



Department
for Business
Innovation & Skills

Export and Trade Control Requirements

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The Powers granted to ECO

The Export Control Act 2002 is primary legislation (law set by Government).

- It specifies the powers of the ECO in administering licensing and the controls.
 - Power to create and revoke licences
 - Compliance auditing
 - Denials procedures
- Secondary legislation is the power granted to implement and administer law with Government's authority. Two subordinate orders
 - Export Control Order 2008
 - Radioactive Sources (Control) Order 2005



HMG's two approaches to licensing:

- **Open General Licences (OGLs):** c.50 fixed framework licences that can be used immediately - once registered. The scope of goods, destinations (included or precluded), circumstances and specific conditions are fixed for each OGL. OGLs are drafted by ECO in consultation with advisory departments. Usage records must be kept for later inspection by ECO's Compliance Unit.
- **Individual Licences:** Exporters apply to BIS including details of goods, end users and/or destination countries. BIS will decide whether to issue a licence based on recommendations from advisory departments in Other Government Departments who will assess proposed exports against the appropriate assessment criteria.



The Consolidated EU and National Arms Export Licensing Criteria

1. UK's International Commitments
2. Internal Repression
3. Internal Situation of recipient country
4. Regional Stability
5. National Security of UK and allies
6. Behaviour of recipient country
7. Diversion
8. Economic Sustainability



How Are Export Licence Applications Made?

- On SPIRE – the Government’s single online portal for all export & trade control licence applications, open licence registrations & rating enquiries
- <https://www.spire.bis.gov.uk>
- Top Tip: make sure more than one person in your company is registered as a user!



Everything is done on SPIRE

- Exporters apply/register for licences through SPIRE.
- ECO process licences through SPIRE.
- Advisory departments review and make recommendations through SPIRE.
- Anything that needs to be queried or requested from applicant companies is done in writing through SPIRE.
- Licences are issued through SPIRE, including, where appropriate, sending licence information to HMRC's CHIEF system, which reports licence usage back to SPIRE.



Types of licences

- Types of licence:
 - Standard Individual Licences (application required)
 - Standard Individual Trade Control Licences (application required)
 - Open Individual Licences (application required)
 - Open Individual Trade Control Licences (application required)
 - Open General Licences (registration required)
 - Open General Trade Control Licences (registration required)



Types of Licence

- Open General Licences (OGL)
 - Register to use, no application form or assessment process
 - Covers various destinations & goods listed in the licence
- Standard Individual Export Licence (SIEL)
 - Single destination/multiple goods lines, default validity is 2 years.
- Temporary Standard Individual Export Licence (T/SIEL)
 - Multiple destinations/multiple goods lines, valid for up to 1 year.
- Transshipment SIEL
- Open Individual Export Licence (OIEL).
 - Multiple destinations and goods lines, valid for up to 5 years / 3 within EU.
- Standard Individual Trade Control Licence (SITCL)
- Open Individual Trade Control Licence (OITCL)
- WMD Technical Assistance SIEL (T/A SIEL)
- WMD Technical Assistance OIEL (T/A OIEL)



Government Targets and Objectives

- SIELs/SITCLs - 70% in 20 working days
99% in 60 working days
- OIEL/OITCLs - 60% in 60 working days
- Appeals - 60% in 20 working days
95% in working 60 days
- Ratings - 90% in 10 working days
- If something you are exporting gets snagged by HMRC they can legally hold it for 10 working days.



The Export Control Community

Licence Decision Making

- Export Control Organisation (final decision) in discussion with
 - Foreign & Commonwealth Office (FCO)
 - Ministry of Defence (MoD)
 - Department for International Development (DfID)
 - Department for Energy & Climate Change (DECC)

 - Department for Transport
 - Home Office



The Export Control Community

Enforcement

- Her Majesty's Revenue & Customs
- UK Border Force (HMRC, UKBF)

Intermediaries and Industry bodies

- UK Trade & Investment (part of BIS & FCO)
- Export Group for Aerospace & Defence (EGAD)
- Export Control Advisory Committee (ECAC)



Typical OGEL Structure:

- A list of goods for which the OGEL covers
- A list of countries for which the OGEL can be used
- A list of specific end-uses and/or end-users for which the OGEL can be used.
- A list of specific conditions particular to the OGEL
- A list of exclusions prohibiting the use of the licence.
- A typical OGEL is more than a dozen pages long.



