

Export Control Organisation Compliance Code of Practice

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 with the most recent major change being the Export Control Act 2002 and the Secondary Legislation under it, which came into force on 1 May 2004. 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 Notices to Exporters electronically you can do this at <http://www.dti.gov.uk/export.control/help/signup.htm> or by emailing web.comments@dti.gsi.gov.uk with a company name, contact point and telephone number.

Central to the Code is 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.

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 DTI'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 Strategic Export Control Lists can be found at <http://www.dti.gov.uk/export.control/pdfs/controllist20040930.pdf>

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.

The Foreign and Commonwealth Office produce a summary of HMG's export control commitments on a country-by-country basis which can be found on their website at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcele/ShowPage&c=Page&cid=1007029391422>

What do we need to comply with?

The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003
(<http://www.legislation.hmso.gov.uk/si/si2003/20032764.htm>)

This Order, made under the Export Control Act 2002, establishes a new framework for the control of strategic goods, software and technology. It brings together controls on the export or transfer of military and dual-use goods, software and technology, controls on goods, software and technology related to weapons of mass

destruction (WMD) and the provision of WMD related technical assistance. The controls in this Order apply to persons in the United Kingdom and in respect of certain provisions, to United Kingdom persons anywhere in the world.

The Order consolidates existing controls on the export of military goods, software and technology in physical form, previously provided for by the Export of Goods (Control) Order 1994 (S.I. 1994/1191), with the provisions of the Dual-Use Items (Export Control) Regulations 2000 (S.I. 2000/2620) (the DUEC). The DUEC gave effect in the United Kingdom to certain provisions of Council Regulation (EC) No. 1334/2000 of 22 June 2000, (O.J. No. L 159, 30.06.2000 p.1.) which set up a Community regime for the control of exports of dual-use items and technology (the Regulation).

Military and para-military goods, software and technology whose export or transfer is controlled are specified in Schedule 1 to this Order. Dual-use goods, software and technology, the export or transfer of which, are controlled in addition to those set out in the Annexes to the Regulation, are specified in Schedule 2.

This Order imposes WMD end-use controls on "any relevant use" in connection with WMD. A relevant use is any use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons.

In addition to the consolidation of existing export control provisions, the Order also introduces the following new controls on:

(a) the transfer of listed military technology in Schedule 1 by electronic means. Electronic transfer includes transfers by fax, e-mail or telephone;

(b) the transfer by any means of technology intended for use in connection with WMD or a related missile programme. This supplements existing end-use controls on the physical export of goods, software and technology and the electronic transfer of technology contained in the Regulation. The new control will apply to anyone in the United Kingdom or a United Kingdom person anywhere in the world who communicates technology which the provider knows or has been informed by Government, is or might be intended for use outside the European Union in connection with WMD or missiles capable of delivering WMD; and

(c) the provision of technical assistance in relation to WMD. This control will apply to anyone in the United Kingdom or to any United Kingdom person abroad who provides or facilitates the provision of technical assistance outside the United Kingdom where he knows or is informed by the Government, that it is or may be intended for use in connection with WMD or missiles capable of delivering WMD. This control, together with the WMD transfer controls, implements the European Joint Action of 22 June 2000 concerning the control of technical assistance related to certain military end-uses (2000/401/CFSP).

The Trade in Goods (Control) Order 2003

(<http://www.legislation.hmsso.gov.uk/si/si2003/20032765.htm>)

This Order, made under the Export Control Act 2002, controls the trade between one overseas country and another of military and para-military goods listed in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance Order 2003 (S.I. 2003/2764). In this Order these goods are referred to as "controlled goods" or "restricted goods". Restricted goods are set out in the Schedule to this Order. The controls in this Order do not apply to software or technology or to activities connected to trade in controlled goods that are situated in the United Kingdom (with the exception of goods in transit via the United Kingdom).

In relation to restricted goods, article 3 of this Order prohibits any person within the United Kingdom, or a United Kingdom person anywhere in the world, from supplying or delivering, or doing any act calculated to promote the supply or delivery of, restricted goods without a licence from the Secretary of State.

