Northeastern University

UK/US Export Compliance Comparison Overview

Prepared for: Northeastern University

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Scope of Work

Traliance consultants reviewed critical similarities and differences between United Kingdom ("UK") and United States ("US") export control regulations as it relates to a UK London campus for Northeastern University ("NU"), with a special emphasis on specific questions and hypotheticals provided by NU. The following analysis can be used as guidance.

NU-London is a wholly owned subsidiary of NU-US that issues UK academic degrees, meaning it operates as a UK institution in the UK.

Overview of UK Export Controls

UK export controls restrict the transfer or disclosure of sensitive goods (including military items and radioactive sources), software, and technology (know-how and other information) to recipients and destinations outside of the UK. This includes physical exports, electronic transfers (via email, file sharing, virtual meetings, etc.), and transfers by any other means (verbal communication, and technical assistance or brokering). Foreign ownership of companies involved in such areas is also restricted or needs approval.

The UK also has 'catch-all' or 'end-use' controls and sanctions.

Export control legislation applies to academic research and teaching in the same way as to trade and commerce.

If a person is seeking to undertake an activity that is restricted under the UK's export control regime, it is necessary to first obtain a license (if possible, to obtain one). Breaching UK export control rules can lead to criminal prosecution and civil monetary penalties.

Control List

Similarity: The most common reason for the application of export controls is that an item is on a control list that includes internationally agreed-upon lists of sensitive items as well as unilaterally controlled items. Licensing requirements vary based on item sensitivity, as well as destination specifics. Both lists include ECCNs – but the US ECCN for an item is not necessarily the same as its UK ECCN, and not all items are on both lists.

Difference: The UK system does not have its export control lists, licensing, and enforcement divided into military and dual-use. The UK Strategic Export Control List, also known as the Consolidated list, includes both a military and dual-use items category, and both categories within the list are administered through a single agency (Export Control Joint Unit).

	United States		United Kingdom
Government Department	Department of State	Department of Commerce	Department for Business and Trade
Controlling Agency	Directorate of Defense Trade Controls (DDTC)	Bureau of Industry and Security (BIS)	Export Control Joint Unit (ECJU)
Regulations	International Traffic in Arms Regulations ("ITAR")	Export Administration Regulations ("EAR")	Framework for export controls includes multiple legislations.
Category	Military / Defense	Dual-use and Commercial	Military and Dual-Use
Control Lists	United States Munitions List ("USML")	Commerce Control List ("CCL")	UK Strategic Export Control Lists (also known as the Consolidated list)
License Systems	DECCS	SNAP-R	SPIRE
License Exclusions	License Exemption	License Exceptions	Open General License
Voluntary Disclosures	Directorate of Defense Trade Controls (DDTC)	BIS Office of Export Enforcement (OEE)	Strategic Exports and Sanctions Enforcement Policy

There are multiple options to determine if an item is on the control list in the UK and verify licensing requirements:

- Check the consolidated list of strategic military and dual-use items directly or use the Goods Checker tool
- Use the Open General License ("OGEL") tool to further research licensing options;
- Use the 'control list classification service' or the 'end-user advice service' in SPIRE, the UK's online licensing software.

Licensing

Similarity: Where a license is required for an export, the UK system has Open General Licenses which may potentially be used without providing specific transaction details for advance government approval. The nature of OGELs is similar to US license exceptions, and the exporter must abide by all requirements appropriate to its use, including any advance registration for use of the OGEL. Open General Trade Controls Licenses ("OGTCLs") are similar to the Canadian ITAR exemption, in that when properly used they authorize certain exports of specific goods from the UK Military List category within the Consolidated list, but the list of possible destinations is much larger.

Similarity: In most remaining circumstances where a license is required for an export, a standard individual export license ("SIEL") is required. The UK government requires specific transaction details, and potentially certified assurances from recipients and/or their governments, to support such licenses. Specific licensing requirements vary based on the sensitivity of the item as well as the destination.

Difference: An Open Individual Export Licence ("OIEL") authorizes multiple shipments of specific controlled goods to named destinations, typically for 3 or 5 years. Unlike US license authorizations, exporters need not name the consignee or end-user for an OIEL application.

Technology / Technical Data

Similarity: The UK consolidated list includes software, and technology (know-how and other information. Controls apply to physical exports, electronic transfers (via email, file sharing, virtual meetings, etc.), and transfers by any other means (e.g. verbal communication).