The OGL/OGTCL Process

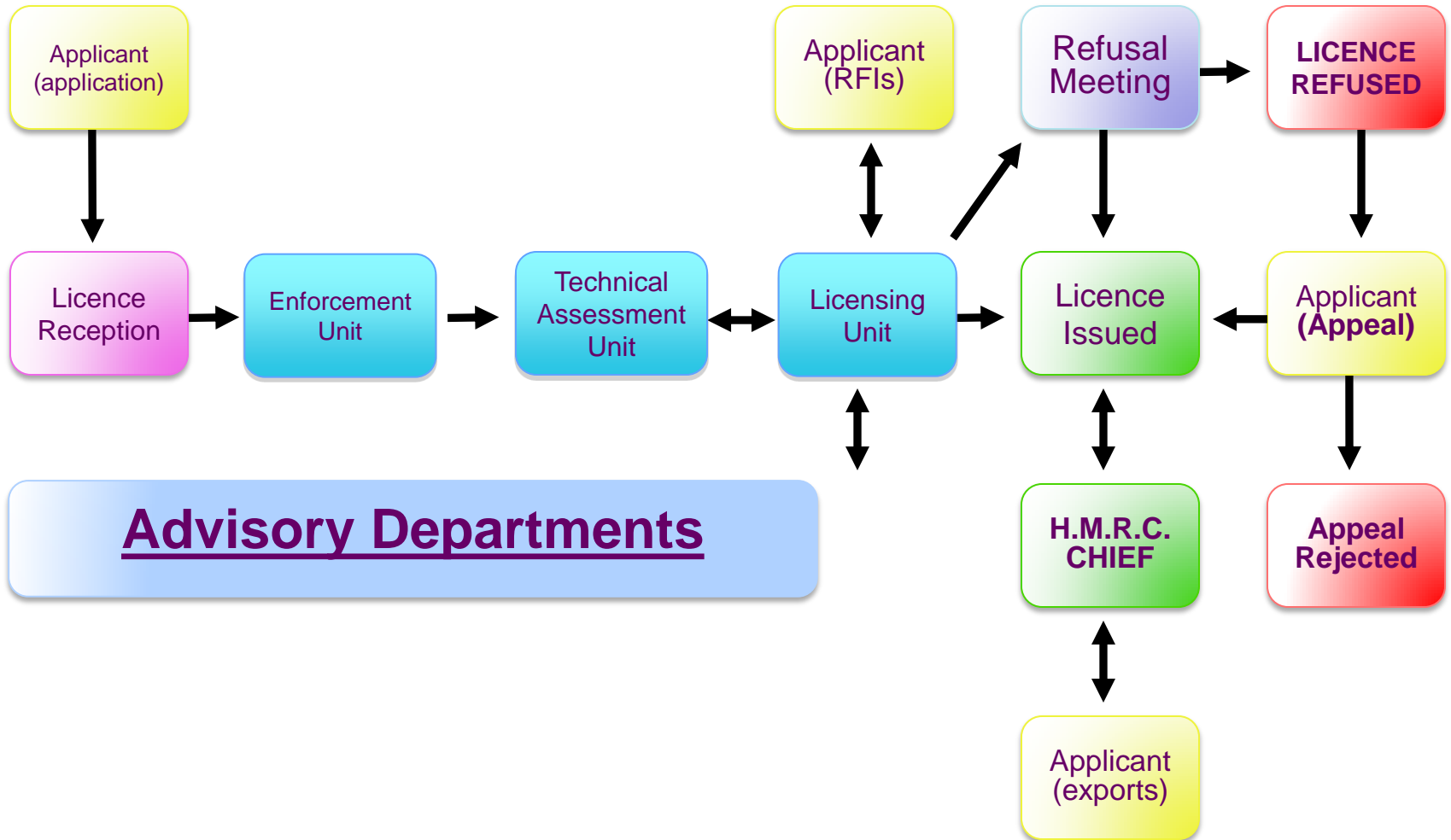


A note on record-keeping:

Licensees must retain records for all licensable activities, however for any activity authorised by an OGL, OIEL and OITCL, licensees will be routinely have their paperwork inspected by ECO's Compliance Unit. When companies internal compliance processors fail and open licences are misused, the licences can be suspended or permanently revoked.



