



Department  
for Business  
Innovation & Skills

EXPORT CONTROL ORGANISATION

Compliance Code of Practice

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## 1. Introduction

The Code of Practice aims to promote effective compliance with the law relating to strategic export controls. It helps to increase awareness of the controls amongst those affected and was drawn up in close consultation with industry.

The system of export controls continues to evolve.

Companies need to keep up to date with the legislation. If they do not comply with the law, legal and financial penalties can follow, for both companies and individuals.

The easiest way for you to keep up to date is to register to receive the Export Control Organisation's "Notices to Exporters" electronically either by email, RSS feed or via Twitter.

You can do this by automatically signing up via the ECO's webpages published on <https://www.gov.uk> or via the Notices to Exporters blog published at <http://blogs.bis.gov.uk/exportcontrol>

Central to the Code is a commitment to compliance by companies and all staff concerned. The Code offers guidelines for dealing with export controls, setting a standard based on existing best practice within companies. The emphasis is on practical and relevant measures, which should ease licensing procedures, benefit the customer and help companies proceed with confidence in a changing world.

Guidance Notes and Annexes support the Code. These include examples of best practice drawn from contrasting companies and a useful checklist on internal compliance procedures.

*The Code of Practice is not legally binding. Companies should continue to seek their own legal advice on the application of the legislation.*

## 2. Background

Export of certain goods has been subject to regulation for many years.

But export controls are the exception, not the rule. UK export controls administered by the Department for Business, Innovation and Skills (BIS)'s Export Control Organisation have an impact on only around 5% of total UK exports.

Some sectors and companies are affected across the full range of their export business. Many others find that export controls relate to just a small, though possibly crucial, fraction of their product range.

The UK Strategic Export Control Lists are the first resource for determining whether your goods are subject to export controls and need a licence. Any items listed or "rated" in this document need a licence. The control lists are published on <https://www.gov.uk>

## 2.1 Why do we have export controls?

Export controls are needed for a variety of reasons, including:

- the collective security of the UK and its allies
- national security
- foreign policy requirements
- international treaty obligations and commitments
- the UK's non-proliferation policy
- concerns about terrorism or internal repression and other human rights violations

A list of countries subject to arms embargoes is listed on <https://www.gov.uk>

## 2.2 What legislation do we need to comply with?

The main legislation that you need to be aware of is the Export Control Act 2002.

Under this legislation there are two orders:

- the Export Control Order 2008
- the Export of Radioactive Sources Control Order 2006

The Export Control Order 2008 controls the following activities:

- export or transfer of military and dual-use goods, software and technology
- imposes Weapons of Mass Destruction end-use controls
- transfer of listed military technology
- trade in military and para-military goods between one overseas country and another where the deal is brokered in the UK (via a 3 tier categorization system)
- prohibits trade in certain goods between any overseas country and embargoed destinations

### *Other rules*

Companies do not need a licence to export most dual-use items to other Member States of the European Union but they must keep records of these exports and warn the consignee that the goods need a licence if exported outside the European Union. This is often referred to as Article 22 (10) from the EU Regulation 483/2009, previously it was Article 21 (7) of 1334/2000. However, a licence is still required to export some of the most sensitive dual-use items to other Member States (Referred to as Annex IV goods).

There is also a wide-ranging end-use or “catch-all” control covering items that would not otherwise require an export licence where there are concerns that they might be used in weapons of mass destruction programmes. In addition the EC Regulation on dual-use items introduced two military end-use controls. This applies in respect of items not otherwise controlled where the exporter has been informed or is aware they are:

intended or may be intended for incorporation into military equipment for the development, production or maintenance of such equipment, or for use in a plant for production of such equipment. **However** this only applies in respect of countries subject to an arms embargo decided by a Common Position or Joint Action adopted by the Council; a Decision of the OSCE or a binding UN Security Council Resolution (a current list of those countries affected can be found in the Supplementary Guidance Note on the Military End-Use Control;

or:

intended for use as parts or components of military goods, obtained illegally, irrespective of destination.

Copies of legislation imposing strategic controls and further information is available via <https://www.gov.uk> or via the <http://www.legislation.gov.uk>

## 2.3. What about to the European Community?

If goods are being shipped to a destination in the territory of a Member State of the European Community a customs declaration is not required. The exporter must inform the proper officer of HM Revenue and Customs of the licence details (SIELs only) at least three working days before the date of the proposed shipment and also state the location where the goods can be inspected\*. Exporters must also comply with conditions of the licence which are to

- maintain records of all transactions carried out under the licence,
- present a copy of these records each time the licence is ‘presented’ to HM Revenue & Customs,
- permit these records to be inspected and copied by any person authorised by the Secretary of State or the Commissioners,
- inform the Export Control Organisation (“ECO”) when the licence becomes exhausted.

\* not applicable where the goods being shipped are firearms covered by EC Directive 91/477/EEC or ammunition for use therewith.