Similarity: The UK system has exceptions for technology and software that is in the public domain, is for basic scientific research, or is the minimum technical information required to support a patent application. Although exceptions are similar to those within the US systems, care should be taken to evaluate cross-border technology per the correct applicable regulations and definitions (e.g. do not assume there is a harmonized global definition for 'basic scientific research'). A good starting point would be https://www.gov.uk/guidance/export-controls-applying-to-academic-research.

Difference: The UK system does not have deemed exports, and sharing verbal or visual data within the UK is not subject to licensing. Note: providing a physical or electronic copy of information within the UK to foreign nationals who will be taking that information home **is** the beginning of an export requiring authorization because the information will be leaving the country.

Difference: The UK has an Academic Technology Approval Scheme (ATAS) certificate required for certain foreign students/academics. This is required for certain non-UK persons to authorize their study of or research in specific subjects within the UK. High-risk areas include persons potentially doing applied research in many science, technology, engineering, and mathematics (STEM) subjects, such as:

- aeronautical and space technology
- applied chemistry, biochemistry and chemical engineering
- applied physics
- biotechnology
- electrical and mechanical engineering
- instrumentation and sensors
- materials technology
- nuclear technologies
- production and process technology
- telecommunications and information technology

End-Use/End-User

Similarity: The UK government requires a license to export goods, software or technology if the exporter suspects that they are intended for military use or purposes related to weapons of mass destruction (WMD). This includes:

- when there is a risk that an item may be incorporated into military equipment, or used to produce military equipment in a destination that is subject to an arms embargo
- when there is a risk that an item may be intended or diverted for purposes connected with the development, production or use of weapons of mass destruction ("WMD"), or means of their delivery

Similarity: End-Use/End-User controls include limits on the provision of technical assistance for any activities related to WMD, regardless of the involvement of goods/technology on the UK Consolidated list. Although there is no "UK person" definition, UK regulations limit providing technical assistance that includes instructions, skills, training, working knowledge, consulting services, and the transfer of technical data by any UK citizen or from persons within the UK. This restriction also covers the supply, delivery, manufacture, maintenance, and use of anything intended entirely or partly for WMD purposes.

Difference: The UK may provide direct guidance to a UK entity, raising concerns about transfers of specific types of goods and technology involving a specific (typically foreign) entity. The guidance may or may not clearly state the reasons for government concern. This guidance may be unsolicited, or it may be following an advice request from the UK entity to ECJU, or it may be given when a UK entity's goods are seized at customs prior to export. In all of these cases, an export license is required for any transactions identified as potentially subject to those UK government concerns.

Sanctions

Similarity: Most sanctions are restrictions on export destinations as agreed through parties such as the UN Security Council and the Organisation for Security and Cooperation in Europe (OSCE). The UK publishes a full list of its trade sanctions, arms embargoes and other trade restrictions. These sanctions include limits to certain countries, as well as listed denied parties.

Financial, immigration, and aircraft/shipping sanctions also exist. More details on the full scope of UK sanctions are at https://www.gov.uk/guidance/uk-sanctions.

Difference: Most sanctions destinations are similar to those covered under US OFAC sanctions, but there is not a complete overlap, and even among countries subject to sanctions, the specific requirements can vary greatly. For example, although the UK has sanctions restrictions related to Iran, they are not as comprehensive as the US-Iranian sanctions. Although UK entities must comply with UK sanctions, complexities arise when US OFAC restrictions may also apply. This is because the UK also maintains a blocking statute that protects EU operators engaged in international trade in an effort to counteract the application of US sanctions within the UK. Another example where differences in sanctions make compliance challenging is with respect to Cuba. Cuba is subject to significant restrictions under US OFAC sanctions but has no country-specific sanctions under UK regulations.

All US-incorporated entities and their foreign branches must comply with OFAC, including employees, students, or contractors acting on their behalf. Foreign subsidiaries owned or controlled by a US entity must comply with some but not all sanctions programs. Currently sanctions programs for both Cuba and Iran apply to non-US subsidiaries. "Owned and controlled" is understood to encompass holding at least 50% of the equity interest, a majority of seats on the board, or otherwise controlling actions, policies, and personnel decisions of the foreign entity. In addition, non-US entities can face liability for "causing a violation" by involving a US person in a transaction that is prohibited for them. Care should be taken to understand all details of organizational and financial activities for NU's UK campus to enable appropriate actions and ensure compliance with both US OFAC regulations and the UK blocking statute.