In relation to controlled goods, article 4 of this Order prohibits any person in the United Kingdom from transferring, acquiring or disposing, or arranging or negotiating a contract for the acquisition or disposal of controlled goods without a licence from the Secretary of State. In addition, the provisions on controlled goods prohibit any person in return for a fee, commission or other consideration from doing any act or agreeing to do any act, without a licence, which would promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods where that person knows or has reason to believe that the goods will be moved from one third country to another third country.

The Order exempts persons whose sole involvement in the movement of controlled goods from one overseas country to

another is to provide transport, finance, insurance or general advertising or promotion services.

Trade in Controlled Goods (Embargoed Destinations) Order 2004
(<http://www.legislation.hmsso.gov.uk/si/si2004/20040318.htm>)

This order, made under the Export Control Act 2002, prohibits trade in certain goods between any overseas country and the embargoed destinations listed in the Schedule. In this Order, these goods are referred to as "controlled goods", and are found in Part 1 of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003. The controls in this Order do not apply to software and technology or to activities connected to trade in controlled goods that are situated in the United Kingdom (with the exception of goods in transit via the united Kingdom).

In relation to controlled goods, article 3 of the Order prohibits any person within the United Kingdom, or a United Kingdom person anywhere in the world, from supplying or delivering, agreeing to supply and deliver, or doing any act calculated to promote the supply or delivery of, controlled goods to any embargoed destination listed in the Schedule, without a licence from the Secretary of State.

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. However, a licence is still required to export some of the most sensitive dual-use items to other Member States.

In addition, there is 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. These apply 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 are available from The Stationery Office Customer Services Department, PO Box 276, London, SW8 5DT. Tel: 0870 600 5522, Fax: 0870 600 5200. office hours between 0900 – 1700 (Mon – Fri).

Further details of the controls administered by ECO are available from ECO's Helpline eco.help@dti.gsi.gov.uk

What about to the European Community?

There are no routine customs checks at borders between European Community members. Standard Individual Licences must be presented at local customs offices for intra-community exports or under local clearance procedure. Where open licences are being used companies must maintain records for inspection and ensure licence details are visible on the accompanying documentation.

Preventing proliferation

The increased terrorist threats over recent years, particularly the events of 9 September 2001 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.

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

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

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 and a copy made available to DTI Compliance Officers 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. Businesses which issue such a statement should circulate it widely to all staff with any role affected by export controls.

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 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 the organisation of export control issues and relevant contacts. This has become more important under the Export Control Act 2002 as personnel previously unconnected with the exporting process are now potentially exporters.

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 Officers 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 will now include 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 DTI.

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.

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 DTI;
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 becomes 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 Officers make regular and ad hoc visits 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.

Commitment to compliance - an illustrative example

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 and he/she will be reviewing the effectiveness of our current procedures in light of the DTI 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 now 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 is an example of the statement that could usefully be issued by senior management. This kind of statement might be 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 otherwise drawn to the attention of all staff whose work has any bearing on export control compliance procedures.

Information and training - useful references

Legislation

The ECO maintains a list of Current Strategic Export Control Legislation at

<http://www.dti.gov.uk/export.control/legislation/notecurrentleg.htm>
and details of Trade Sanctions and Arms Embargoes can be found at
<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391422>

Published guidance documents

- A Brief Guide to Export Controls
- Service and Performance Code
- Export Control Act 2002 – An Overview Summary Guidance
- Export Control Act 2002 – Supplementary Guidance Note on the Transfer abroad of Controlled Military Technology and Software
- Export Control Act 2002 – Supplementary Guidance Note on Trade (“Trafficking and Brokering”) in Controlled Goods including Trade to Embargoed Destination
- Export Control Act 2002 – Supplementary Guidance Note on Additional Controls relating to the prevention of Proliferation of Weapons of Mass Destruction (WMD)