SIELs Licence Process





What's licensable?

- Exports / transfers of listed items from the UK or EU:
 - Military, Explosives-related, Radioactive Sources, Para-military, Human Rights, National & EU Dual-Use lists
 - Listed on “UK Strategic Export Control Lists”
- Transfer of Software & Technology ‘by any means’ and provision of technical assistance in relation to WMD
- WMD End-Use Control - if exporter “aware”, “informed” or “suspects” a WMD-related end-use
- Military End-Use control
- Trade Controls
- Control of items subject to Sanctions & Embargoes
- Transit & Transshipment controls



What do we licence?

- Exports of controlled goods from the UK
- Controlled goods transshipping the UK
- UK involvement in the supply of military goods being supplied from one third country to another (trafficking and brokering).
- UK involvement in the supply of dual-use goods being supplied from a non-EU country to another non-EU country for a WMD programme (trafficking and brokering).
- An UK individual's involvement in a foreign WMD programme (Technical assistance).



Trade of Military Goods Controls

- ONLY apply to UK involvement in overseas trade
 - e.g. Goods moving from France to Italy
- NOT exports of goods from or imports to the UK (except goods in transit are considered as located outside UK)



What Business Activities fall under the heading of 'Trade'?

- Negotiating contracts or processing purchase orders resulting in supply from overseas factories & warehouses
- Transferring controlled items across borders even where the ownership of the items is not transferred e.g. transfers of weapons to and from approved floating armouries
- UK persons overseas directly involved in arranging the supply or delivery of Category A and B goods
- Offset / buy back arrangements drop shipping
- 'any act calculated to promote the supply or delivery of...'
– but see the exemptions for Categories B and C



Trade Controls - Category A

- Goods the supply of which is inherently undesirable
 - Cluster munitions, explosive submunitions, explosive bomblets
 - Certain para-military / Human Rights goods
- Controlled activities, directly or indirectly:
 - Supply or deliver (or agree to)
 - ‘Any act calculated to promote the supply or delivery of...’
- Applies to activities carried out in the UK
- Applies to activities of UK persons anywhere in the world



Trade Controls - Category B

- Goods which are of heightened concern but which are traded legitimately
 - Small arms/light weapons, ammunition; hand grenades, long-range (>300km) missiles & UAVs; MANPADS & related equipment (production, test, training, simulators), AVLMS
- Controlled activities, directly or indirectly:
 - Arrange the transfer, acquisition or disposal (or agree to)
 - Arrange or negotiate a contract (or agree to) for acquisition or disposal
 - Provision of transport services
 - “Any act calculated to promote...”

Cont...



..Trade Controls - Category B

- ‘Sole Involvement’ exemptions, unless carried out for payment:
 - Financing or financial services
 - Insurance or re-insurance
 - General advertising or promotion
- Exemption for contract promotion activity, unless in return for ‘payment’
- Applies to activities carried out in the UK; and
- Applies to activities of UK persons anywhere in the world



Trade Controls - Category C

- Goods which are not of heightened concern
 - Military & explosives-related goods not in Categories A or B; certain substances for riot control & their portable dissemination equipment
- Controlled activities, directly or indirectly:
 - Arrange the transfer
 - Acquire or dispose of (or agree to)
 - Arrange or negotiate a contract (or agree to) for acquisition or disposal
 - “Any act calculated to promote...”

Cont...



