

Update to [Notice to Exporters 2010/25](#) (published on 20 August 2010) and [Notice to Exporters 2010/21](#) (published on 4 August 2010)

1. Overview

On 27 October 2010, **Council Regulation (EU) 961/2010 on restrictive measures against Iran and repealing Regulation (EC) 433/2007** ('the Regulation') was published in the Official Journal of the European Union (O.J. L281, 27.10.2010, p1) and came into force on that day.

The Regulation implements the measures outlined in [Council Decision 2010/413/CFSP of 26 July 2010](#) that are necessary to comply with [UN Security Council Resolution 1929 \(2010\)](#). It also imposes additional restrictive measures as requested by the European Council in its [Declaration of 17 June 2010](#).

Those restrictive measures comprise, in particular:

- additional restrictions on trade in dual-use goods and technology, as well as in equipment which might be used for internal repression;
- restrictions on trade in key equipment and technology for and restrictions on investment in the Iranian oil and gas industry;
- restrictions on Iranian investment in the uranium mining and nuclear industry;
- restrictions on transfers of funds to and from Iran;
- restrictions concerning the Iranian banking sector;
- restrictions on Iran's access to the insurance and bonds markets of the Union
- and restrictions on providing certain services to Iranian ships and cargo aircraft.

For further information you should read the full text of the Regulation: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:281:0001:0077:EN:PDF>

This Notice describes the

- measures applying to trade in dual-use goods and technology and equipment which might be used for internal repression. (See [Annex A](#) attached below)
- new restrictions on exports to Iran's oil and gas industry – including what is covered and exempt and how to determine if you are affected. (See [Annex B](#) below)
- the process to be followed for those who wish to notify the Export Control Organisation of a prior contract for the purposes of the exemption in Article 10.

For further information on financial restrictions see the HM Treasury's Asset Freezing Unit's webpages at: http://www.hm-treasury.gov.uk/fin_sanctions_index.htm

HM Treasury issued a separate Notice on 27 October 2010 with details about:

- the transfer of funds and making economic resources available (including by the supply of goods) to persons and entities listed in Annexes VII and VIII of the Regulation;
- restrictions on the Iranian banking sector and Iranian access to the insurance and bond markets of the EU

Remember that the UK Government does not encourage trade with, or investment in, Iran and has withdrawn all commercial support for trade with Iran. However, outside of the current sanctions regime the Government cannot prevent you from taking on new work in Iran. Clearly though you would proceed at your own risk. Having weighed up the risks, the final decision on whether to trade with Iran lies with you. However if your business dealings get into trouble, or the Regulation prevents you from complying with your contractual obligations, the Government will not be able to assist.

2. Related information

- Details of current arms embargoes are published on the Businesslink site at: <http://www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&r.l1=1079717544&r.lc=en&r.l2=1084228483&topicId=1084100244>
- From this page you can navigate through to access a summary of **Current Arms Embargoes and Other Restrictions** and links to individual country pages with current arms embargoes in force.
- Businesslink Guide on “Arms embargo on Iran” <http://www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&r.l1=1079717544&r.lc=en&r.l3=1084100244&r.l2=1084228483&topicId=1084127310>
- Further information on Iran Sanctions available on the FCO website: <http://www.fco.gov.uk/en/about-us/what-we-do/services-we-deliver/business-services/export-controls-sanctions/country-listing/iran>

3. Further Details

For further details of strategic export controls please contact:

Export Control Organisation
Department for Business, Innovation and Skills
3rd Floor, 1 Victoria Street
London, SW1H 0ET

Tel: 020 7215 4594

Fax: 020 7215 2635

E-mail: eco.help@bis.gsi.gov.uk

Website: <http://www.bis.gov.uk/exportcontrol> or

<http://www.businesslink.gov.uk/exportcontrol>

SPIRE (Export Licensing Database): <https://www.spire.bis.gov.uk>

This notice is for information purposes only and has no force in law. Please note that where legal advice is required exporters should make their own arrangements.

Export Control Organisation
27 October 2010
NTE201034

Annex A: Trade in dual-use goods and technology and equipment which might be used for internal repression

The following summarises the main measures with a brief explanation:

- *It is prohibited to sell, supply, transfer or export, directly or indirectly, the goods and technology listed in Annexes I and II, to any Iranian person, entity or body or for use in Iran.*

Annex I is the same as the EU Dual-Use List, (that is Annex I of Council Regulation (EC) 428/2009). This is published at: http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143390.pdf. (which is also published as part of the UK Strategic Export Control Lists – see: <http://www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&r.l1=1079717544&r.lc=en&r.l2=1084228483&topicId=1084302974>)

This is with the exception of items listed in Category 5 of Annex I to Council Regulation 428/2009 that are not included in the Nuclear Suppliers Group (NSG) and Missile Technology Control Regime (MTCR) lists.

In practice this means all of Category 5 is exempt from the prohibition except control entries 5A101, 5D101 and 5E101.