## 2.4. Preventing proliferation

The increased terrorist threats over recent years, has heightened international desire to prevent proliferation of nuclear, chemical or biological weapons capability, and missile delivery systems. Multilateral proliferation controls are the basis for a significant and increasing proportion of the licensable activities from the UK.

International agreements in operation include the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention. There are also active international groups such as the Australia Group (countering the proliferation of chemical and biological weapons), the Nuclear Suppliers Group and the Missile Technology Control Regime.

## 2.5. Enforcement

ECO has a role in monitoring cases where violations of the controls are suspected. Information is passed to HM Customs and Excise who are responsible for enforcing licensing restrictions and investigating suspected offences.

ECO Compliance Inspectors visit companies to ensure they are aware of, and are fulfilling, their obligations in respect of conditions attached to licences.

## 3. Elements of the Code of Practice

- Commitment to compliance
- Identifying responsible personnel
- Information and training
- Company compliance procedures
- Awareness of suspicious enquiries/orders
- Record keeping
- Internal audits
- Integration with quality management practices

More details on each of these areas are provided below:

### Commitment to compliance

*Each company should make a firm commitment to comply with UK export controls. A statement, carrying the authority of the UK chairman, chief executive or other senior figure, gives a clear indication of the compliance policy of the business. Such a statement should be drawn to the attention of all employees affected by export controls in whatever form is*

*suitable for the company and a copy made available to the Export Control Organisation's Compliance Inspectors when they visit.*

The objective is to clarify the policy of the business on export control issues and to underline the importance of effective compliance procedures. Senior management can raise awareness at all levels by rehearsing, briefly, the principles of strategic and non-proliferation controls. By demonstrating their commitment to compliance they also strengthen the position of those charged with administering export control compliance programmes, enabling them to refuse to send licencable goods without a valid licence. The statement may be general or specific in form but it should signal commitment to compliance with the applicable laws and regulations (which for some businesses will include other national controls as well as those of the UK).

[Annex 1](#) gives an example of the kind of statement that may be made. It is not intended as a pro forma and businesses will wish to express their commitment according to their own style and circumstances.

## **Nomination of responsible personnel**

*Each business should nominate the person(s) responsible for export control issues. Where necessary, duties relating to export control may be delegated and an internal record maintained of responsibilities relating to each stage of export control compliance. The record should be updated as necessary.*

The objective is to ensure a clear definition of responsibilities and a management chain, however simple or complex the structure of the business. One individual should be acknowledged to hold overall responsibility for export control within a business, or an operating unit. This should be a Director, but he, or she, could delegate day to day responsibility to a named person within the organisation. This enhances efficiency within the organisation, strengthens the position of those dealing with export control, and thereby lessens the risk of failure in compliance. All employees likely to have a part to play in the exporting process should be aware of these relevant contacts. This has become more important since 2004 as personnel previously unconnected with the exporting process are now potentially exporters of technology via email and other electronic means.

For most businesses it will be convenient to name the responsible person(s) in the statement of compliance (see above). This may be supplemented by an organisation chart, or similar, setting out each element of delegated responsibility, giving details of the post (and individual) to which it is delegated. Individual job descriptions should, as appropriate, specify responsibilities in relation to export controls, for example as they do for health and safety responsibilities. Records, or organisation charts, should be maintained and updated as necessary to take account of changes in personnel or business activities and Compliance Inspectors will expect to see such a contact list when they visit the company.



## Information and Training

*Each business should establish clear procedures for acquiring, keeping and disseminating information on export controls. Training needs of staff at all levels in relation to export controls should be assessed and satisfied.*

The objective is to ensure that businesses are aware of all information relating to export controls including training material that is available, and that they have in place adequate procedures to inform and train personnel. This includes personnel who can export technology via electronic means, and those involved in arranging the movement of goods between third countries.

It is essential to keep up to date with relevant regulations and guidance notes. A reference list of sources of information and contacts for advice is valuable. Procedures should be in place for acquiring details of changes/updates to legislation and disseminating them to relevant personnel.

Export control training requirements for all levels of personnel should be identified and appropriate training programmes developed.

[Annex 2](#) lists sources of information and help.

## Company compliance procedures

*Businesses should draw up and operate compliance procedures that are effective for the business concerned and reflect as far as possible the best practices illustrated in this code.*

The objective is to promote effective and appropriate procedures for processing enquiries/orders in accordance with export control requirements. This will help companies to ensure that everything is done to prevent an export of licencable goods being made without a valid licence. The Code draws together guidelines for internal procedures, based on existing best practice, within companies. It highlights the issues that need to be addressed by means of a checklist (see [Annex 3](#)). The stages detailed are:

- establishing which of the businesses products or activities require a licence and what type of licence would best suit, taking into account customers and destinations;
- end-use control considerations;
- vetting customers (see also suspicious enquiries/orders below);
- mechanics of licence application;
- exporting and freight;
- keeping records.

Case studies are also included to illustrate procedures found effective for businesses of different sizes and structure and with various product ranges/customer bases (see [Annex 4](#)).