..Trade Controls – Category C

- ‘Sole Involvement’ exemptions
 - Transportation services
 - Financing or financial services
 - Insurance or re-insurance
 - General advertising or promotion
- Exemption for contract promotion activity, unless in return for ‘payment’
- Applies to activities carried out in the UK only



Embargoed Destinations

- Strictest level of control applies to Category A, B & C goods traded to 'embargoed destinations'
- 'Embargoed Destinations' means those subject to full-scope EU, OSCE and national arms embargoes
- Controlled activities as for Category A goods
- Applies to activities carried out in the UK; and
- Applies to activities of UK persons anywhere in the world



“Brokering Services” of Dual Use Items Controls

- Only applies to EU persons involvement in movement of items outside the EU.
- Annex 1 goods where informed they will be used for WMD purposes. e.g. Items moving from Norway to Australia
- Not exports of items from, or imports to EU.
- Further info on [.gov.uk](http://www.gov.uk) website



Embargoes and Sanctions – how these impact on Trade Controls

- Destinations subject to binding UN/EU Sanctions are also subject to trade controls
 - Belarus, Iran, Iraq, Liberia, Libya, Somalia, Syria
- Measures are contained in the Orders implementing the sanctions (made under the United Nations Act 1946)
- These Orders may also control provision of technical assistance and other activities
- See GOV.UK website for full list of sanctions, embargoes and other restrictive measures:



Trade Control Licences

- Similar to current export licensing - apply / register through SPIRE
 - Standard Individual Trade Control Licence (SITCL)
 - Open Individual Trade Control Licence (OITCL)
 - Open General Trade Control Licences (OGTCL)
 - Category C goods
 - Small Arms
 - **Maritime Anti Piracy** OGTCL came into force 22 Feb 2012
 - Transfer of military controlled goods between any two permitted destinations for the purpose of Maritime Anti Piracy Services
 - **Form A3PF – supporting documentation**



Maritime Anti-Piracy Service Licence

- UK Private Security Companies signed to International Code of Conduct for Private Security Service Providers (ICoC)
- Controlled goods must be transferred to a registered Flag State vessel*
- Any single transfer – max four firearms (max two rifles) for each member of personnel
- Max storage 48 firearms in any approved armoury**
- Controlled goods must be protected against unauthorised re-transfers; diversion or loss whether in use, in transit or in storage

You must read:

Purpose of Licence

Terms and Conditions

Exclusions to use of the licence

Schedule 1 Permitted Goods

Schedule 2 Non Permitted Destinations

* Flag State Vessel – a vessel flying the flag of a state under whose laws that vessel is registered or licenced and which state has the authority and responsibility to enforce regulations over that vessel

** nominated by licence holder which ECO has approved for use with the licence



Floating Armouries

- We don't authorise them, we authorise UK companies that hold licences to use them.
- Companies must seek approval in advance and via SPIRE.
- For reasons of company competition, we will not publish a list.
- We find out about floating armouries from completed A3PFA forms
- Every request is individually assessed – we work on a case by case basis.



Weapons -Types and Quantity

- Quantities and types of weapons remain as outlined in licences.
- We work on a case by case basis.
- Current specifications & quantities were approved by UK Govt. Ministers.
- No leasing or renting of weapons is permitted, as noted in the OGTCL (MA-P)
- (Please remember to read your licence!)



Compliance

- Companies that export under licences not presented to HMRC or that make use of open licences will receive a Compliance Audit, holders of:
 - OIELs and registered OGEL holders (inc. CGEA)
 - SIELs for electronic transfer of technology & software
 - Trade Licences
- Compliance Audits are intended to ensure licences being used correctly and all terms and conditions are being adhered to
- A Compliance Audit includes:
 - Overview of company, products and markets
 - Review of processes and procedures
 - Audit records of exports made under licence export, inc commercial documentation and all other record keeping requirements stated in licence



Compliance

- Compliance Code of Practice
 - Lays out guidelines for company best practice
- Compliance Visits Explained
 - Lays out the purpose of compliance visits
 - Helps exporters know and understand what to expect from a visit by a Compliance Inspector
- See detailed guidance & information on the .gov website



Compliance

- For Maritime Anti-Piracy Sector
 - Visits in the UK
 - Paper based audit – requires good record keeping
 - Same process as compliance for all other export licences
 - Undertaken by ECO's Compliance Inspection Team
- No decision yet made regarding a programme of overseas visits; can't rule this out entirely.



