

BIS | Department for Business
Innovation & Skills

**EXPORT CONTROL
ORGANISATION**

Guidance on the Transfer
Abroad of Controlled Military
Technology and Software by
Electronic Means

MARCH 2010

Contents

1.	Introduction	3
2.	Legislation	3
3.	What is controlled?	4
4.	What constitutes an electronic transfer abroad?	4
5.	Types of Licences	5
6.	How to apply for a licence?	7
7.	What end-user documentation is needed?	8
8.	Record-keeping and the role of the Compliance Unit	8
	• Compliance Visits	11
	• Compliance Visiting Officers	11
9.	Contacts for Further Advice	12
10.	Frequently Asked Questions	13

1. Introduction

The Export Control Act 2002 sets out the legislative framework for the control of strategic goods and technology. It provides order making powers to control the transfer of technology, the provision of technical assistance overseas and trade in military rated equipment between overseas countries.

This Guidance Note is concerned specifically with the part of the legislation which provides for controls on the transfer abroad of controlled military technology and software by electronic means.

By “controlled”, we mean included in a control list¹. Other items may be controlled because of their end-use (for example in WMD), but such controls are the subject of other guidance.

Separate advice likely to be of particular interest is contained in the **“Guidance on Export Controls relating to the prevention of the proliferation of Weapons of Mass Destruction (WMD)”** (which details controls on transfer of WMD related goods by any means) and in the **“Guidance on the Export of Technology”** (which provides a definition of ‘technology’). Both sets of guidance are available on the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>.

Before the 2002 Act came into force, transfers of military technology by tangible means, and tangible and electronic transfers of dual-use technology, were already controlled. It was inconsistent that transfers of military technology by electronic means were not controlled. The original secondary legislation under the 2002 Act rectified this anomaly, with the result that the transfer or export from the UK of all controlled military and dual-use technology and software both by physical means and electronic means is now prohibited unless carried out under the authority of an appropriate export licence issued on behalf of the Secretary of State for Business, Innovation and Skills (BIS).

2. Legislation

The controls on the export and transfer of technology and software are contained in the Export Control Order 2008 (SI 2008/3231).

¹ The UK Strategic Export Control Lists are published on the [ECO Website](#).

3. What is controlled?

The Order makes provision for the control of electronic transfers from the UK to destinations outside the UK of military, paramilitary and certain other technologies and software whose physical export from the United Kingdom is also controlled. The items subject to control are listed in the Export Control Order 2008.

The UK Strategic Export Control Lists are published on the the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>.

The net effect is that the transfer abroad of any controlled technology or software, whether by physical or electronic means, can only be carried out under the authority of an appropriate export licence.

4. What constitutes an electronic transfer abroad?

An electronic transfer includes transfer by **any** electronic means, including **fax, e-mail, or telephone**, from **within the UK to a person or place abroad**.

The controls on transfers by telephone only apply where the transfer involves reading out the contents (whether in part or whole) of a document containing controlled technology or describing its contents in such a way as to achieve substantially the same result.

(This definition is modelled on the definition contained in Article 2 of the European Dual-Use Regulation, which provides for controls on the electronic transfer of dual-use technology).

Certain electronic equipment other than the telephone will of course also permit forms of oral communication, such as **video-conferencing**. Where communication by such means is purely oral, the rule which applies to telephone transfers will apply (namely that the transfers will be subject to control only where they involves reading out the contents, whether in part or whole, of a document containing controlled technology, or describing its contents in such a way as to achieve substantially the same result).

The **filming of documents or papers** containing controlled technology, **including by videophone**, for sending by electronic means, would also require a licence.

Any transfers via **text messaging** will also require a licence.

5. Types of Licences

The ECO processes a variety of different licences depending on the nature of the export and associated risk assessment.

The four types of licences which cover electronic transfers of military technology and software are:

- Standard Individual Export Licences (SIELs)
- Open Individual Export Licences (OIELs)
- Global Project Licences (GPLs); and
- Open General Export Licences (OGELs)

Standard Individual Export Licences (SIELs) generally allow shipments/transfers of specified goods, technology or software to a specified consignee and/or end-user up to (in the case of goods) the quantity specified by the licence. Such licences are generally valid for two years.