Copies are available on request from the ECO Helpline

Tel: 020 7215 8070,

Fax: 020 7215 0531

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

Training materials

DVD ROM : “Understanding Export Control” (URN 04/DVD2) also available as a video (URN 04/VID2) – Price £5.00 each

This interactive DVD has been produced by ECO for information and guidance. It is not a substitute for the legislation and legal advice, and the information on it may from time to time become out of date. If in doubt, check with ECO and/or the current legislation. The DVD may be obtained from the DTI Publication Orderline 0870 1502

500; Fax 0870 1502 333; Minicom 0870 1502 100. email:
publications@dti.gsi.gov.uk or <http://www.dti.gov.uk/publications>

Sources of information

The Export Control Organisation in DTI is responsible for administering the controls on strategic exports that are the subject of this Code.

For all general enquiries:

ECO Helpline

Tel: 020 7215 8070 (between 0900 and 1700)

Fax: 020 7215 0531

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

Other sources of information:-

For copies of the legislation:

The Stationery Office

P O Box 276

London SW8 5DT

Tel: 0870 600 5522

Fax: 0870 600 5200

<http://www.legislation.hmso.gov.uk/legislation/uk.htm>

For notifications of changes to export controls:

Lloyds Register (published every Thursday), is available from major newsagents.

For details of the chemicals sector Code of Conduct:

- Chemicals Industries Association; or
- British Chemicals Distributors and Traders Association

Awareness and training

ECO run seminars and workshops around the UK on a rolling basis. These are usually aimed at either a 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. The cost is currently £75 (including VAT) per participant.

Export control compliance checklist

1. Product/ destination/ licence check

- a. Establish whether business' products are subject to controls.

How?

Consult the UK and EU Export Control Lists

Note: controls are subject to change, and up to date information is needed. This is available on the ECO Website or you can receive information electronically by registering via the website <http://www.dti.gov.uk/export.control/help/signup.htm> . If in doubt about a product, complete and submit an export rating request form also available from the Helpline or website <http://www.dti.gov.uk/export.control/applying/ratenq.htm> .

When?

As early as possible, which may be well in advance of any particular enquiry or order. This can be at the design/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. Contact:

Ministry of Defence
DESO
St George's Court
2-12 Bloomsbury Way
London WC1A 2SH

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 Helpline if in doubt.

b. 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?

c. Consider Licence options

Consider licence type(s) required in light of products and destinations.

Consult ECO Licensing Group (LG), ECO's guidance documents and the list of current Open General Licences.

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.*

d. Special considerations for different licence types

If Open General Export Licence (OGEL) or Open General Trade Control Licence (OGTCL):

Is the company registered with DTI 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 DTI Guidance on licence application.
Ensure full details are submitted with the application including end-user undertaking.

2. On receipt of enquiry/ 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/order against the WMD and Military End-Use Controls.

3. Exporting

Are the freight forwarders you use vetted and do they satisfy professional standards? (Are they members of a recognised professional body?)

Clear written instructions should go to the forwarding/freight agent:

defining 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. 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?

Illustrative case studies

Here are some examples of compliance procedures. These are not directly attributable to named organisations but are based on the working procedures found within companies. They are indicators of best practice and represent the possible as well as the desirable.

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 circulated a letter to all employees with any involvement in export control compliance.

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. (One experience of successfully targeting a market, but subsequently being unable to obtain a licence, led to early input of export control considerations.)

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 have been 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.

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 (as yet there is no disposal policy). The computer record, through the order processing system, is kept on disk, which may be accessed by company name and address, postcode, product, and country of (final) destination. The disks are stored similarly to the paper files.

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 annual audits in their own operating unit, but consideration is being given to Export Control Co-ordinators doing peer audits of other operating units to improve the objectivity of the review.

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 system (designed in house) is used. It did not originally make any provision for export control requirements. The need for export licenses was often ascertained on a 'best guess' basis. The creation of a separate International Division within the company provided the opportunity for the area to be looked at afresh and for export controls to be included.

Responsibility

The Export Manager 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 was 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 at DTI - in particular the Enforcement and Technical Assessment Units.