Enforcement

- Export & Trade Control Legislation is enforced by HMRC & the Crown Prosecution Service
- Strict liability offence, e.g. export or attempted export of controlled goods without a licence
- Deliberate act with intent to evade controls
- Penalties can vary depending on type of offence
 - Warning letters
 - Revocation of licence
 - Seizing goods
 - Issuing compound penalty fine
 - Up to 10 years imprisonment



Enforcement

- There is an obligation on the exporter to declare to HMRC whether goods require a licence
- Licence details must be shown on the customs declaration - processed by CHIEF which checks licence details held on the SPIRE system
- Penalties against those who breach controls, goods can be seized
- Crown Prosecution Service prosecutes for strategic export control offences





Penalties – If you export without a licence

- 1569 HMRC Customs Cases referred to ECO in 2012
 - Approx. 10% contained licensable goods
 - A further 8% were ‘informed’ of a WMD end-use
- 165 seizures made by HMRC (2012)
 - 10.5% contained licensable goods
 - A further 10% were ‘informed’ of a WMD end-use
- Prosecution cases
 - Details published on the ECO website



Invitation to Make a Voluntary Declaration

- If you think you might have breached the terms of your licence and to avoid being found non-compliant at your next compliance audit, you should make a voluntary declaration to HM Revenue and Customs.
- Further information and details of how to do this are on the [.gov.uk](http://www.gov.uk) website



How to avoid pitfalls in licence applications

- Most mistakes are caused by simple and easily rectifiable failings:
 - Insufficient understanding of the controls
 - Not knowing the ratings for your products
 - Not reading the licence
 - Knowledge of procedures / licences with one person
 - Inadequate or no written procedures
 - Failing to consider all the licensable activities you are involved in (e.g. tech. transfers, trade)
 - Failing to raise awareness among all relevant staff



How to avoid pitfalls in export control

- Build export control checks into your quality management processes.
- Establish the control classification for your goods.
 - ensure key people are aware of strategic control status.
- Check the date of any “No Licence Required” letters – has the shelf life expired?
- Be aware of political situation of your country of destination.
- Read the terms and conditions of all licences.
- Ensure you know what countries; goods and end users your open licences are valid for.
- Train people in your organisation – from sales to procurement to shipping.
- Keep records of all relevant documents for exporting controlled goods.



Keeping up to date with useful information

- Register for Notices to Exporters – the alert service provided by the Export Control Organisation.
- The notices include updates about changes to strategic export controls, details of arms embargoes, and amendments or revocations to Open General Licences.
- You can either subscribe via email, via RSS feed or Twitter.



Strategic export control training for exporters

- We run a range of courses designed to extend the knowledge and awareness of all exporters about their legal responsibilities in the field of export and trade controls.:
 - beginners seminar
 - intermediate seminar
 - making better licence applications workshop
 - control list classification and use of the checker tools workshop
 - open licence and compliance workshop
 - trade control seminar
 - exporting cryptographic products seminar
- We can also run bespoke training for groups of companies in a single sector. You may wish to ask your trade body to organise this for you.



Trade Controls

- Do they cover training & capacity building?
- Depends what is meant by training or capacity building.
- This is a very complex area.
- No blanket answer, because the answer will differ dependent on where the training or capacity building might take place and who it might be for.
- We work on a case by case basis, please ask giving specifics of what is planned and for whom.



Flagging of Vessels

- Defer to colleagues in Department for Transport



Further Information?

www.gov.uk/government/organisations/export-control-organisation

ECO Helpline: 020 7215 4594

eco.help@bis.gsi.gov.uk

www.spire.bis.gov.uk

eco.anti-piracy@bis.gsi.gov.uk



Thank you

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