An **Open Individual Export Licence (OIEL)** is specific to an individual exporter and covers multiple shipments/transfers of specified goods, technology or software to specified destinations and/or, in some cases, specified consignees and/or end-users, usually without limits on quantity. OIELs covering military goods, technology or software are generally valid for two years. OIELs covering other goods, technology or software are generally valid for three years.

A **Global Project Licence (GPL)** is similar in nature to an OIEL. It simplifies the arrangements for licensing military goods, technology and software between Framework Agreement (FA) partners (i.e. France, Italy, Sweden, Spain and Germany) participating in collaborative defence projects. They can be used for exports/transfers involving both Government collaborative projects, and projects where industrial collaboration has taken place. GPLs will generally be valid for the length of the particular project.

Open General Export Licences (OGELs) allow the export/transfer of specified controlled goods, technology or software by any exporter,

providing the items and destinations are eligible and the conditions are met. Exporters must register with the Export Control Organisation (ECO) before they make use of most OGELs. All Open General Licences remain in force until they are revoked, although their provisions may be varied at any time. Because OGELs allow for exports/transfers without the need to apply for individual licences (SIELs or OIELs), the Government is encouraging their use where possible. Before applying for an individual licence for a proposed transaction, you should first check, therefore, whether it is possible to make the transaction under an OGEL, and whether you can comply with the conditions of the OGEL.

In particular you should be aware of the following OGELs:

1. The **Open General Export Licence (OGEL) for Military Technology** applies to electronic transfers of certain technologies to certain destinations. This OGEL permits exports of all but the most sensitive military technology (as specified in the schedule to the OGEL) to Austria, Belgium, Channel Islands, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Republic of Ireland, Spain, Sweden, Australia, Canada, Japan, New Zealand, Norway, Switzerland and the United States of America. The OGEL also permits exports of a range of less sensitive technologies to many other destinations.
2. The **Open General Export Licence (Military Goods: UK Forces deployed in embargoed destinations)** permits, subject to conditions and restrictions, the export or transfer of most military goods, including software and technology, to UK armed forces or MOD notified civilian contingents operating in certain embargoed destinations, and to warships, naval auxiliaries, or Government Service ships operating within the territorial waters of those destinations.
3. The **Open General Export Licence (Military Goods: UK Forces deployed in non-embargoed destinations)** extends the same coverage to a wider range of destinations that are not subject to embargoes.

NOTE: These last 2 OGELs include destinations which are not covered by the OGEL for Military Technology and were introduced to assist exporters who need to transfer technology electronically to support UK forces operating overseas.

Details of all OGELs, including how to register for OGELs and compliance requirements are available on the export control pages on the Businesslink website at

<http://www.businesslink.gov.uk/exportcontrol>.

Where an OGEL does not cover the proposed transfer, you should apply for an **Open Individual Export Licence** or **Global Project Licence**. If approved, an OIEL or GPL would be particularly valuable for transfers abroad within a company or group or in the course of an ongoing collaboration with an overseas company. The OIEL or GPL could cover the export or transfer abroad, by both physical and electronic means, of a range of controlled goods and technologies/software to a range of destinations and/or end-users, usually over a period of two or three years, thus removing the need for you to apply for separate licences for each electronic transfer.

Finally, if an OGEL does not cover the proposed transfer, and an OIEL or GPL is not appropriate or has been refused, you should apply for a **Standard Individual Export Licence (SIEL)** in the same way as for electronic transfers as for physical exports. As is the case for SIELs and OIELs issued for dual-use technology and software, any licence issued for the export of Military technology or software will be valid for both physical and electronic transfer. It should be noted that licences issued for the physical export of goods also allow for the minimum of associated supporting technology to be exported with them.

6. How to apply for a licence?

It is important to remember that, unless you are aware of a WMD end-use, only the physical or electronic transfer of **controlled technology / software** will require a licence.

If your proposed transfer does require a licence, you should first consider whether it is covered under any Open General Export Licences (OGELs) (see [Section 5](#) above), and if so whether you can comply with the conditions of that OGEL. If you use an OGEL you must register with the ECO via the SPIRE licensing database at <https://www.spire.bis.gov.uk> (NOTE: In most cases this will be before the first use. The OGEL itself will specify when registration should be made).

