

# **Export Control Organisation**

## Compliance Visits Explained



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## **The Purpose of this Manual**

This manual has been written to provide companies with information about the reasons for export control compliance visits, details of the visit, what to expect from the Compliance Officer at the visit, what Compliance Officers expect to see from companies and to illustrate some of the penalties companies might face if not compliant with export control legislation.

The intention is to de-mystify the process and allow companies to prepare fully so both sides can get maximum benefit from the visit and any subsequent interactions.

This will not be a static document. We are constantly looking at ways to make compliance visits more effective for both sides and less resource intensive. Licence conditions also change and this document will reflect those changes as they happen.

Additional information on export controls can be found on our website, via the Checker Tools and from our DVD. We also provide an electronic update service and have a helpdesk ([ECO.help@dti.gsi.gov.uk](mailto:ECO.help@dti.gsi.gov.uk)) to assist you.

## **The Purpose of Export Control Compliance Visits**

There are a number of reasons for Export Control compliance visits and the main ones are listed below.

### **Statutory**

The standard conditions of Open Individual Licences (OILs) and Open General Licences (OGLs), backed up by the provisions of Article 14 (6) of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order No 2764/2003, as amended, (The Main Order), contain provision for authorised people to inspect export records to ensure the licences are being correctly used.

### **Assurance**

ECO needs to be assured that the licence user has the necessary systems and procedures in place to administer Open Licences, that they are familiar with export control legislation as it applies to their business and particular circumstances and that that knowledge is correct and current. Companies can also assure themselves that they are not breaking the law.

While Open General Licences (OGLs) are available to all companies so long as they can meet all the conditions; Open Individual Licences (OILs) are concessions and if are not used often enough to make them worthwhile being issued, or correctly, complying with all the conditions, the company may need to revert to Single Individual Licences (SILs). Compliance visits are the way the usage threshold (currently more than 20 uses per year) and adherence to the terms and conditions of the licence can be checked.

### **Building relationships**

In the majority of cases, Compliance Officers are the only Export Control Organisation (ECO) representatives that the company sees. It is a chance for companies to provide feedback to Compliance Officers on their experience of dealing with ECO and to ask questions about areas of policy and current situations that affect their company and specific circumstances.

### **Enforcement**

The visits are also to ensure that companies have not exported goods or technology without an appropriate licence and that they have met all the conditions of any licence they have exported against.

If breaches of the legislation are discovered appropriate action will be taken against the exporter, taking into account the circumstances surrounding the breach and its exact nature in terms of goods and destination.

## **Timing**

The gaps between compliance visits are based on a risk assessment with the categories ranging from 3-12 months up to 36 months with most exporters currently falling in the 12-18 month bracket.

We aim to visit companies new to Open Licences within 6 months of them receiving their first OIL or registering for OGLs for the first time, although this is not always possible.

After the initial visit, a risk assessment is conducted based around issues such as licence usage, number used, compliance record and procedures in place, volume of exports, goods and destinations on the licences and any special conditions which may be in place.

For example a typical company in the 12-18 month bracket will use open licences at least 3 times a week and have OILs to sensitive destinations or with particular conditions on them. They may have had compliance issues in the past.

A typical company in the 24-36 month bracket will make less than one shipment a month under open licences and have an excellent compliance history.

Subsequent visits will result in another risk assessment and so on.

## **The Export Control Compliance Team**

### **Who we are**

Compliance Officers are DTI officials who work within the Export Control Organisation. Our main function is to visit companies to check their compliance with the terms of whichever open licence(s) they are using and UK export controls in general. We liaise with the exporter to agree a time and date for the visit. The exporter normally has contact with the Compliance Officer and knows who they are, but, if requested, we have passes with our photos on them, which declare us to be DTI officials.

### **What we are not**

We are not involved directly in issuing export licences, although we may have input into the decision as to whether a company has sufficient knowledge, experience and expertise to administer an Open Individual Licence.

We are not the authority who investigates or prosecutes companies for breaches in Export Control Legislation. Those tasks fall to Her Majesty's Revenue and Customs (HMRC) and the Revenue and Customs Prosecution Office (RCPO). But we will inform them if we discover what we consider to be significant breaches of export controls on a compliance visit, and ECO may take action on more minor breaches.