The key features of these examples of best practice are:

- a considered plan of what is needed for compliance;
- clear and simple procedures, appropriate to the business' structure and integrated with business functions;
- comprehensive coverage, detailing requirements of all relevant functions from sales, through order administration, to credit and finance and despatch, and including where necessary maintenance and repair;
- adequate documentation (in line with other quality management initiatives).

## Suspicious enquiries or orders/end-use considerations

*Businesses should develop awareness among their employees to help in identifying suspicious orders. Where there is doubt about the bona fides of an order, the business should consult the ECO.*

The objective is to enable businesses to protect themselves by avoiding involvement in activities that may be against the law. Indicators are made available to help assess customers and orders which may be unusual and carry a possible risk, for example of diversion from the stated end-user to another end-user, possibly in another country, who may be engaged in a programme to acquire weapons of mass destruction or items for military use in a destination subject to an arms embargo. Company personnel need to be aware of these indicators. ECO's website has specific information on companies in Iran and advice on exporting to Iran.

By notifying their suspicions to ECO, businesses can obtain advice and guidance in the light of more comprehensive information available to HMG. They can also contribute information that may be of possible strategic value in the prevention of trade in controlled goods.

[Annex 5](#) lists:

- the indicators of Suspicious Enquiries/Orders
- details for consulting the ECO
- where to find additional information on end-use controls

## Record keeping

*Business activities covered by export control legislation should, as required by their licences, maintain records of all controlled activities for at least the minimum period required by law.*

The objective is to ensure that traceable records of these activities are maintained so that queries about any transactions under licence (whether open general, open individual or other licence) may be readily checked and an adequate audit trail followed through.

To facilitate record keeping, the business should establish a policy on the time, mode and place for maintaining and storing records so that it is known what information is retrievable and how. This is even more important for the electronic transfer of technology and for trade controls. You must look at what records are already kept, and whether they would meet the criteria stated in the legislation.

## Provision for audits

*Businesses should establish a programme of regular internal audit of the system for export control compliance.*

The objective is to maintain standards set in compliance procedures through periodic appraisal. According to the size and complexity of the business the audit may be a self audit carried out according to a simple checklist of questions (see [Annex 6](#) for an example) or it may be delegated to a central auditing function.

ECO Compliance Inspectors make regular and ad hoc Audits to licence users and look for standards of procedures in line with best practice set out in this Code. (See [Annex 7](#)).

## Integration with quality management practices

*Businesses should ensure that all procedures and practices for dealing with export control regulations are fully integrated with any quality management systems that may apply to them.*

The objective is to ensure that within quality management practices export control compliance procedures are treated in the same manner and with equal emphasis, as other business procedures. To this end quality managers should be briefed on the Code of Practice.

## Annex 1 - Commitment to compliance: an illustrative example

This is an example of the statement that could usefully be issued by senior management.

### **A MESSAGE FROM THE CHAIRMAN**

*“The success of this company depends in large part on the business we do overseas.*

*Export controls imposed by the UK Government and the European Community affect a high proportion of the products we see and many of our overseas markets. We must therefore understand the controls and be quite sure we comply with them. The purpose of these controls is to limit the supply of technology or strategic goods to countries proscribed, principally for reasons of proliferation, security, or terrorism. It is in the interest of us all that the controls are effective if it makes the world a safer place. For our business it is essential that we comply with the legislation: failure to do so would bring serious penalties for the company and for the individuals concerned.*

*I have nominated ..... to be the person with overall responsibility within the company for export control matters assisted by ..... and he/she will be reviewing the effectiveness of our current procedures in light of the Export Control Organisation’s Code of Practice to which we shall adhere. But each of us must be aware of our own role and ensure that no items are despatched (remembering that this term also covers the transmission of software or technology by fax, telephone or other electronic media and arranging to move goods between third countries) without due clearance and authorisation. Information is available on how export controls affect your position; make sure you are aware of it.”*

This kind of statement might be made in a number of ways, for instance:

- circulated as a self-contained policy statement
- incorporated in a statement about a number of regulatory matters
- included in a preface to a quality manual
- included in any induction material the company may produce for new personnel
- disseminated through a company newsletter or via the intranet
- or otherwise drawn to the attention of all staff whose work has any bearing on export control compliance procedures.

## Annex 2 - Information and training: Useful references

### Legislation

The Export Control Organisation, which forms part of the Department for Business, Innovation and Skills (BIS), is responsible for administering the controls on strategic exports that are the subject of this Code.

The ECO maintains a list of UK Strategic Export Control Lists, Current Strategic Export Control Legislation as well as details of Current Arms Embargoes and Other Restrictions. This information is available on <https://www.gov.uk>.

### Published guidance documents

The ECO also publishes a wide range of guidance documents which are available online on <https://www.gov.uk>.

These include:

- Introduction to the Export Control Organisation and to Export Controls: What the ECO does and its UK regulatory role of controlling the export of strategic goods
- Export Control Organisation: Service and Performance Code
- Guidance documents on specific aspects of controlled goods including firearms, end-user documentation requirements, end-use control, transit and transshipment controls, and guidance aimed at specific sectors and exporters such as academics and exhibitors.