Difference: The UK has no comprehensive sanctions and also fewer unilateral sanctions than the US, with the only current national sanction relating to the export of certain military items to Argentina. The maintenance of export licenses related to sanctions restrictions is also simpler than in the US, with the same licensing body and software (ECJU and SPIRE) for trade sanctions licensing as for standard export licensing. Sanctions licenses for imports are separate, however, and are managed through the Department for Business and Trade's import licensing branch.

NU Q&A

Q1: If a PI based in London is doing US-funded research in the UK, would both sets of regulations apply?

A1: UK regulations would apply. US regulations would also apply only in specific circumstances. Their applicability should be considered if:

- the PI is themselves a "US person" as defined in the EAR/ITAR;
- the PI is controlled by a "US person", such as an employee of NU-US;
- the contract related to the funding specified consideration of such US regulations; or,

- the research is using US-origin controlled goods or technologies of a level and/or type sufficient to trigger US regulations. The specific threshold will vary depending on the classification of the goods or technologies.

Otherwise, the US funding does not automatically require consideration of US regulations.

Q2: Are there differences based on the person's country of citizenship (US person vs UK person)?

A2: The UK does not have deemed export regulations, and there is no direct counter to the US definitions for "UK person". Certain activities related to military and WMD-related activities, as well as brokering and transshipments as relates to sanctions restrictions, are restricted for all UK citizens.

Q3: What about the shipment of tangible items/samples from the UK campus to other countries – do both sets of regulations apply?

A3: If the tangible items/samples came from the US if they are based on US-origin technology subject to the Foreign Direct Product Rule, or if they contain controlled components subject to ITAR or above di minimis thresholds within the EAR, then the tangible items/samples are subject to the US regulations in addition to the UK regulations. Otherwise, only UK regulations apply.

Q4: International travel for Northeastern University employees in the UK – what to be aware of? For example, what if a faculty gets invited to Iran to present at a conference, would the same OFAC license requirements apply?

A4: As a legal entity organized under the laws of the United States, Northeastern University is a "US person". Persons acting on behalf of their status as employees or students of NU would similarly be considered "US persons," including concerning any OFAC requirements on a faculty member presenting at a conference in Iran. However, such persons acting independently are not subject to OFAC restrictions for their personal activities.

Q5: What are some concerns regarding collaboration between faculty in the UK campus and entities from a highlight-sanctioned country or on a restricted party list?

A5: The UK has a restricted party list and sanctions which are similar to the US regulations. Any parties on the UK list would be restricted for faculty at the UK campus. An overview of these is above in Sanctions.

In addition, prior to international collaboration, the UK government requires researchers to "check whether your potential collaboration partner individuals and their organisation have been involved in activities of potential concern." "Internet searches" are specifically listed as part of that due diligence, and being a party on a US-restricted party or

sanctions list would qualify as a red flag. In such cases, NU should contact the UK's ECJU with their specific inquiry to verify licensing requirements. In addition, if US laws are also relevant for the potential transaction(s), then US export and/or sanctions licenses would also be required.

Q6: Trigger/Red Flags framing guidance for the UK. What will require additional EC review?

A6: The UK government does not have a single red flag list. However, they do provide the following guidance about licensing requirements:

Unless your work qualifies for an exemption you might need an export licence if one of the following apply:

- *your software or technology is linked to items in the consolidated list of strategic military and dual-use items that require export authorisation*
- *you have been informed, are aware, or suspect that the recipient of the software or technology intends to use it for WMD purposes*

  and you answer yes to any of the following:

  - *the software or technology is not in the public domain*
  - *the technology does not meet the definition of basic scientific research*
  - *your research is in one of the disciplines that could be targeted by would-be proliferators*
  - *The recipient intends to use or send the information outside the EU*
  - *preliminary online searches or other open source checks show the recipient is potentially involved in suspicious activity*

Q7: Does the UK fall under the EU export regulations or UK regulations?

A7: The UK is no longer a member state of the EU, so a UK license is not automatically valid within the EU nor is the reverse true. However, the UK regulations consist of all EU-wide restrictions and certain unilateral restrictions, and they are expected to remain substantively similar at this time.

In addition, the UK has issued EU-27 OGEL to support easier export to and from EU member states, and the EU has added the UK to its Union General Export Authorization EU001 (EU GEA 001), authorizing the transfer of the majority of EU dual-use items to the UK. Where terms of the OGEL and GEA are met, the transfers will be straightforward.