The Export Control Organisation will continue to consider licence applications for other Category 5 items on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria. (A copy of the Criteria is published at: <http://www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&r.l1=1079717544&r.lc=en&r.l2=1084228483&topicId=1084563487>)

Annex II is the list of additional nuclear and missile-related goods and technology whose supply to Iran or to an Iranian person, entity or body is prohibited and is equivalent to Annex IA of the “old” Iran Regulation.

- *It is prohibited to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex III, to any Iranian person, entity or body or for use in Iran.*

Annex III places additional prohibitions on goods that can be used for internal repression. A significant proportion of the equipment listed in this Annex is similar in function to goods found in the UK National or Dual-Use Lists. The ECO will not issue licences for the export of these items to Iran.

- *A licence is required for the sale, supply, transfer or export, directly or indirectly, of the goods and technology listed in Annex IV to any Iranian person, entity or body or for use in Iran.*

Note: Annex IV is equivalent to Annex II of the old Iran Regulation.

- *It is prohibited to purchase, import or transport from Iran the goods and technology listed in Annexes I, II and III, whether the item concerned originates in Iran or not.*

Note: this is simply an extension of the existing prohibitions on the purchase, import or transport from Iran of certain goods and technology.

- *It is prohibited to provide, directly or indirectly, technical assistance, financial assistance or brokering services related to the goods and technology in the EU Common Military List or in Annexes I, II and III to any Iranian person, entity or body or for use in Iran.*
- *A licence is required to provide, directly or indirectly, technical assistance, financial assistance or brokering services related to the goods and technology listed in Annex IV to any Iranian person, entity or body or for use in Iran.*

Note: These measures are not new. They simply extend the existing restrictions on the provision of technical and financial assistance and of brokering services related to goods and technology whose supply to Iran is prohibited or for which a licence is required.

Annex B: New restrictions on exports to Iran's oil and gas industry

A completely new aspect of the measures against Iran in the Regulation is a range of restrictive measures targetted at Iran's oil and gas industry. These measures work on the basis of a list of key equipment and technology for that industry, which is set out in Annex VI of the Regulation. In essence, the sale, supply, transfer or export to Iran or to any Iranian person, entity or body of anything on that list is prohibited, as is the provision of brokering services or technical or financial assistance related to items on Annex VI. There is, however, an exemption for pre-existing contracts, as explained below.

What the new restrictions will cover

It shall be prohibited:

- to sell, supply, transfer or export key equipment or technology listed in Annex VI, directly or indirectly, to any Iranian person, entity or body or for use in, Iran.
- to provide, directly or indirectly, technical assistance or brokering services related to the key equipment and technology listed in Annex VI, or related to the provision, manufacture, maintenance and use of goods listed in Annex VI, to any Iranian person, entity or body or for use in Iran.
- to provide, directly or indirectly, financing or financial assistance related to the key equipment and technology listed in Annex VI to any Iranian person, entity or body or for use in Iran.

How to determine if you are affected

The first question to address is whether what you intend to supply, or for which you intend to provide technical or financial assistance, is listed in Annex VI of Council Regulation 961/2010. A quick link to Annex VI is published at:
<http://www.bis.gov.uk/assets/biscore/eco/docs/iran-regulation-9612010-annex6.pdf>

In most cases, you should be able to determine this yourself, but if you have tried this and really cannot do so, you can get advice by submitting a Rating Enquiry to Export Control Organisation via ECO's export licensing database, SPIRE –
<http://www.spire.bis.gov.uk>

Note: the Rating Enquiry Service can only advise whether or not goods or technology are listed in the Annexes to the Regulation, it cannot advise whether or not the exemption applies to a specific transaction. If you are unsure whether or not you have a qualifying contract you should seek your own legal advice.

If the equipment **does not** feature on Annex VI, there is no bar to exporting or providing assistance under the oil and gas provisions, but you will need to consider further aspects before your export can proceed. These are set out below.

If the equipment **does** feature on Annex VI, then you may be able to claim exemption from the prohibition – and thus proceed with the transaction – if you have a qualifying contract.

Exemption

The prohibitions **do not apply** if there is:

- a contract, subcontract or agreement which obliges you to supply the equipment, or to provide technical or financial assistance or brokering services related to the equipment
- and that contract was concluded before 26 October 2010
- and you have notified the relevant competent authority of the transaction at least 20 working days in advance.

The competent authority is the Export Control Organisation.

If you wish to supply equipment or technology or related assistance listed in Annex VI to Iran or to an Iranian entity **you will therefore need to demonstrate that such a contract exists** by providing a notification in a form being published shortly by ECO. This form is intended to give ECO the opportunity to consider the notification and confirm that the contract qualifies for the exemption - otherwise, the transaction will remain prohibited.

Notification - how to claim the contractual exemption

To claim exemption, you will need to prove a number of key facts – chiefly that the obligation to supply the equipment or technology, or to provide related assistance or brokering services, arises from a contract that was in force on or before 26th October 2010.

You must notify the Export Control Organisation at least 20 working days in advance of the date of the transaction.

The notification is required to be submitted in writing via email with a copy of the contract, or key excerpts from it, using a notification form which will be published on the ECO website. This form will be issued shortly and will provide details of the email address to which notifications must be sent.