We are not Technical Officers, so cannot give an opinion on the control entry which specifies your goods, although we have sufficient knowledge of the strategic export control list to flag up the sort of goods that might be controlled and sometimes suggest categories or control entries which might be relevant.

We are not a consultancy service, and whilst we can, and do, provide advice to companies on how to administer export controls, we cannot write or provide significant input into, company compliance manuals or similar. We are aware of consultants who offer such services, but we cannot, pass comment on their services or recommend any in particular.

### **Who might accompany Compliance Officers on visits?**

ECO seeks advice from a number of other Government Departments when it decides whether or not to issue a licence and also when it develops a new Open General Licence. Sometimes these advisors ask to accompany Compliance Officers on a visit. Usually this is to check particular conditions of a licence, because the company is List X (i.e. works with classified material) and working on something particularly sensitive to the UK Ministry of Defence (MoD). MoD advisors will also wish to see the company's methodology for handling MoD Form 680s (F680s) where these are required for licences and in particular will wish to review company measures that

ensure the dissemination to and proper observance by the relevant company personnel of F680 provisos.

On occasion our own technical advisors or other ECO personnel accompany us, sometimes to provide particular advice where the Compliance Officer is unused to such goods, software or technology.

Two Compliance Officers sometimes visit companies together. This may be because one is being trained, so that a manager can see their work, or simply to share or update knowledge.

Companies should not infer anything is amiss, or that they are seen as more of a risk if more than one person comes on the compliance visit.

## **Who do we visit?**

### **OIL holders**

We visit any company that holds an Open Individual Licence of any type. We will visit the address on the licence, which will usually be the address where the records relating to the exports are held. Other arrangements can be made, but we need to be aware of them before we visit, as well as the reason for the change.

### **OGL holders**

Most Open General Licences, though there are exceptions, require the user to register with ECO before, or shortly after they have used the licence. This is a condition of the licence. Any company not notifying us of this is in breach of the conditions of the licence and liable to prosecution.

We visit users of all OGLs requiring registration. However, if you only use some of the niche market OGLs such as those relating to historical goods we are likely to visit less often than if, for example, you are using those which permit exports in support of UK MoD contracts.

Again, our visits are to the site that has registered to use the licence, which should be where the export records are kept. This does not need to be the site from which the export is made, but at some point, perhaps at the visit, we will need to understand the relationship between the different sites.

### **Companies who have SILs that cannot be decremented by HMRC**

This includes SITCLs and also SIELs for the electronic transfer of technology or software.

## **What to expect before the visit**

We do not turn up unannounced. Usually we will give at least 4 weeks notice, although sometimes we might give less, particularly if another company in your area has had to reschedule its compliance visit.

### **Making contact**

We will ring the person we have on our database as your company contact. Please try to let us know if that person changes. It can be very frustrating both for you and us if we have to go through a number of people before finding someone who has heard about export control. It also paints a poor initial picture of the company.

### **Arranging the date**

We will usually be looking at a specific date, but may be able to offer you a range of dates. It is important that all those who need to be involved in the visit are available on that day. On a first visit we expect to see a director of the company or a senior manager, which helps us to be sure that the company takes export control seriously. It also helps the person or people who administer the Company's licences to do their jobs more effectively: We find that if senior management is involved the likelihood of unlicensed shipments being made is reduced as we can point out the serious consequences of that to Directors.

Those involved in administering the licences should obviously be involved in a compliance visit and, depending on the nature of the company and exports, we may need to have project managers or technical personnel available. We can help you decide who should be present during this initial call.

Once we have arranged a mutually convenient date, we will send you a letter of confirmation. If we will be accompanied by anyone, we will let you know as soon as we know.

## **Preparation for the visit**

### **What we do**

After we have sent you the confirming letter, or sometimes simultaneously, we may, particularly on first time visits, email you a questionnaire that, when completed, will give us some general information about your company, your products and your export markets. This helps us to do some basic research on your company so that we can ask appropriate questions during the visit.