### Training materials

The ECO produced a short film in 2009 called “Responsible Exports” which provides an overview of export controls. In 2010, ECO produced a second film “Open Audits Explained” Both are accessible via the export control training pages on <https://www.gov.uk>

### Awareness and training

ECO run seminars and workshops around the UK on an ongoing basis.

These include courses at Beginner or Intermediate level. In addition, advanced events, targeting particular sectors, or particular aspects of the controls are also run on a demand-led basis.

Further information including the current programme of courses and prices is available from <https://www.gov.uk>.

## **ECO Helpline**

If you have any general enquiries about export controls, you can contact the ECO Helpline either by phone or by email.

Tel: 020 7215 4594

Email: [eco.help@bis.gsi.gov.uk](mailto:eco.help@bis.gsi.gov.uk)

## **Updates – “Notices to Exporters”**

The ECO issues periodic updates about changes to legislation, introduction of new OGELs and other changes to export controls on military and dual-use goods.

To keep informed of these and other aspects of export control, you can sign up to receive the ECO’s “Notices to Exporters” email update service.

Current Notices to Exporters are published online at <http://blogs.bis.gov.uk/exportcontrol>

## Annex 3 - Export Control Compliance Checklist

This checklist contains four elements:

1. Checking products, destinations and licences
2. Checking on receipt of enquiry or order
3. Checking export procedures
4. Checking records

These are detailed further below:

### 1. Checking products, destinations and licences

#### 1.1. Establish whether your business products are subject to controls

##### How?

Consult the UK Strategic Export Control Lists which are published on <https://www.gov.uk> or use Goods Checker – <http://www.ecochecker.bis.gov.uk>

*Note: controls are subject to change, and up to date information is needed. If in doubt about a product, complete and submit an export rating enquiry via the SPIRE electronic licensing database at <https://www.spire.bis.gov.uk>*

##### When?

As early as possible, this may be well in advance of any particular enquiry or order. This can be at the design or development stage of a new product.

For military goods, use of the MOD F680 procedure for pre-application check is recommended. Note: This may be the trigger point for licence applications for Technology Transfer or for Trade Control licences.

MOD F680 applications should be made via the SPIRE database – <https://www.spire.bis.gov.uk>

##### Beware!

Much software and technology related to controlled goods is also subject to control.

The end-use controls relating to weapons of mass destruction (WMD), certain arms-embargoed destinations, and use as parts of military items exported in breach of export controls can mean that items, normally not subject to control, need a licence. Consult ECO via the Helpline if in doubt.

## 1.2. Consider customer base

- What information is available on customers' bona fides, location and activity (bearing in mind that a domestic order might lead on to an export)?
- What are the business' sources of information about potential customers?
- Can sales/marketing reps in the field feed in more detail?
- Would a status report or credit check give useful indicators if there are some doubts about any customers? (See also indicators of suspicious enquiries at [Annex 5](#)).
- Are company products exported to destinations with WMD programmes?
- Do the business' overseas distributors know the licence conditions relating to the re-export of controlled goods?

## 1.3. Consider licence options

- Consider licence type(s) required in light of products and destinations.
- Consult ECO Licensing Unit, ECO's guidance documents and the list of current Open General Licences as well as OGEL Checker.
- As well as country of destination and technical specification of the product, end-use information may be needed depending on the type of licence. It may also be relevant to know whether business is a first order or a repeat order and whether any licences have been issued in the past.
- Is it practicable for you to draw up a matrix\* of licence requirements?
- Can this matrix be integrated with the order processing system to provide automatic flags about the need for a licence and which type?
- Can the system supply regular reports on enquiries for restricted goods (may show pattern highlighting suspicious enquiries.)

*\*Note: A matrix needs regular updating to take account of changes in product, customer, or regulations.*

## 1.4. Special considerations for different licence options

- If Open General Export Licence (OGEL) or Open General Trade Control Licence (OGTCL):
  - Is the company registered with ECO to use that Open General Licence?
- If Open Individual Export Licence (OIEL) or Open Individual Trade Control Licence (OITCL):
  - Is end-use undertaking valid and up to date?
- If Standard Individual Export Licence (SIEL) or Standard Individual Trade Control Licence (SITCL):
  - Refer to guidance on licence application.



- Ensure full details are submitted with the application including end-user undertaking.

## 2. Checking on receipt of enquiry or order

- Consult matrix/order processing system flags. Check this information is fully up to date.
- Vet the order, checking for unusual features consulting the indicators of suspicious enquiries ([Annex 5](#))
- Consult sales/marketing staff for further information as necessary
- For new customers check status, credit risk and maybe visit
- Consider end-use information, and whether the order is reasonable in light of normal requirements within the industry and stated end-use. This relates equally to initial product and to orders of parts or maintenance.
- If appropriate, include in the sales contract that delivery is subject to obtaining clearance from the UK's export licensing authority.
- Consider all aspects of the enquiry or order against the WMD and Military End-Use Controls.