If it is not possible to use an OGEL or GPL to cover your proposed transfer, you should then consider whether you should apply for an Open Individual Export Licence (OIEL). Certain circumstances or categories of transfers will be suited to OIEL or GPL coverage, for instance, those where frequent or repeated transfers are required, large ongoing contracts/projects, Shared Data Environments (SDEs), and collaborative ventures. However, it should be noted that there will be circumstances when OIELs may not be issued.

If neither OGELs, OIELs nor GPLs are appropriate (and if a request for an OIEL/GPL is turned down) then you should apply for a Standard Individual Export Licence (SIEL).

All licence applications and OGEL registrations should be made via SPIRE at <https://www.spire.bis.gov.uk>

7. What end-user documentation is needed?

An End-User Undertaking will be required from the end-user, both for physical and electronic transfers. If transfers are to take place both physically and electronically, you will need to advise us of the electronic address (fax no or email address) at which the transfers will be received. The requirements for end-user evidence relating to intangible transfers are the same as the requirements for evidence relating to physical exports on OIELs, GPLs & SIELs.

Full guidance on the suggested format of End-User Undertakings is available on the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol> or from the ECO Helpline (see [Section 10](#) below).

When submitting an application for a licence for controlled activities, remember to ensure that it covers **all** your requirements. You might need to apply for more than one licence in order to catch all aspects of a particular project or venture (e.g. physical exports of goods, transfers of technology, trafficking and brokering activities). Where you need to apply for more than one licence, it would be advantageous for processing purposes if you could apply for these simultaneously (and uploading a covering letter with our application on SPIRE). If this is not possible, please ensure that all related applications are cross-referenced.

8. Record-keeping and the role of the Compliance Unit

You are required to keep certain records in respect of transfers of all controlled technology by electronic means. For transfers made under an OGEL, the requirements are set out in the Export Control Order 2008. There may be additional requirements in the OGELs themselves.

When you receive a visit from a compliance officer, he/she will inspect your records in relation to intangible transfers in the same way as they do in relation to tangible exports under open licences. This inspection also includes SIELs.

In recognition of the different circumstances surrounding transfers of technology by intangible means compared with physical exports, the compliance officer will also advise you on systems that you should, as a matter of best practice, put in place to ensure that employees who may be in a position to make electronic transfers are aware of the requirements in relation to licensing. These are described in more detail in the section below.

It should be noted that the record-keeping requirements relate only to technology that is **controlled and whose transfer therefore requires a licence**, and to the **actual transfer** of the technology, not to non-essential matters such as associated e-mails which may relate to the transfer but do not add to it. Furthermore, we do not require records to be kept of every email to a particular end-user if a transfer takes place over a prolonged period. It is sufficient to identify the technology transferred, the dates between which it was transferred, and the identity of the end-user.

It is recognised that electronic transfers may not pass through the company's export manager who in many companies would normally arrange for the necessary paperwork, including export licences for physical exports. In this respect record-keeping and compliance for transfers by intangible means is less straightforward. But transfers by electronic means will often form part of a commercial deal, the contents of which will have been agreed in advance. Thus export managers should have had the opportunity at the time a contract is finalised to assess what technology will be transferred by intangible means, and what licences are required, and to advise employees accordingly.

By way of guidance, the records which the Government considers it appropriate to keep in respect of intangible transfers made under an Open General Licence are:

- 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.

These records must be kept for 3 years.

Open and Standard Individual Export Licences (OIELs, SIELs, GPLs):

As a minimum, the following information will need to be kept for 3 years:

- a description of the technology or software transferred (type of technology or software, what it is intended 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
- **for OIELs and GPLs only:** the company or individual must obtain from the end-user or consignee of the technology or software, appropriate end-user documentation (see paragraph 7 above). This must be obtained within 30 days of the first transfer taking place and made available to the Compliance Visiting Officer. (N.B: this requirement does not apply to SIELs because the end-user documentation for a SIEL must be supplied at the time of application)
- the Compliance Visiting Officer will ask to see evidence that the company or individual is complying with any other specific conditions of the licence that may have been imposed at the time of issue
- **for SIELs:** The licensee must keep records that contain sufficient detail to allow the following to be identified:
 - a. A description of the listed software and technology that have been transferred;
 - b. The date(s) of the transfer(s); and
 - c. In so far as it is known to the licensee, the name and address of the end-user of the listed items.