### **What you should do**

Please fill in the questionnaire mentioned above and return it at least a week before the visit is to take place. Make sure all the logistics are in place to make things run smoothly. For example alert your reception desk, send us a map of how to get to the site, arrange parking if necessary and of course, make sure all those involved know the visit is taking place, why and what their roles are.

Ensure you have to hand for the visit a list (ideally as a spreadsheet or printout from a database) of all the exports you have made since the last visit. This should also show which licence was used to export the goods, technology or software in question or that no licence was required.

Identify and gather together the supporting paperwork for these exports, or ensure they are easily retrievable on the day. Not just the export documentation, but end-user/consignee undertakings, paperwork from MoD and anything else that shows you are complying with the conditions of the licence you have quoted on the export documentation. If any of the licences contain provisos, make sure you can demonstrate to us that you have complied. The documents should provide a logical trail ending up with the end-user and should be consistent in terms of descriptions of goods, address of end-user etc, and should, of course, match the licence conditions. e.g. - OGL Export after Repair - Export against Paragraph 1 (iii) requires both evidence of the export licence used for the original export from the UK and evidence the goods are being returned to the person to whom they were originally delivered.

## **The visit itself**

We will try to arrive on time, or alert you if we are likely to be more than 10 minutes late.

[Annex A](#) gives a comprehensive list of all the subjects we might want to cover, but please bear in mind that not all of them may be applicable to your company.

Please bear in mind that each compliance visit will be different. The answer to a question could lead in many directions, but only one can be followed at once and not all points can necessarily be followed up. If a Compliance Officer gets answers which give them concern in one area, he or she may focus more on that than other areas. This might give the impression the visit is skewed in one direction but the next visit is likely to focus elsewhere.

## **Your company**

We do not expect a full presentation on every aspect of your company's business. By all means give a presentation if it is helpful, for example during the first visit but please keep it short and relevant. Hopefully much of the information will already have been given in the pre-visit questionnaire.

## **The licensing and export processes in your company**

Basically this is a discussion about who in your company decides whether a licence is necessary and when in the export process this decision is made. We are also looking here for evidence of good procedures and back-up for the people working day-to-day on this, for example, what happens when they go on holiday, etc.

## **Licences**

This begins with a discussion about what licences you use and how often. We will then discuss with you whether these are the most appropriate licences for your needs and, if not, what the alternatives might be.

## **Other activities**

Many companies still only think about the export of goods from the UK. But is your company involved in the transfer of technology or software by any means, e.g. electronically; - or arranging the transfer of goods between two or more overseas companies; - or between different overseas sites of your own organisation? These activities may also be licensable. Do you send goods to exhibitions, demonstrations, for repair, back to the original supplier? Exports can take place regardless of recipient (for example, it could be part of your own company based outside the UK), price paid (you may be sending goods to exhibitions or after you have repaired them and you state FOC on

the export documentation) or mode of transport (physical exports and electronic transfers may be licensable).

### **Being alert and responsible**

Do you make enquiries about new customers (or even existing ones)? Are you confident that your goods are arriving at the intended destination and that your customer is using them in the way you thought? What do you do if you are suspicious? If you are not sure about end-use controls, then at this point we will explain them to you.

### **Keeping up-to-date**

We will ask you how you keep up-to-date with changes in legislation and keep your knowledge current. If you are not already aware, we will discuss the help and advice the ECO can offer. These include our website, Checker tools, our DVD and our electronic updates service.

### **Questions and concerns**

You may well have concerns or questions about UK export controls. Compliance Officers are a mine of information, but sometimes they will need to take your question away and discuss it with experts either in ECO or sometimes in other Government Departments coming back to you with the answer later.

## The Audit

### The process

We will ask to see a record or list of the exports, technology transfers and trade activity the company has undertaken over the last 12 months, as a minimum or since our last visit if this is longer.

From this list we will choose a number of exports and ask to see the supporting paperwork for those shipments. First, we need to see the export documentation with the licence referenced on it, and then other documents which the licence conditions require. We will check that the goods and destination match the permissions on the licence and that all supporting paperwork ties together.

Then we will need to see documents to support the specifics of the licence, e.g. OIL Undertaking (original, on End user or consignee headed paper, signed, matching the licence, with appropriate wording and valid on the date on which the export was made). You may need a letter from DESP confirming that the company has a contract with the UK MoD and some sort of assurance from you that the goods and destination relate to that specific contract. Each OGL and some OILs have their own set of conditions; you must be able to provide documentary evidence that you have complied with each condition.