## 3. Checking on export procedures

- Are the freight forwarders you use vetted and do they satisfy professional standards? (Are they members of a recognized professional body?)
- Clear written instructions should go to the forwarding/freight agent which:
  - Define responsibility for documentation (including the return of any completed customs declaration for records)
  - Supplying full licence details relevant to the individual export
  - Specifying any implications, for example for routing or consolidation
- Is there a final check in the system that will prevent attempts to export goods without licence clearance?

## 4. Checking records

- Are records of all transactions under licence readily available?
- Are you keeping these records for the period of time specified on the licence?
- Are the records logical and in a traceable sequence?
- Do the records include:
  - Name and address of consignee and any person known at the time to be the ultimate consignee
  - In the case of trade controls, do they show the source of the goods?
  - Particulars of goods or technology exported
  - Date of exportation

- Licence used
- Any further information required to be kept by the licence?

## Annex 4 – Illustrative Case Studies

Here are some examples of compliance procedures.

These are not directly attributable to named organisations but are based on an amalgamation of working procedures typically found within companies. They are indicators of **best practice** and represent possible as well as desirable approaches to compliance.

### Example 1

This is a company that has several operating units. It holds OIELs and uses OGELs and individual licences. Some products are dual-use.

- **Commitment to compliance**

The Chairman has placed a letter to all employees with any involvement in export control compliance on the organisation's intranet.

- **Delegation of responsibilities**

The Managing Directors of the operating units have responsibility for compliance.

Each has nominated an Export Control Co-ordinator. Also within each function in the operating unit (sales and marketing, order processing, production, despatch and shipping, maintenance, finance, and personnel) there is a nominated Compliance Liaison Officer.

In each case the export control responsibility is spelt out in the individual's job description.

- **Information**

The Export Control Co-ordinator in each unit is responsible for maintaining up to date information on regulations and has registered to receive electronic updates from the ECO website. The Export Control Co-ordinator contributes occasional pieces to the company-wide newsletter to raise general awareness.

- **Training**

All job descriptions are flagged if they have any direct or indirect input to export controls. Induction or re-training of anyone in such a job will automatically include one of two standard modules of training.

One module is a basic introduction to export licensing and how the system for compliance works. It is geared primarily to the administration staff. The other module, geared to the more customer-oriented staff (e.g. sales, maintenance) and to middle managers throughout the company, includes more material on why export controls exist, the hazards of non-compliance, and awareness of suspicious orders.

Training material includes booklets, videos, DVDs and overhead slides.

*Procedures:*

The Compliance Liaison Officer in each function is responsible for drawing up the local procedures for export control. This is passed to the Export Control Co-ordinator for checking and inclusion in the manual for the operating unit.

The following examples of these functional procedures highlight key export control activities within the company:

*Sales / marketing:*

The Compliance Liaison Officer feeds into business planning to ensure export licencing is considered at the outset of a project or when looking at new markets.

Indicators of suspicious enquiries are widely publicised and export controls, including the treatment of technological documents, are an element in sales training.

Quotations - whether to overseas enquirers or to UK customers - include a statement that a licence may be required for export.

Agents are given written instructions about UK export controls and contact details of the Export Control Co-ordinators.

*Design and development:*

The Compliance Liaison Officer sees plans for new design and development and gives early advice on possible licensing implications. Where necessary, ECO or (if there is a military use) MOD is consulted. In some cases, designs will be amended to avoid use of sensitive components.

*Order processing:*

Order processing software includes a checklist of export licensing issues. A matrix of product/destination/licence type and number has been generated and will automatically flag a new order accordingly.

End-use information requirements are flagged.

Orders are numbered sequentially and a paper file kept, including end-use statements where necessary, for each transaction.

Financial status checks (including, for example, details of Directors of the customer company) are recorded in the order processing system.

The Export Control Co-ordinator has access on line and must record approval

of the order and licence detail before an invoice can be generated. The licence details appear automatically on the paperwork generated to accompany the goods.

*Despatch / shipping:*

The Compliance Liaison Officer has issued a checklist for the instructions needed for freight forwarders.

One of the units has a close relationship with the freight forwarder used regularly and the Compliance Liaison Officer has provided training sessions for their staff on the implications of export controls.

Goods may not be despatched without final clearance from the Compliance Liaison Officer or delegated deputy on sight of the completed documentation and licence details.

Export documents are returned to the company and filed with other documents relating to that transaction.

*Record Keeping:*

The file for each order, including the contract, letter of credit, and end-user statement is kept on the premises for four years and thereafter goes into store there is no disposal policy within the company and in future the documents will be electronically archived. The computer record, through the order processing system, is archived indefinitely and may be accessed by company name and address, postcode, product, and country of (final) destination.

*Audit:*

Compliance Liaison Officers conduct a self-audit of the procedures in their function biannually. This includes checks of documentation, implementation, and training. The result of this audit is reported to the Export Control Co-ordinator, and any problems resolved jointly. Export Control Co-ordinators conduct peer audits of other operating units to improve the objectivity of the review.