Compliance Audits

Auditing and compliance is carried out by the ECO's Compliance Officers. The purpose of compliance audits is to measure 'best practice' and compliance with UK export controls. The Compliance Unit will notify you of an audit approximately 6 weeks in advance, specifying the areas they will be looking at during the visit.

Companies/individuals holding any licences or using any OGELs issued under the Export Control Order 2008 for the export or transfer of controlled technology or software must demonstrate to Compliance Officers:

- an understanding of export control legislation as it relates to their company or activities
- the means by which the company or individual complies with these controls (for example any training or awareness activity it arranges for engineers and other staff to explain what they need to do before making an electronic transfer)
- that there are systems in place to make sure all the appropriate people are 'trained' within the company (for example, what happens when a new employee arrives, what about 'refresher training'?)
- that there are clearly defined lines of responsibility on export controls, preferably written down and reflected in a formal quality regime
- a knowledge of the ratings of the licensable technology or software and of the related goods that they are exporting or transferring (ideally written down)
- that procedures (ideally in writing) are in place to ensure that those transfers or exports of technology or software which require a licence are covered by one, and that the person who is transferring or exporting the items knows and ensures compliance with the licence conditions.

Compliance Audit Officers

- may wish to approach and question employees who have been made aware of the controls to check their knowledge is up to date

- may examine current back-up records and systems that are kept by companies.

If, at the time of the visit, companies or individuals fall short in any area, the Compliance Officer will discuss those shortfalls and may request more specific details and records to be kept for examination at the next follow-up visit.

You are advised to refer also to the ECO publication “**Export Control Compliance – Code of Practice**” available on the export control pages on the Businesslink website at

<http://www.businesslink.gov.uk/exportcontrol>.

9. Contacts for Further Advice

Further information and help may be obtained from the following :

Export Control Organisation
3rd Floor
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 4594

Fax: 020 7215 2635

Email: eco.help@bis.gsi.gov.uk

Information on export controls is published on:

<http://www.businesslink.gov.uk/exportcontrol>

and <http://www.bis.gov.uk/exportcontrol>

For advice on whether transfers require a licence please apply for a Rating Enquiry via SPIRE – <https://www.spire.bis.gov.uk>

More information on the Rating Enquiry Service is available on the export control pages on the Businesslink website at

<http://www.businesslink.gov.uk/exportcontrol>

Please note that this is a guidance note and not a statement of law

10. Frequently Asked Questions

1. How is controlled military “technology” defined?

The following definitions in the Export Control Order 2008 are all relevant:

- "technology" means specific 'information' necessary for the "development", "production" or "use" of "goods" or "software".

Technical Note:

'Information' may take the forms including, but not limited to: blueprints, plans, diagrams, models, formulae, tables, 'source code', engineering designs and specifications, manuals and instruction written or recorded on other media or devices (e.g., disk, tape, read-only memories);

- 'source code' (or source language) is a convenient expression of one or more processes which may be turned by a programming system into equipment executable form.

- The associated definitions of "development", "production" and "use" are as follows:

"Development" means all phases prior to "production" (e.g., design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into "goods" or "software", configuration design, integration design, layouts);

"Production" means all production stages (e.g., product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance).

"Use" means operation, installation (e.g., on-site installation), maintenance checking, repair, overhaul and refurbishing.

- "military" in relation to goods, software and technology, means listed in Schedule 2.

You may also find the **“Guidance on the Export of Technology”** information available on the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol> which is useful in determining whether what you intend to export is considered to be “technology”.

2. How are the controls enforced?

HM Revenue and Customs (HMRC) have responsibility for the enforcement of export controls and investigate and prosecute offences. Where, as a result of an investigation they find evidence of a deliberate breach of the controls they will institute proceedings.

3. What happens if I find that my company has inadvertently transferred technology or software electronically to an overseas location and I do not have a licence?

You should let the ECO know as soon as possible. We will normally advise you to make a voluntary declaration about the mistake to HMRC. It is important to remember that a breach will have occurred only if controlled technology or software is transferred. It is, therefore, equally important that companies take advantage of the various training opportunities that ECO provide and ensure that they themselves have adequate training, awareness, procedural and security strategies in place.