[Annex B](#) gives greater detail on this and other aspects of the requirements of a company from a compliance visit. It also catalogues the mistakes that could lead to a revisit or to us contacting HMRC.

**Please Note: this is not a comprehensive list and is subject to change.**

## **The end of the visit and what follows**

By the end of the audit you should be aware of how we have assessed your ability to administer open licences.

### **Summing up**

There will usually be a session at the end of the visit where the Compliance Officer will run through his or her findings and any follow-up actions needed on either side. You will also be given an indication, sometimes dependant on additional information or documents which need to be supplied by you, of when the next visit will take place, and whether there is anything we need to refer to HMRC.

### **Confirming letter**

You will receive, usually within about a week of the visit, a letter confirming the outcome and reminding you of the action points for both sides and any improvements needed to your procedures and so on which were discussed at the visit.

### **Follow up action**

We will give you a deadline by when we expect you to provide any additional information we would aim to follow up any actions ourselves and reply to you within one month.

## **Shortcomings on visits and possible penalties**

Compliance visits are largely built around helping companies to comply with the legislation, rather than punishing them for non-compliance, but there are times, either because of the severity of the breach, or for “repeat offenders” that we need to impose “penalties”. The following table shows some of the breaches that occur and the penalties available. Both increase in severity towards the bottom of the list.

### **Breaches**

Missing or incorrect undertakings or other paperwork

Failure to reference licence on paperwork

Failure to put Article 21(7) declaration on paperwork for exports of Dual Use items within the EC

Exporting goods under a licence where no licence is required

Not meeting all the conditions of the licence

Making shipments without a licence that could have been covered by an extant licence at the time of shipment

No records of exports or trade activities kept, particularly in relation to electronic transfers, against open licences

Systematic failure in procedures or persistent carelessness/lack of attention to detail

Blatant disregard for export controls/deliberate attempt to circumvent or evade controls

### **Penalties – any could be invoked**

Revisit in 3-9 months where evidence of improvements in procedures etc must be demonstrated

Warning letter from ECO Head of Compliance to Export Director or equivalent.

Details passed to HMRC

Any renewals to OILs or new OIL applications received which could be issued before the revisit will be issued for a maximum of 6 months or not issued pending a successful revisit

Warning letter from ECO Head of PBRG to Director of Exports or equivalent.

Any renewals to OILs or new OIL applications received will not be issued

Existing OILs will be revoked with the resulting SILs not being subject to ECO performance targets.

Company asked to report exports to Compliance Unit, which may ask for documentation to support the exports, on a monthly basis until further revisit in 3 months or the company will need to seek ECO approval before a shipment can be made.

Warning letter from Director of ECO to the Managing Director or equivalent.

## **Annex A**

**Your company: List of all the subjects we might want to cover. NB that not all of them may well be applicable**

### *Company Information*

History  
Group/Parent company  
Other sites  
Number of employees  
Turnover  
% goods specified on strategic export control lists  
% of turnover exported

Goods/software/technology  
Components/spares too?  
Trade controls  
Temporary exports

### *Customers, markets and competitors*

UK  
Overseas  
Agents/Distributors  
Checking of customers

### *Licensability*

Control entry specifying goods  
Expertise within company  
When decision made about need for a licence  
Keeping up to date with relevant changes  
Article 21 (7) declarations

### *Responsibility*

Overall  
Day to day  
Cover in absence  
Reporting structure for export activity  
Compliance statement  
Export control training procedures  
Desk instructions

### *Order process*

Blocks on computer system  
Check on end user undertaking

Check on end use/user  
Written instructions?

*Licence usage*

OILs  
OGLs

*Record keeping*

Retention policy  
Maintaining end-user undertakings

## **Annex B**

### **Guidelines for Compliance Visits**

#### *Records maintained electronically*

1. Exporters can maintain an electronic record of commercial or shipping documents for exports made against open licences. It is recommended that hard copies of undertakings be retained until a licence application has been finalised.