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## Example 2

The company is a distributor of electronic components and associated products, supplying mainly small to medium sized original equipment manufacturers. Sales are achieved primarily via an extensive catalogue. The operation including stockholding is centred on one major UK site, with overseas orders being supplied through subsidiaries in key markets and distributors in other territories.

- Export control

As a result of the scale and complexity of their operation, a sophisticated computer controlled order processing is used.

- Responsibility

The Export Director is allocated overall responsibility for export control, assisted by one staff member, the Order Processing Manager, who was given the task of working up and implementing a viable set of procedures. The Finance Co-ordinator is also involved in this because of the benefits in checking for creditworthiness and export control/end-use at the same time, especially with new customers.

- Quality

As a part of its Total Quality Management programme, the company holds regular senior management meetings at which the subject of export control is a permanent agenda item.

- Staff awareness

All staff concerned with the administration of export orders have a set of notes covering:

- identification of licensable products;
- types of licences and working practices;
- production of shipping documents;
- audit trail;
- quotations.

A sales team undertakes regular visits to agents and subsidiaries in all territories. They are briefed on export controls and, in particular, on end-use concerns.

#### *Identification of licensable goods*

Only a relatively small proportion of the company's stock items are controlled and introduction of a 'Positive' licensing regime within the company was considered inappropriate. The order processing system therefore incorporated a suitable flagging process. The flags

- highlight the need for a licence
- indicate whether the Open Individual Export Licence held by the company is applicable
- indicate if a valid end-user undertaking is on file.

If any relevant information is not available (e.g. concerning the consignee or end-use), a standard letter is sent to the customer requesting further details.

#### *End-use*

Possible end-use concerns are highlighted by flags in the order processing system. Where it is a new consignee, staff refer the order to the Export

Manager or Order Processing Manager for further checks as to the bona fides of the consignee and/or end-use. In view of the sensitivity of some of the countries supplied, the company maintains regular contact with the Export Control Organisation.

#### *Documentation*

Once any part of an order is identified as requiring an export licence, the letter 'L' is added to the product description of the goods concerned in the order processing system. When the commercial invoice is raised, reference to the export licence is added and the details of the export licence, including consignee, goods, value and the licence to be used are captured and used to populate the Export Log, which is available to the ECO's Compliance Inspector when he or she Audits.

#### *Shipping*

A close working relationship exists with the principal freight forwarder, with whom export licensing is regularly discussed. Direct routing is used wherever possible.

### **Example 3 – Electronic transfer of technology and controls on trade**

This is an illustration of how some companies approach compliance with the record keeping requirements of the legislation. There are many other ways and companies should put in place something which mirrors their own way of operating.

- **Export Control**

The decision on whether a licence is required is similar to that made on goods, but the licences available will differ slightly. Decisions on licencability need to be made as soon as possible, the trigger for technology transfer could be the signing of a non-disclosure agreement and there is a similar, immediate, point at which a licence is required when Trade controls are applicable.

(Note: The ECO publishes a decision tree on trade control licences which is available on the ECO webpages on the Businesslink website.)

- **Responsibility**

Because electronic transfer of technology and the movement of goods between third countries does not necessarily pass through the usual export control channels, companies should consider selecting appropriate personnel

in sales and marketing, also project managers and senior engineers to play a more active role in complying with export control legislation. Some companies have software to control technology transfers, but many others rely on the provisions of a contract or project to define what can be transmitted and between whom. Details of every transaction are usually not required (see record keeping below). The relevant project manager likely to involve exports of controlled items initially completes a number of fields. These details confirm licencability of the goods. This data is then passed to someone who can determine which licence is applicable.

- Staff Awareness

The controls on the electronic transfer of technology meant that potentially everyone who has access to email; a telephone or a fax machine could be an exporter if they also have access to controlled technology. Companies need to inform staff of their responsibilities under the legislation. The level of detail and the method of doing this should be relevant to the needs and culture of your company, but Compliance Inspectors will ask to see what you have done when they Audit you. The Export Control Organisation's DVD provides a basic overview of export control requirements and could form the basis of general export control awareness training in the company.

For engineers taking laptops abroad, one way of reminding them of their responsibilities might be to issue an explanatory leaflet to accompany their flight tickets or hotel booking confirmation. Some companies have introduced an authorisation system for laptops leaving the country, so that each laptop must be signed for and checked to see whether technology is on it.

- Record keeping

Where possible, existing records should be used. The information you need to have available is:

- a description of the technology sent (type, what it is to be used for);
- details of the person or entity to whom it is sent (including information on end-users and any other party to the transaction, and the destination countries involved wherever possible);
- the date of the transfer or the period of time the transaction takes place over (start and end dates in cases where the transfer takes place over a period of time);
- any other records which the licence may specifically state

### *Electronic transfer of technology*

Compliance Inspectors will not need to see every email. However, there should be a record (perhaps as part of the project plan) of what technology was sent, to what organisation, when the transfer began and when it ended. If it is part of a call off contract to provide assistance, there will be a start and end date to the contract, and invoices are likely to hold information on the technology transferred and where to.