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 an entry is made in an Export Licence Book. This triplicate book has a tear form - the details of the export licence, including consignee, goods, value and the licence to be used. A copy of the docket is attached to the commercial invoice accompanying the goods, thus notifying all those involved in the shipping process and Customs & Excise. A copy is also retained on the relevant order file.

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 companies might approach compliance procedures to deal with the provisions of the Export of Goods, Transfer of Technology, and Provision of Technical Assistance (Control) Order 2003 and the Trade in Goods (Control) Order 2003. Procedures from one company are also included. Their method may not suit your company, but it may give you some ideas.

Export Control

The decision on whether a licence is required is similar to that made on goods, but the licences available will differ slightly. A decision tree on trade control licences is at <http://www.dti.gov.uk/export.control/publications/tradefairnote.pdf> (page 3). 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.

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. One company has software to control technology transfers. The relevant project manager for a project 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. Bear in mind this does not have to be an electronic process.

Staff Awareness

The introduction of controls on the electronic transfer of technology means 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 Officers will ask to see what you have done when they visit 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 Officers 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.

One company has appointed information managers to ensure that existing company records are available to provide information to Compliance Officers.

Trade Controls

If, for example, a UK company is supplying components to a customer, but one particular part needs to be supplied from a sister company in another country, direct to the customer; the UK company needs to ensure that the customer receives the goods and, of course, needs to inform the sister company of the details. Whatever form this request takes, be it email, fax, letter or a transaction on a database, this will form part of the audit trail. In some cases the records may come from a project plan if goods are, for example, moving between joint venture partners.

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 request form, available from the ECO Helpline or website at

<http://www.dti.gov.uk/export.control/applying/ratenq.htm>

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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;

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 is provided in the Supplementary Guidance Notes on the End-Use Controls: WMD at <http://www.dti.gov.uk/export.control/publications/bizguide/enduseguidance.pdf>

Military at

<http://www.dti.gov.uk/export.control/publications/guidancemilitaryenduse.pdf>

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, 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 correct name of the licence quoted in full 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?

Export control organisation compliance visits

What are compliance visits 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 and Open General Licences, are correctly used by the holder and that the terms and conditions are being met.

What does the compliance visit 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 visit, 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 met fully.

Who should be involved in the visit?

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

Marketing/sales/project managers.

Technical personnel.

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.

CGEA

Community General Export Authorisation.

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.

DTI

Department of Trade and Industry.

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.

DUEC

Dual-use Items (Export Control) Regulations 2000, as amended.

EC

European Community.

ECO

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

ELVIS

Electronic Licence via the Internet System

END-USE

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

EU

European Union.

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 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
- Standard Individual Trade Control Export Licence (SITCL) is specific to a named trader and covers involvement in the trading (commonly referred to as 'trafficking and brokering') of a set quantity of specific goods between a specified

overseas source and overseas destination country with a specified consignor, consignee and end-user. SITCLs will normally be valid for two years.

- An Open Individual Trade Control Export Licence (OITCL) is specific to a named trader and covers involvement in the trading (commonly referred to as 'trafficking and brokering') of specific goods between specified overseas sources and overseas destination countries and/or specified consignor(s), consignee(s) and end-user(s). OITCLs are generally valid for two years. Trade Controls only apply to goods on the "UK Military List" (Schedule 1, Part 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003) and do not apply to software and technology.
- Open General Trade Control Licence (OGTCL) allows most trading activities in respect of military and paramilitary goods on the "UK Military List" (Schedule 1, Part 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003) moved to or from specified countries. Similarly as with OGELs exporters must register with ECO before they use the OGTCL.

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

OLLIE

Open Licences Liasing with Industry Electronically.

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 DTI licensing from other items subject to controls by other

Government Departments for other reasons (for example flora and fauna or national art treasures).

XNP

Export Control and Non-Proliferation Directorate.

WA

Wassenaar Arrangement.

WEAF

Web Enabled Application Form

WMD

Weapons of Mass Destruction.