The Export Control Act and Scientific Research

During the passage of the Export Control Act, I organised the Royal Society, the Committee of Vice-Chancellors and Principals (as it then was) and the AUT (as it then was) to introduce Section 8 via an amendment in the Lords.

Our concern was that export controls on intangibles would require many academics working with colleagues overseas on science and technology to get export licenses. This would seriously damage scientific research by limiting collaboration in many disciplines to large, formal projects – excluding the flexible ad-hoc collaborations that, thanks to modern communications, are an ever-larger part of research. It is just not practical to call the DTI and wait six months whenever I spark an interesting idea with a US researcher at a conference or on an email discussion list and want to follow it up; and if non-EU academic visitors require export licences then Britain's strong position in science will be seriously damaged. The scope of the potential damage is also much wider than one might think. The dual-use list consists of all scientific topics of interest to the Pentagon; and it has a very substantial overlap with the list of topics of interest to academic researchers.

For these reasons, the House of Lords introduced the Section 8 exemption for scientific research. However, this was stopped up by subsequent regulation made in terms of EU regulations (although the EU regulations in question had been made at Britain's instigation) – a breathtaking instance of a department cynically circumventing the clearly expressed will of Parliament.

We have been unable to work out whether a number of common examples of routine scientific collaboration breach the regulations or not. The regulations appear to have been deliberately made so complex as to frustrate any independent analysis or adjudication, and to force enquirers into reliance on official interpretation. (Indeed, where four years ago the texts of OGELs could be easily found on the DTI website, now all I find from a quick web search are brief introductory pages pointing the enquirer to contact `eco.help@dti.gsi.gov.uk`.)

On speaking with officials at the time of the Act's passage through Parliament, we received embarrassed half-reassurances that the regulations are not designed to target bona fide scientific research; on speaking to one of the Government's supporters in the Lords I was told “Look, you can't expect us to get the boundary absolutely precise; just act reasonably, keep records, and stop being so suspicious”. Since then, there has been no serious attempt to inform potentially affected 'exporters' such as academics and SMEs.

I have no doubt that thousands of UK academics are conducting bona fide research with colleagues overseas that could be held, should the Government ever care to go after them, to be criminal. We pointed this out at the time, and the DTI was not interested. Other lobbyists pointed out that large numbers of small firms are probably breaking the law in blissful ignorance. Software companies, for example, routinely incorporate cryptography

into products without being aware that they might have to register for OGELs; so do private individuals and even students developing or enhancing open-source products.

The Export Control Act is thus, as currently administered, one of the most objectionable pieces of legislation on the UK statute book. It criminalises thousands of people by stealth, laying them open to jail should they ever annoy the Government. The DTI has not had the courage to advertise this fact at all widely. Thus the affected parties have not, in your words, “received sufficient notice of any changes and adequate explanation of the requirements in the orders”, and the system of export controls is far from being accountable and transparent.

I can only refer the committee to Lord Bingham's recent speech on the rule of law in which he set out eight principles: “The law must be accessible and intelligible; disputes must be resolved by application of the law rather than exercise of discretion; the law must apply equally to all; it must protect fundamental human rights; disputes should be resolved without prohibitive cost or inordinate delay; public officials must use power reasonably and not exceed their powers; the system for resolving differences must be fair. Finally, a state must comply with its international law obligations.”

It is unclear to me that our system of export controls meets even one of these criteria. The official attitude of “You are all criminals now, but don't worry – we won't put you in jail unless you make us cross” might be expected in North Korea, but should not exist here in Britain. Even if no academics or small software developers have been prosecuted up till now, that is still no excuse. Members of Parliament might care to recall that although the Government quite rightly stopped the prosecution of gay men who had sex between the ages of 16 and 21 once it came to office, it was still thought to be a good idea to actually change the law so that such behaviour was no longer an offence.

All I can say is that I did what I could – and if anyone is ever prosecuted under the Export Control Act for exporting an intangible good, I hope they win on appeal to Europe.

Yours Faithfully

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