Q8: Are there any differences regarding deemed exports (know-how and technology transfer)? Is there any general guidance or cases in which the deemed export rule would apply?

A8: See Technology / Technical Data for more information on the (lack of) deemed export requirements within the UK. US-deemed export requirements would apply to US-origin technology within the UK. In addition, where NU-US is aware that technology being sent to the UK will be accessible by non-UK persons, the licensing authorization for such persons must also be considered.

Q9: Critical Technologies (previously Foundational & Emerging Technologies): are there any areas of key technology that are on US lists but not on UK lists and vice versa?

A9: The UK does not have a public list that parallels the US list. The UK does list several STEM research areas of concern (see Technology / Technical Data for the UK list), but the level of granularity is different from that of the US Critical and Emerging Technologies List. Both the US and UK lists share a focus on technologies that might enhance military capabilities or WMD deployment.

Q10: If the UK/EU uses a specific list in their regulations like the USML or CCL, are there any categories in general (no specific controlled items) that we should draw attention to due to significant differences between US and UK regulations?

A10: The UK has a single list. Its controlled items are predominantly based on the same multi-lateral treaties as most US control lists. However, the UK list is organized differently, so numerical differences exist in the designation of controlled items, and a few items are subject to unilateral controls in the US or the UK. EAR99 is not a concept that exists in the UK regulations.

Q11: We know some controls are the same based on the Wassenaar Arrangement – what about other common control lists, for example does the UK also follow the “Australia Biological Control List”?

A11: The US and the UK are both member states of several key multi-national export control regimes, including:

- Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies;
- Missile Technology Control Regime;
- Nuclear Suppliers Group;
- Australia Group (biological and chemical).

These regimes typically specify control lists and set expectations for control procedures for listed goods and technologies. Cooperation between member states means that licensing (or other authorizations) for international activities between the UK and the US will be simpler than for activities with non-member states.

Q12: Does the UK/EU have comprehensive sanctions on other countries that restrict or limit travel or collaboration?

A12: UK travel sanctions focus on limiting listed persons (and aircraft/vessels) from travel to the UK. Outbound travel would be subject to compliance with UK financial sanctions for certain potential destinations, but these sanctions are not comprehensive in nature. Collaboration with persons in/from such countries would also not have comprehensive sanctions considerations.

However, prior to any travel or collaboration, including via cloud computing or other means of data transfer, consideration should be taken as to whether export-controlled goods/technology may be part of the transfer.

In addition, if a "US person" will be traveling/collaborating, or if technology/goods subject to US regulations are part of the travel/collaboration, then US sanctions regulations would apply.

Q13: Are there any items that NU should be aware of which are prohibited from exporting to or from the UK?

A13: There is no specific list of items prohibited to export from the US to the UK. However, licenses or other authorizations are required for goods and technology on the USML, as well as EAR items with reasons for control that include CB1, NS1, MT1, or RS1.

There is also no specific list of items prohibited to export from the UK to the US. Most controlled items can be exported to the US using an OGEL, but certain items such as various military items and highly sensitive items, as well as those which are "OFFICIAL-SENSITIVE" or "CONFIDENTIAL" (similar to the US "classified"), require specific license authorizations. The Open General License ("OGEL") tool is an excellent place to verify UK licensing requirements once potential export-control classifications are known.

Hypothetical Case 1

Two Professors at the Northeastern University UK campus are invited to participate in a conference in Iran, they are both presenting research that has been published and meets the fundamental research, Professor A is a US citizen and Professor B is a UK citizen, both are teaching at the UK campus.

- Professor A would need an approved OFAC license to participate in the conference in Iran. Would Professor A require any approval from UK/EU regulations?
- Does Professor B also require an OFAC license or any other license approval from the UK/EU government?

Answer:

- Professor A and Professor B would not need any authorization from UK authorities unless other red flags (e.g., WMD/military end-use) were relevant, or if UK financial sanctions were triggered by travel-related activities.
- Since NU-London is a wholly-owned subsidiary Professor B would require an OFAC license, unless one of the General Licenses applies, such as the Iran General License

(No. G). A list of current OFAC General Licenses relevant to Iran can be found at https://ofac.treasury.gov/sanctions-programs-and-country-information/iran-sanctions.

