

Preparing for the Worst: Licenses Needed for UK Export of Dual Use Items

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It has always been a possibility that the United Kingdom would crash out of the European Union on 30 March 2019 but “no deal” preparation is now highly recommended by both sides. For organisations that export dual use items, the possibility of the UK becoming a “third country” vis-à-vis the EU without an exit agreement or transition period means an overnight need for export licenses where none are required today.

Seasoned international businesses understand that dual use items, which can be used for both civil and military purposes, include far more products than one might assume. In addition to the more obvious goods that may be used to produce or develop military items, such as machine tools and equipment used for chemical manufacturing, computers, drawings, technology, software, raw materials, and components also may be subject to dual use controls. Even seemingly mundane items such as protective clothing used in medical laboratories, certain commonly used chemicals, certain ball bearings, and a wide variety of other products are controlled for export and they need to be properly classified to determine if a license would be needed to ship to a UK that has left the EU. Many entities that have been operating exclusively within the EU could soon be confronted with dual use licensing requirements for the first time and global businesses may be faced with a potentially significant increase in the number of items that need be licensed.

While the export of military items, firearms and goods that may be usable for torture or capital punishment from the UK have been and will continue to be subject to specific licensing requirements, the movement of most dual use items between the 28 Member States of the European Union is possible today without any license. If the UK and EU fail to reach agreement on the UK’s exit from the EU or if either the UK or European Parliament rejects the proposed EU-UK deal, the UK will no longer be part of the EU as of 11.00 GMT on 29 March 2019 or midnight on 30 March 2019 on the continent (GMT+1), and a license would be needed to export many dual use items from the UK to the EU. In addition, existing licenses for exports issued by the UK or issued by the EU27 would no longer be valid for exports from the others’ territories.

In a series of technical notices released on 23 August 2018 by the UK, exporters are advised to determine what licenses may be needed should the talks fail. Exporters were advised to put programmes and procedures in place to ensure compliance. Importantly, the UK has announced that it will issue a new Open General Export License (OGEL) in advance of leaving the UK that will cover many dual use items, thus reducing the need for individual export licenses. Businesses seeking to use the new OGEL will need to register at a later stage. The UK further advises that exporters will be able to apply for and obtain any individual licenses that may be needed prior to the end of March 2019. Unfortunately, however, it is unknown how many additional businesses will be affected and

whether regulators will be able to keep pace with the demand. Further information will be forthcoming but action can and should be taken by businesses now to examine their potential exposure and prepare contingency plans to avoid business disruption.