#### *Compulsory checks to be made during the inspection of export paperwork*

2. During a first compliance visit to a company a Compliance Officer will inspect the records of at least one shipment made against every licence used. On subsequent visits the number of shipments inspected will be at the discretion of the Compliance Officer, taking into account all the information available.
3. Compliance Officers will inspect paperwork for a range of exports made against
  - open licences,
  - standard individual licences covering transfers of controlled technology or software by electronic means, and
  - standard individual licences covering trade activities
  - licences relating to WMD-related activities
4. Compliance Officers will investigate compliance with the WMD exclusion (or any related condition) for any exports of missiles, UAVs or related parts made against open licences.

#### *Record keeping requirements*

1. Unless a licence states otherwise records of shipments made against SILs and OILs must be retained for at least three years from the end of the calendar year in which the export took place. Individual OGLs state the number of years' records must be kept with regard to shipments against that OGL.

### *Electronic transfers of controlled technology or software*

1. An exporter can maintain generic records (e.g. summaries of transfers under a specified contract on a spreadsheet) detailing controlled electronic transfers of technology. The records required are set out at Article 14 of The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order No 2764/2003, as amended, as well as specific requirements in each licence. If generic records are maintained the exporter does not need to retain the original communication.
2. If the actual communication (e.g. email) is retained as the sole record of an electronic transfer this must in itself meet the record keeping requirements of Article 14 of The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order No 2764/2003, as amended, and any specific requirements of the licence used.
3. There is no need to make a specific reference to the licence on the email, fax, etc where controlled technology or software is transferred by electronic means. However the exporter must, when asked, be able to identify the licence used and demonstrate compliance with all the conditions of use.

### *General guidelines for compliance visits*

1. OILs are only issued where there is an appropriate business case,. For example an OIL might be required to fulfil regular exports, provide ongoing support or maintenance, or urgent shipments (eg to deal with emergencies). For regular exports acceptable OIL usage, ie justification for an exporter to retain the licence, is defined as follows:
  - Dealer-to-Dealer OIL – minimum of six exports per annum.
  - Other OILs – minimum of twenty exports per annum.

Individual parts of the same licence, eg 1P/2P/1T/2T etc, should be treated as one licence when establishing OIL usage.

2. Sometimes goods exported from the UK will subsequently be moved on to another destination without first being returned to the UK. It is possible that more than one open licence might apply to such movements. It is also possible, depending on the goods involved and other factors such as where and when the onward transaction was arranged, or any fee involved etc, that a trade licence might be required.

3. Moving goods from one destination to another rather than bringing them back (to the UK) and re-exporting them is acceptable, providing the conditions/restrictions that apply to each licence used can be met e.g. that both are permitted destinations on the same OIL, or it fulfils all OGL conditions to both destinations.
4. The country of ultimate destination shown in box 17 of the customs declaration must be the final country to which the goods are being exported from the UK. This is irrespective of any changes to the means of transport en route and provided they are not the subject of a commercial transaction in any intermediate country. The licence for this destination must be declared to HMRC in box 44 of the customs declaration. If the goods are subsequently re-exported from that destination, please bear in mind that you may need an export licence from the original country of destination and, that if the goods are on the "Military List" and you arrange their transfer between the countries, and it is not part of the same transaction, you are likely to require a trade control licence.
5. For OIELs which contain a wide definition government-only clause (Government direct, Government agencies or companies whose use of the goods is in direct support of a Government contract) it is acceptable for the goods to be consigned to an agent or distributor in the destination country, i.e. an intermediary rather than the company that uses the goods. It is also permissible for the goods to pass through multiple consignees who simply handle the goods in the destination country so long as there is a clear audit trail from the UK exporter to the government end-user.
6. The MoD requirements for approving the export or transfer of goods or technology classified "Confidential" or above include the following which are specific to certain open licences:
  - Physical exports or postal shipments: Security Transportation Plan.
  - Courier exports: MoD issues an "Authority To Carry Documents" certificate.
  - Electronic transfers above unclassified: These must be on an approved encryption system, which must itself be approved by MoD

