Defence Export Controls Technical Assessments– Responses to Questions

25 June 2025

These responses are designed to assist you in understanding Defence Export Control's regulatory framework. It is not legal advice nor intended to be legal advice and it may therefore include some generalisations about the law. Some provisions of the law referred to have exceptions or prerequisites, not all of which may be described here. Defence does not guarantee the accuracy, currency or completeness of any information contained in this document. Your particular circumstances and activities must be taken into account when determining how the law applies to you. These responses are therefore not a substitute for obtaining your own legal advice and does not imply that other regulatory obligations would not be applicable to certain activities

Question: We have a serving UK member attached to our unit. Is he exempt under 10A?

Response: It will depend on the technology to be provided. There are 10A exemptions for the Foreign Country List and AUKUS citizens but these exemptions do not apply to supplies of technology on the Excluded Technologies List or Australian Military Sales Program. For more information, visit Defence Export Controls: Section 10A – onshore supplies

Question: Consider an item or technology developed and built by an Australian company, which is a subsidiary of a US company, and the parent US company owns the item (and the intellectual property to the item). If the item is on the DSGL and potentially also controlled through ITAR, which export control regime applies? Australian DEC? ITAR? Or both? Or as long as it is in Australia, would only AU export controls apply to any export of that item?

Response: Both DEC and ITAR controls may apply. A permit from DEC is required for the export from Australia of a DSGL-controlled item, regardless of the ownership of the item, unless an exemption applies. A DEC permit does not however satisfy any ITAR requirements. Should the item be subject to ITAR, a separate US permit may be required.

Question: In 2023 O:S (OFFICIAL: Sensitive) was designated a security classification level, so should it be O:S and above, or equivalent?

Response: DEC only considers items classified at PROTECTED or above to be on the Excluded Technology List where classification is specified as a prerequisite for being on the list. The fact that official information may be subject to additional personal privacy, legal or commercial in confidence requirements is not relevant to the risk profile of its export.

Although O:S is now determined as a security classification, you don't necessarily require a security clearance to access OFFICIAL: sensitive. Access to information classified as PROTECTED and above

requires minimum Baseline clearance. As such, 'classified' items on the ETL require a permit if they are security classified as PROTECTED or above (or equivalent). This approach aligns with our AUKUS partners.

Question: If technical documents required for use are provided to an Australian company, and the Australian company changes the format (i.e. turns a user manual into an interactive tool) before sending it back to the originator would a permit be required?

Response: Whether a permit is required is dependent on the location and/or citizenship of the exporter/supplier and recipient.

If the originator (the person who supplied the technical documents) is located outside Australia, you may need an export/supply permit if the interactive tool is controlled technology (or potentially software). Note, AUKUS and other exemptions may apply.

If the originator is within Australia (e.g. inter-company transfer), you may require a 10A permit if the originator (now recipient) is a non-exempt foreign person (i.e. no 10A exemptions are applicable).

Permit requirements are assessed on a case-by-case basis. The export control status of the interactive tool itself will determine the permit requirements.

Question: Does the Sensitive Technology List (STL) fit into either the LFE or ETL?

Response: The items on the Excluded Technologies List (ETL) are determined by AUKUS members and interpretation is not affected by any sensitive technology list in any of the AUKUS countries.

Australia's List of Critical Technologies in the National Interest is maintained by the Department of Industry, Science and Resources and has no relationship with the Excluded Technologies List. The Critical technologies List is not used to regulate or control technologies.

The only goods and technologies that cannot be exported using the AUKUS Licence Free Environment (LFE) are those listed on the Excluded Technologies List and Australian Military Sales Program.

The eligibility of items and activities for the AUKUS LFE is determined by the 5 criteria listed on the Licence-free environment | Defence.

Question: When considering 'technology' are we considering the highest level system (aircraft, vehicle, vessel) or at the sub-system level as appropriate? Platforms will have military variants of commercial technology that could be considered 'dual-use'?

Response: Technology must be considered at all levels of the system (complete system, sub-systems, and parts/components). Whether, and how, the technology is controlled is dependent on how directly and specifically it relates to the item. The technology must be 'required' for conditions such as the 'development', 'production' and 'use' of a controlled item to be controlled. If the technology is required for an uncontrolled item then the technology is not controlled.

For example, technology that is required to use a complete military aircraft would likely be controlled as military technology. If the technology is required to use a specific, dual-use component (e.g. a commercial radio), and is not required for the remainder of the military aircraft, then this technology would be controlled as dual-use technology. Note, this assumes the commercial radio is controlled as a dual-use item.

As a general consideration, goods, software and technology can be controlled under multiple DSGL codes. Which code is most applicable is dependent on the information provided in the application and the description of the item.

Question: The example is very much about the physical 'radio' item – what about the drawings for the 'radio'? Are they export controlled?

Response: Drawings of a radio could be considered technology related to the physical radio. However, depending on the detail and specificity of the drawings, they may or may not be controlled. This would also depend on the control status of the physical radio (i.e. technology for uncontrolled items is not controlled).

For example, if the drawing is very detailed and provides all the exact specifications of a controlled radio and its unique features and capabilities, the technology could be considered 'required' for the development (design) of the radio. In this case, the technology would also be controlled.