in quotation marks.

Definitions

In this Schedule:

“cluster munitions” means conventional munitions designed to disperse or release “explosive submunitions”;

“explosive bomblets” means conventional munitions, weighing less than 20 kilograms each, which are not self propelled and which, in order to perform their task, are specially designed to be dispersed or released by a dispenser affixed to an aircraft, and are designed to function by detonating an explosive charge prior to, on or after impact;

“explosive submunitions” means conventional munitions, weighing less than 20 kilograms each, which in order to perform their task are dispersed or released by another conventional munition and are designed to function by detonating an explosive charge prior to, on or after impact;

“ordinary handcuffs” means handcuffs which have an overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 240mm when locked and have not been modified to cause physical pain or suffering;

“production” has the same meaning as in Schedule 2;

“a self-deactivating feature” is one which automatically renders a munition inoperable by means of the irreversible exhaustion of a component (eg, a battery) that is essential to the operation of the munition;

“a self-destruction mechanism” is an incorporated, automatically-functioning mechanism which is in addition to the primary initiating mechanism of a munition and which secures the destruction of the munition into which it is incorporated.

PART 1

CATEGORY A GOODS

Certain Security and Para-Military Police Equipment

1. Goods designed for the execution of human beings, as follows—
 - (a) Gallows and guillotines;

- (b) Electric chairs;
- (c) Air-tight vaults made of eg, steel and glass, designed for the purpose of execution of human beings by the administration of lethal gas or substance;
- (d) Automatic drug injection systems designed for the purpose of execution of human beings by the administration of a lethal chemical substance.

2. Restraints specially designed for restraining human beings, as follows—

- (a) Leg-irons, gangchains, shackles and individual cuffs or shackle bracelets except those that are “ordinary handcuffs”;
- (b) Restraint chairs unless designed for disabled persons;
- (c) Shackle boards;
- (d) Thumb-cuffs and thumb-screws, including serrated thumb-cuffs;
- (e) Electric shock belts.

3. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (eg, electric-shock batons, electric-shock shields, stun-guns and electric-shock dart-guns).

4. Components specially designed or modified for the devices in paragraph 3.

5. Hand-held, spiked batons.

Cluster munitions, explosive submunitions and explosive bomblets

6. “Cluster munitions” other than those munitions described at paragraph 10.

7. “Explosive submunitions” other than those submunitions described at paragraph 10.

8. “Explosive bomblets”.

9. Components specially designed for “cluster munitions”, “explosive submunitions” or “explosive bomblets”.

10. Paragraphs 6 and 7 do not include the following conventional munitions:

- (a) a munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
- (b) a munition or submunition designed to produce electrical or electronic effects;
- (c) a munition that has all of the following characteristics:
 - i) each munition contains fewer than ten “explosive submunitions”;
 - (ii) each “explosive submunition” weighs more than four kilograms;
 - (iii) each “explosive submunition” is designed to detect and engage a single target object;
 - (iv) each “explosive submunition” is equipped with an electronic “self-destruction mechanism”;
 - (v) each “explosive submunition” is equipped with an electronic “self-deactivating feature”.

PART 2

CATEGORY B GOODS

Small arms and light weapons within ML1 and ML2

11. “Goods” specified in entry ML1.a., ML1.b., ML1.c. or ML2 in Schedule 2 that are designed to be carried, operated and fired by an individual or by three or fewer individuals acting together, other than—

- (a) “goods” specified in entry ML2.b. in that Schedule; and
- (b) mortars with a calibre of 100mm or more.

Accessories and ammunition for small arms and light weapons within ML1 and ML2

12. The following “goods”—

- (a) accessories specified in entry ML1.d. that are capable of being used in connection with weapons falling within paragraph 11; and
- (b) ammunition that is capable of being fired or launched by weapons falling within paragraph 11.

Light weapons within ML4

13. Equipment specified in entry ML4.b. in Schedule 2 that is—

- (a) specially designed for firing or launching rockets, grenades, missiles or other explosive devices; and
- (b) designed to be carried, operated and fired by an individual or by three or fewer individuals acting together.

Ammunition for light weapons within ML4

14. Rockets, grenades, missiles and other explosive devices that are—

- (a) specified in entry ML4 in Schedule 2; and
- (b) capable of being fired or launched from equipment falling within paragraph 13.

Hand grenades

15. Grenades specified in entry ML4 in Schedule 2 that are designed to be thrown.

MANPADS, missiles for them, associated equipment and their specially designed components

16. To the extent they do not fall within paragraph 13 or 14, the following “goods”—

- (a) (a) man-portable air defence systems (MANPADS), as follows:
 - (i) surface-to-air missile systems designed to be man-portable and operated and fired by a single individual;
 - (ii) surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals;
- (a) missiles for MANPADS;

- (b) “production” equipment specially designed for MANPADS;
- (c) field test equipment specially designed for MANPADS;
- (d) specialised training equipment and simulators for MANPADS.

Long-range missiles

- 17. Missiles capable of a range of 300km or more that fall within Schedule 2.

Components for “goods” within this Part

- 18. Components specially designed for “goods” falling within any of paragraphs 11 to 17.

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