- Considerations should also be taken as to whether the creation of the presentation, the travel, or any other activities and transactions related to the conference and the trip, may involve other "US persons". As some examples, will there be technical reviews of the presentation by a "US person", will any related financial payments (direct or reimbursements) be conducted or authorized by a "US person", will any financial activities related to the presentation or travel involve US banks, or will any software being used for the presentation be subject to sanctions prohibitions per the manufacturer's terms and conditions. Such activities would also be subject to OFAC licensing requirements unless a General License applies.
- Care should also be taken to ensure compliance with the UK's blocking statute, as described in Sanctions.

Hypothetical Case 2

Currently, no research is taking place in the UK, but it could happen in the future. This scenario is based on the possibility of future research.

NU receives funded research from the UK Ministry of Defence and the project doesn't meet the fundamental research exclusion, since publication approval is required. The research is subject to the ITAR due to the type of technology and defense application. The research will be completed by Professors A and B in Boston, both are U.S. persons and faculty located in the UK campus; Professor C is a UK citizen and Professor D is a German citizen.

- What are some considerations NU should keep in mind under a scenario like this?

Answer:

- The research will be subject to export control regulations of both the US and the UK governments. Because all persons and entities involved are from member-states of key export-control regimes, eventual authorization from both governments is likely but the process should begin as soon as possible due to the duration of the preparation and licensing processes.
- There is a US-UK Mutual Defense Agreement which may enable the use of certain license exemptions under the US ITAR regulations as well as an OGEL under UK regulations. The specific regulations, as well as detailed requirements for the use of the license exemptions and the OGEL, should be examined early during the planning of such activities, as well as throughout the project should these authorizations be used, to ensure continued compliance.
- A detailed Technology Control Plan ("TCP"), specific to the project and all parties involved, should be developed in accordance with the requirements of both the UK and US regulations. This TCP would be required for US licenses and is a best practice to ensure compliance for any ITAR technical data.

- In addition to the primary researchers, the TCP would need to detail information about all other persons with partial or full access to the technology. This may include but not be limited to students involved in the research, IT personnel, faculty in shared spaces, and university administrators.
- Data sharing between the US and UK campuses will likely involve both physical and electronic movement of information, as well as storage with shared access. A secure means for such storage and transfer should be defined, including maintenance of access to such data.
- Given the positive relationship between the UK and US governments, it is possible that latitude by one government may be granted in exchange for tight controls by another (e.g., the US might allow the UK to have full license granting authority for publishing and presenting research results), but this should not be assumed. Include requirements for publishing/presenting, with the appropriate reviews/approvals, in the TCP details such that the license authorization may cover that.

Acronym Glossary

United Kingdom

- **ATAS** - Academic Technology Approval Scheme. ATAS is a certificate required for certain foreign academics, to authorize research in high-risk areas (STEM)
- **ECJU** - Export Control Joint Unit
- **OGCL** - Open General Trade Controls Licenses. OGCL is similar to the Canadian ITAR exemption used for the UK military category.
- **OGEL** - Open General Licenses. OGEL is similar to US license exceptions.
- **OIEL** - Open Individual Export License. The OIEL is an authorization license that can be used for multiple shipments and is typically issued for 3 to 5 years.
- **OSCE** - Organization for Security and Cooperation in Europe
- **SIEL** - Standard Individual Export License

United States

- **BIS** - Bureau of Industry and Security
- **CCL** - Commerce Control List
- **DDTC** - Directorate of Defense Trade Controls
- **EAR** - Export Administration Regulations
- **EAR99** - classification given to commercial items and technology regulated under the EAR
- **ECCN** - Export Control Classification Number
- **ITAR** - International Traffic in Arms Regulations
- **OEE** - Office of Export Enforcement
- **OFAC** - Office of Foreign Assets Controls
- **TCP** - Technology Control Plan
- **USML** - United States Munitions List

Disclaimer

The following analysis is general in nature. Should additional relevant facts be discovered, the review should be updated appropriately, as alternate facts may have a substantive impact on the findings. Traliance LLC is not a law firm; the information in this email is general in nature and is not intended to constitute legal advice.

There are separate UK export rules for non-strategic items (e.g., animals, plants, and medicines) which are not covered in this analysis. This analysis also does not include other export control regimes that have jurisdiction over radioactive substances and firearms.

We recognize that this analysis doesn't cover all US and UK regulations, and NU-London doesn't have labs for biological and animal research. Should NU London's footprint change in the future to include research covered under those areas we will amend this guidance.