Export control in relation to postgraduate teaching materials

The challenges posed by the COVID-19 pandemic have led to an increase in distance teaching, which is likely to include students studying remotely from abroad.

On rare occasions remote teaching may be subject to **UK export control law**.[1] This note provides guidance for staff running remote postgraduate teaching and is designed to ensure that export control law is complied with. This will require those running postgraduate courses to undertake due diligence.

What are export controls?

Export controls are designed to ensure that goods, technology or software that can be used for a military purposes or contribute towards the proliferation of weapons of mass destruction (WMD) are not exported into the wrong hands. The University provides guidance on export control on the Research Office website and issued a guidance note for Departments in January 2020.

Export controls affect the physical, electronic or oral transmission **outside the UK**, including digital download, of items that have a direct military use or that are considered dual-use (i.e. civil items and technologies that could be used for military or WMD purposes). All such controlled items are listed on the UK Strategic Export Control Lists.

In addition, controls apply to any items not listed on the Control Lists where:

a) The exporter is aware, informed or suspects that the items are intended, either in their entirety or in part, for WMD purposes.
b) The items are being exported to a country under embargo or sanctions, where the export would breach the embargo or sanctions.
c) The exporter is aware that the items are intended for incorporation into or for the development, production, use or maintenance of military equipment in a location subject to an arms embargo.

In addition to the export of physical items, export control also applies to software, and technology (i.e. information). Any exports of controlled items, software, data or technology require a licence issued by the UK Export Control Joint Unit. Export of controlled items, software or technology without a licence where one is required is a criminal offence.

'Technology' is defined as information necessary for the development, production or use of controlled goods. This might take the form of blueprints, plans, diagrams, formulae, tables, engineering designs and specifications, or manuals and instructions.

Technology is exempt from export control law where the information is already in the public domain (i.e. already available without restriction, beyond copyright, upon further dissemination) or when it is limited solely to basic scientific research (i.e. experimental or theoretical work undertaken principally to acquire knowledge of the fundamental principles or phenomena or observable facts and not primarily directed towards a specific practical aim or objective[2]).

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[1] Although this note focuses on UK Export Controls, on rare occasions remote teaching may also be affected by US Export Controls. Where remote teaching includes the sharing of knowledge that is derived from technology imported from the United States of America under a US export licence there may be legal limitations on the sharing of that knowledge. In such circumstances, the Research Office's guidance note for Departments on export control should be consulted and advice sought from the University Research Office.

[2] As a rule of thumb consider whether the information being shared could be used to develop, improve, produce or use a physical item – if so then it is not basic scientific research.

Export controls and remote teaching

It is possible for controlled technology to be shared with individuals overseas through remote teaching (e.g. through lecture notes, course materials, and slides).

Most material used in teaching, particularly undergraduate teaching, will be in the public domain and therefore not controlled. In research-led post-graduate teaching, however, instances may emerge in which technology (i.e. information necessary for the development, production or use of controlled goods) that is not already in the public domain could be included in remote teaching and sent to individuals overseas.

To ensure that material is not inadvertently exported through remote teaching without the necessary licence, it is important that those running remote postgraduate teaching in relevant disciplines undertake due diligence to ensure that all materials sent to students overseas comply with export controls. The guidance below provides an overview of how to do so.

Due Diligence

Export controls are most likely to affect teaching in certain scientific and technical areas with potential military or WMD applications, for further information see the University website under the heading 'Who is most likely to be affected?'. These areas are similar to those covered by the Academic Technology Approval Scheme (ATAS)[3] and any course covered by ATAS should also be considered of higher risk of being covered by export control.

If your teaching is in an area of higher risk, or if you have other reasons to believe that the information to be shared is dual-use, you should first consider whether the exemptions apply (i.e. is the material to be shared already in the public domain? Or is it limited solely to basic scientific research). If either exemption applies to all the material, then no further due diligence is required. If any of the material is not covered by either exemption then you must consult the Export Control Organisation's Goods Checker Tool and the UK Strategic Export Control Lists to see whether any of the information that you intend to share with students based overseas is listed as controlled. You may seek advice from the contacts at the end of this guidance.[4]

If you confirm that your teaching material includes controlled technology please consider whether the inclusion of that material in remote teaching is necessary to the course. If it is not, you are advised to remove the material from any remote teaching.

Should removing such material be impossible, then a licence application will be needed. To apply for a licence please complete an Export Control Enquiry Form and submit this to one of the contacts below. For further information see the University's Export Control webpage.

In addition, anyone running a course, either undergraduate or postgraduate who becomes aware, is informed or comes to suspect that the material they are sharing through the course will be used for a WMD purpose should seek advice from the contacts below.

For further guidance contact:

- Dr Rhys Morgan, Research Strategy Office, Rhys.Morgan@admin.cam.ac.uk

- Claire Piffard, Senior Legal Advisor, Research Operations Office, Claire.Piffard@admin.cam.ac.uk

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[3] The ATAS scheme requires all Tier 4 (International) students on postgraduate level courses to be vetted to ensure that they do not have existing links to WMD programmes before beginning a covered course.

[4] In addition, where students are based in sanctioned countries, advice should be sought where any material included in teaching has the potential to breach sanctions.