### *Trade Controls*

Records of trade control transactions are often emails, faxes or records of telephone conversations in some form. So long as this documentation confirms that the terms of the licence have been adhered to, any would be acceptable to a compliance Inspector.

## Annex 5 - Handling of Suspicious Enquiries or Orders

Among customers, the vast majority of whom are quite legitimate, there may emerge some whose intent is to procure or divert items and components for proscribed purposes (such as proliferation of weapons of mass destruction or military end-uses) or to proscribed destinations (such as those under embargo).

There may be occasions when the nature or circumstances of an enquiry or order leads you to doubt the bona fides of the customer. This may be a customer overseas or a UK based customer known, or thought, to be planning to export the goods.

The list below includes some points that may arouse your suspicions. Make your sales and order processing staff aware of these indicators so that they can play their part in spotting any dubious business. Let them know how to proceed if they do sense something suspicious.

If you wish to consult someone about your suspicions, complete and submit a rating via SPIRE at <https://www.spire.bis.gov.uk>

All information is treated in strict confidence.

### Suspicious?

You should be if:

- the customer is reluctant to offer information about the end-use of the items;
- the customer is reluctant to provide clear answers to commercial or technical questions which are routine in normal negotiations;
- an unconvincing explanation is given as to why the items are required, given the customer's normal business, or the technical sophistication of the items;
- routine installation, training or maintenance services are declined;
- unusually favourable terms such as higher price and/or lump-sum cash payment are offered;
- unusual shipping, packaging or labelling arrangements are requested;
- the customer is new to you and your knowledge about him/her is incomplete or inconsistent;
- the installation site is in an area under strict security control or is in an area to which access is severely restricted, or is unusual in view of the type of equipment being installed;
- there are unusual requirements for excessive confidentiality about final destinations, or customers, or specifications of items;
- there are requests for excessive spare parts or lack of interest in any spare parts.

### End-use controls

More specific guidance about Weapons of Mass Destruction (WMD) and military end-use controls is published on <https://www.gov.uk>

## Annex 6 - Audit of internal compliance procedures checklist

It is good practice to carry out regular audits to ensure that standards in export control compliance are maintained.

For businesses without a central auditing function the following checklist of points may be helpful:

### Personnel

- Are records of personnel involved in export control up to date?
- Have all employees who have the ability to make exports (remember that everyone with access to email, telephone and fax can potentially export technology) received the necessary induction or (re)training?

### Documents available

Do staff who need to have access to:

- compliance procedures
- up to date legislation
- guidance notes/contact details?

### Product/licence

- If there is a full product/country/licence matrix or similar, is it up to date?
- Was it checked against export control legislation and current company product range within the last three months? - if not a check/update should be arranged within the next two months.
- Are ratings of products up to date, including ratings in relation to new products or new markets?
- Have there been any changes to Open General Licences in the last few months, which means the goods/destinations, are no longer covered?

### Customer information

- Is the necessary information reaching those responsible for licence processing, for example to ensure quick answers to end-use enquiries? - if not, should sales/marketing staff be reminded of what is needed?
- Should customers be alerted to the possible need for end-use information at an earlier stage (e.g. on quotation documents)?
- Is credit control information on customers' status being fed through for export control checks?

### Licence processing

- Are licences held by the business up to date (for example, any

changes in name or address duly notified)? Do the Open Individual Licences the company has have at least 6 months before they expire? If not has a new licence been applied for? If less than 3 months, has an extension been requested?

- Are end-use undertakings valid? Are they in the right format?
- Where individual licences are needed, is the procedure for applications working smoothly (and see Customer Information above)?
- If Open General Licences are used, has the business registered with ECO? Is the licence quoted correctly on the relevant documentation?

### **Exporting goods**

- Are instructions to despatch department and/or freight forwarders up to date?
- Are they being adhered to (e.g. copies of export documentation returned within reasonable time)? - if not revise or restate the requirements and set a date to check on improvement.

### **Record keeping**

- Selecting two or three cases at random, are the records (required to be kept under the licences) accessible?
- Are all related documents filed together, or accessible through common fields?

### **Resolution of problems**

- If aspects of procedures have been found unsatisfactory in the course of this check, or if problems have been encountered in operating the procedures, is there a plan for improvements?
- Have the necessary revisions or amendments been made known to the relevant personnel?

## Annex 7 - Export Control Organisation Compliance Audits

### What are compliance Audits for?

- To promote understanding of the UK export control regime, particularly with regard to end-use concerns
- To examine records to ensure that UK export licences, particularly Open Individual Export Licences (OIELs) and Open General Export Licences (OGELs), are correctly used by the holder and that the terms and conditions are being met.

### What does the compliance Audit cover?

Overview of company/operating unit – including organisation; structure; products and services; markets; export activity

Applicability of UK export controls – review position of items against controls. Where a representative of the ECO Technologies Unit or other government agency (e.g. MoD) is involved in the Audit, it would be helpful if relevant technical staff could be made available for part of the discussion.