What sort of “contracts” can qualify?

Whilst a contract is no more than a binding agreement between two parties to provide goods or services for a consideration, for the purposes of the application of the exemption it will be necessary to provide robust evidence that it exists. Therefore, the

contractual obligations must be clearly documented, and copies of such documents will need to be included with the notification to ECO. Contracts signed on or before 26 October 2010 can come in many different forms including a 'purchase order' or invoice but must:

- be in written form (verbal contracts will not qualify)
- include consignor, consignee and customer / end-user details as appropriate
- have a date of issue
- provide details of the transaction including the equipment or technology, or technical or financial assistance, to be provided

Note: ECO can only confirm that an applicable contract has been notified to us in the proper way in order to qualify for the exemption. exemption i.e. that satisfactory evidence has been provided to support your claim that the exemption applies. It is therefore for you to take a view as to whether or not the exemption applies before you make the notification as we cannot advise in individual cases whether or not the contract exemption would apply. If you are unsure whether or not you have a qualifying contract you should seek your own legal advice.

If my contract is approved, does that give me the right to complete the transaction?

Not necessarily. If you know, have reason to suspect, or have been informed by the ECO that what you intend to supply might contribute to Iran's Weapons of Mass Destruction (WMD) programme, then you will need to apply for an export licence from ECO. Such a licence may be refused regardless of whether you have a qualifying contract. And any supply to an Iranian person or entity listed in Annexes VII or VIII of the Regulation is prohibited, because that would represent the provision of economic resources to one of those entities and this is prohibited under the financial sanctions against Iran for which HM Treasury is the competent authority.

Submitted export licence applications

The oil and gas restrictions are **not a licensing regime**. The export of these goods is prohibited and you should not submit export licence applications for items listed in Annex VI. However, if, for other reasons, you have already submitted a licence application that includes items now listed in **Annex VI**, you will be advised that the export of those items is prohibited unless you can demonstrate contractual exemption. Please refer to the notification section above.

Frequently asked questions

Q: *I am a main contractor who uses subcontracts to make some of my supplies to Iran. Should I notify those subcontracts at the same time as I notify my main contract?*

A: No. Notification of contracts and subcontracts is the responsibility of the exporter and only the exporter may make a notification.

Q: *I am a subcontractor contracted to a non-UK company. Can I still claim exemption?*

A: Yes, in principle. But, in line with the normal rules, you will have to demonstrate that your sub-contract was signed on or before 26 October 2010 and that what you are supplying was required by that contract.

Q: *I have an agreement in principle to supply, does this agreement qualify?*

A: No, only formal contracts qualify.

Q: *I have been requested to provide replacement items that have been damaged. Is this permitted?*

A: Only if the obligation to replace damaged items was specified in the contract will they be allowed to be exported.

Q: *Do the prohibitions only apply to the supply of goods, or technical or financial assistance, directly to Iran?*

A: No, they apply to the supply, directly or indirectly, to any "Iranian person, entity or body" as defined in Article 1(m) of the Regulation. As well as the State of Iran and its public authorities, natural persons resident in Iran or legal entities or bodies registered in Iran this includes any legal person, entity or body outside Iran that is owned or controlled directly or indirectly by one or more of those mentioned above. Indirect supply includes the supply to Iran via intermediaries in third countries.

Q: *What is meant by "technical assistance"?*

A: "technical assistance" means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; including verbal forms of assistance.

Q: *So I have a contract for the on-site maintenance of goods listed in Annex VI, is this permitted?*

A: Yes, provided the obligation to maintain the goods is specified in a contract signed on or before 26 October 2010 and you have notified ECO at least 20 working days in advance of your intention to provide such a service.

Q: *Both ECO and HMRC are involved in operating these restrictions. Who is it best for me to approach?*

A: If you have tried to establish whether or not your equipment is listed in Annex VI, and cannot do so, you should always approach ECO for this type of advice.

If you wish to claim contractual exemption, then we advise that you do so significantly in advance of your proposed export date. This will give the authorities adequate time to determine your claim and give you the reassurance you need about future exports.

If you do not claim contractual exemption until you are actually submitting an export declaration to HMRC, or taking goods to the point of export, then HMRC will deal your claim and advise you. However, if you do things this way, then you have greatly increased the risks of your export being delayed whilst the necessary evidence is provided.

Q: *My goods have been stopped at the border. Do I have to wait twenty days for an answer?*

A: The UK is obliged to implement the new oil and gas restrictions as soon as they come into force. However, whilst the Regulations provides for a period of 20 working days for the competent authority to consider the contract exemption, we will make every attempt to provide you with advice significantly in advance of that.

Q: *My goods have been stopped at the border but I do not think my goods are on Annex VI.*

A: Your goods may have been stopped for a number of reasons as Annex VI is in addition to existing prohibitions.

Q: *My transport agent has informed me that my goods have been stopped at the border, but I have already been advised that my contact qualifies.*

A: The HMRC single contact point for contractual exemption claims is in the National Clearance Hub in Salford (NCH). Local staff do not have access to decisions made by them, or by ECO. They will therefore be contacting NCH to obtain confirmation.