These may also be checked during the compliance visit

## **Supporting documentation**

### *Undertakings*

1. Exporters should obtain original undertakings to support shipments made against open licences. If a Compliance Officer is presented with photocopies, faxed versions or those sent as attachments to emails, and there are any doubts as to the authenticity, the exporter will be told to obtain originals, usually within one month of the visit.
2. Undertakings are valid for a maximum period of one year from the date of the document. If an undertaking is undated the exporter must obtain a new one within a reasonable timeframe.
3. It is an administrative requirement that undertakings are written on the consignee's headed notepaper even though this is not expressly requested in the conditions of OILs.
4. Undertakings issued by a head office (or equivalent), but specifically covering exports from a range of other sites, are acceptable so long as it is clear that the signatory has management authority over those sites. The document must also include the names and addresses of all the sites covered.

### *Government Purchase Orders (GPOs) and Government contracts*

1. GPOs and Government contracts will be accepted as supporting documents for shipments made against OILs in lieu of end user or consignee undertakings.
2. GPOs which are quantity-specific remain valid supporting documents until the stated quantity of the goods have been delivered.

## **Definitions and interpretations**

1. The definitions of "**exhibition**" and "**demonstration**" are as follows:

### *"Exhibition"*

A display of equipment and technology where the exhibitor has no control over who views the equipment or technology. It therefore follows that all exhibits MUST be at an unclassified level.

### *"Demonstration"*

A closed event where equipment and technology can be shown, in greater depth, at a pre-agreed level of classification to a known audience.

2. With regard to **Trade Controls** (aka trafficking and brokering) UAVs are included in the definition of Long Range Missiles (i.e. if they have a range of 300km or more) and are known as "restricted goods".
3. **Government Bodies:** The status of law enforcement agencies in relation to the definition of government is dependent on the country concerned. Some, like the FBI in the USA, can be considered as a Government body, others such as a more local force would not. Compliance Officers will seek clarification on a case-by-case basis unless the answer is clear.

### **Guidance on specific OGELs**

#### *OGEL (Military Goods: Government or NATO End-Use)*

1. Paragraph 1 (i) does not indicate a specific means by which an exporter is required to confirm use by a Government or a specified NATO HQ. A Government or NATO contract or similar will confirm this.
2. Paragraph 1 (ii) gives examples of the type of documentation a contractor might provide to confirm that goods supplied against the OGEL are for a permitted use and end-user. However this is not a definitive list, and anything that confirms this, as well as linking the contractor to the end-user, would be acceptable.
3. The OGEL refers to trial and testing. This covers only trial and testing by organisations appointed to act on the Government's behalf (as defined above).
4. Exports of equipment/technology being used in relation to the A400 project are not permitted under the OGEL. This is because one of the end-users of the aircraft is Turkey, a non-permitted destination.

#### *OGEL (Technology For Military Goods)*

5. Where technology relating to ML21 (software) is exported against this OGEL it is not necessary to determine the military product to which that software relates (e.g. in relation to the exclusions in the licence).

#### *OGEL (Exports or Transfers in Support of UK Government Defence Contracts)*

6. It is not necessary for the finished goods to go into service with the UK MoD, although that Department must issue prior written confirmation that the intended export is in relation to a UK Government defence contract.

*OGEL (Export For Repair/Replacement Under Warranty – Military Goods)*

7. Where Compliance Officers deem it necessary exporters are required to show that a consignee falls within the definitions contained in conditions 1 (iii) (the original manufacturer, stockists or licensed manufacturer who first supplied them (the original supplier) or 1 (iv) (an approved repair centre) of the licence. The means by which this is done is also at the discretion of the Compliance Officer, but may include for example headed notepaper showing them to be an accredited repair centre or a document from the original manufacturer listing them as such.

*Open General Trade Control Licence*

8. If a UK exporter arranges the transfer of non-restricted goods from a Group 2 country (a) to a Group 3 country (b), but at the same time also arranges the transfer of those same goods onto another Group 3 country (c), the movement from (b) to (c) would not be permitted by the OGTCL unless (b) was simply a transit point from (a) to (c).

**Guidance specific to named consignees or end-users**

1. Two organisations in Singapore, known as DSTA and DSTL, are part of the Singapore MoD. MoD 680 approvals for the Singapore MoD therefore cover both DSTA and DSTL.