Documentation trail - how orders are received and processed, and how records are maintained.

Suspicious enquiries/orders – how these are identified and handled.

Shipping – who administers shipping and what methods of movement are used.

Inspection of records – to ensure that the terms and conditions of licences have been fully met.

### Who should be involved in the Audit?

The responsible Director and any other relevant Senior managers

Line manager for export administration/shipping functions and relevant personnel involved in export administration.

Marketing/sales/project managers.

Technical personnel.

## Annex 8 – Glossary of Terms

To help you, some of the more specialised expressions are defined or explained here. This glossary has no formal status and should not be taken as an interpretation of the law.

### **AG**

Australia Group.

### **BTWC**

Biological and Toxin weapons Convention.

### **CATCH-ALL**

Provisions relating to end-use concerns. Where an exporter has been informed by the authorities, or suspects, that a potential export of items not ordinarily requiring an export licence is, or may be intended for WMD-related end-use then the export become licensable.

Where an exporter is aware that dual-use items are intended for WMD-related end-use, he must inform ECO who will decide whether export of the items is licensable.

In addition where an exporter has been informed or is aware that the dual-use items, not otherwise controlled, are either intended for

- Incorporation into military equipment for development, production or maintenance of such equipment or plant for production of such equipment to certain countries subject to an arms embargo; or
- For use as parts or components for military equipment that has been exported from the UK illegally.

An export licence application is required.

Also where the exporter is aware that the above applies he must inform ECO who will decide whether the export is licensable.

### **COMPLIANCE**

Acting in accordance with the legislation. The term is widely used in relation to companies' procedures for dealing with export controls, especially in USA and Europe.

### **CONSIGNEE UNDERTAKING**

Required from a consignee in accordance with Open Individual Export Licence (OIEL) conditions.

### **CWC**

Chemical Weapons Convention.

### **DUAL-USE GOODS**

Items, including software and technology, which are not military items but can be used for both civil and military purposes. This includes all goods which can be used for both non-

explosive uses and assisting in the manufacture of nuclear weapons or other nuclear explosive devices.

**EC**

European Community.

**ECO**

Export Control Organisation, the part of BIS that processes export licence applications.

**END-USE**

The final use of exported items (in some cases may be beyond the use of the direct consignee).

**EU**

European Union.

**EU GEA**

European Union General Export Authorisation.

**EUU**

End-User Undertaking.

**EXPORT CONTROLS**

Refers to the regulation of the export of certain items to certain destinations or in certain circumstances as specified in the relevant legislation. Controlled items may be exported only under licence.

**FCO**

Foreign and Commonwealth Office.

**HMG**

Her Majesty's Government.

**LICENCES**

Authorisation for export of controlled items (in this case, issued by ECO). Different forms of licence are available:

- Open General Export Licences (OGELs) covering a wide range of controlled items to a range of non-sensitive destinations. Most require companies to register as an OGEL user. Conditions of use are set out in each OGEL.
- Open General Trade Control Licences (OGTCLs) – The trade control version of OGELs
- Open Individual Export Licences (OIELs) are issued to a named company for frequent shipments of less sensitive items to less sensitive destinations. Initial application needed. Conditions of use are set out in the OIEL.

- Standard Individual Export Licences (SIELs) are issued to a named company for one or more exports of specified items to the same consignee at the same destination. Quantity and value limits apply. Application needed for each licence.
- Transshipment licence for controlled items entering the UK solely for transit to another country.
- Global Project Licence (GPL) in a similar nature to OIELs permitting the multiple exports of goods and technology where these are required to achieve a particular programme or when they are intended for the national military use (if requested) by any of the Framework Agreement states
- Open Individual Trade Control Licences (OITCLs) and Standard Individual Trade Control Licences (SITCLs) – The trade control versions of OIELs and SIELs)

**MoD**

Ministry of Defence.

**MTCR**

Missile Technology Control Regime.

**NATO**

North Atlantic Treaty Organisation.

**NPT**

Nuclear Non-Proliferation Treaty.

**NSG**

Nuclear Suppliers Group.

**OGL**

Open General Licence.

**OITCL**

Open Individual Trade Control Licence

**OGEL**

Open General Export Licence

**OGTCL**

Open General Trade Control Licence

**OGTL**

Open General Transshipment Licence.

**OIEL**

Open Individual export Licence

**PROLIFERATION**



Term used in reference to the unwelcome spread of nuclear, chemical or biological weapons and missiles.

**RATING**

Advice on the licensing status of specified items.

**SIEL**

Standard Individual Export Licence.

**SITCL**

Standard Individual Trade Control Licence

**STRATEGIC**

Relating to security, defence and proliferation interests. In this context it differentiates the controlled items that are the subject of BIS licensing from other items subject to controls by other Government Departments for other reasons (for example flora and fauna or national art treasures).

**WA**

Wassenaar Arrangement.

**WMD**

Weapons of Mass Destruction.

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