You should be aware that exporting any controlled technology or software without a valid licence is a criminal offence. Offenders can be fined and/or imprisoned. In addition making false statements in connection with a licence application is also a criminal offence. The maximum penalty for the most serious offences is now set at 10 years.

4. How do the controls affect (i) UK employees travelling abroad and needing to access and download controlled technology of software; and (ii) multinational companies that share common IT systems?

It is expected that most situations will be covered by an Open Licence (either General or Individual).

In addition to the Military Technology OGEL, an Open General Licence is available which, subject to certain conditions, permits companies to transfer specified technology and allow access from overseas by authorised persons with the proviso that it is not further disseminated to unauthorised users. This Open General Licence will not be suitable for all companies and their employees. In these circumstances an Open Individual Export Licence (OIEL) is likely to be more appropriate as it can be tailored to the particular needs of the company and their employees. ECO staff will be able to offer advice on applying for an OIEL. It should be noted, however, that there may be occasions when it will not be

possible to issue an OIEL (in which case there is the option of applying for a Standard Individual Export Licence).

5. Do I need a licence to transfer any controlled technology or software to a foreign national residing in the UK?

No. You do not need a licence to transfer controlled technology and software within the UK unless it is in connection with Weapons of Mass Destruction – see separate **“Guidance on Export Controls relating to the prevention of the proliferation of Weapons of Mass Destruction (WMD)”** which is available on the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>

The nationality of the recipient is not relevant. However, any exports or transfers from the UK of controlled technology or software do require a licence. Therefore, if you transfer the technology or software to anyone, whether a foreign or UK national, within the UK, and that person subsequently exports the technology or software out of the UK, they must obtain an appropriate licence.

6. Why is it OK to transfer controlled technology or software to a foreign national in the UK without a licence, but not to the same person outside the UK?

The approach in the controls is based on the concept of exports or transfers from the UK to overseas, not on nationality. This mirrors all existing UK controls, including those on the export of military technology by tangible means, and of dual-use technology by electronic means. Foreign or UK nationals in the UK need a licence if they wish to export controlled technology which they may have acquired here.

7. Do I need a licence to put details of my company’s products or technology on my company’s internet site?

The posting of product details, photographs, diagrams etc to an internet site which is freely available to the public without further restriction is not considered to be a transfer of technology and so is not licensable. This means that if, for example, you wish to place general product information, brochures or similar onto your company’s freely available internet site, then a licence is not required. We suspect that for commercial reasons, exporters will not wish to place controlled military technology onto freely available sites, which can be accessed by customers or indeed competitors without charge. However, if you are not sure whether what you intend to place on your site constitutes controlled military technology, then please refer to the definitions contained in the first question of this Q and A guidance.

You also need to take care to ensure that in populating your internet site, you do not divulge UK classified information – even if no export licence is required.

8. Do I need a licence to make my company's technology/ software available outside the UK on an intranet or within a shared data environment (SDE)?

Making controlled military technology or software available outside the UK on a company's or organisation's intranet or SDE – for example to established customers with access rights - would constitute an electronic transfer, and therefore a licence would be required.

A licence is also required before that technology or software can be accessed by employees of the company, group, or organisation, abroad.

The point at which a licence is required depends on the arrangements made for granting access to the intranet. If material on an intranet is to be fully accessible by members of the company, group, or dedicated collaborative user-group, situated abroad from the time when the material is saved to the site, then a licence would be needed **before the material was saved to the site**. If individual permissions were required for employees or other approved users overseas before they could access the site, then it would only be necessary to obtain a licence **before that permission was given**.

Again, when considering your licence requirements, you should first consider whether there is an OGEL, eg the Military Technology OGEL which covers the proposed activity, and with whose terms and conditions you can comply. If so, then you should use the OGEL. If not, you should apply for an OIEL or one or more SIELs to cover all potential transfers of controlled technology via an intranet over a specified period. Unless the activities are covered by an OGEL, it is for the company to ensure that the technology or software is no longer accessible from outside the UK beyond the date when the licence expires or is exhausted, and until a new licence is issued.

9. If controlled technology or software on a company intranet is accessed electronically abroad by the employee of a UK company, is that an electronic transfer?

Yes. If the employee of a UK company accessed controlled technology or software belonging to his or her company electronically while abroad, then this would constitute an electronic transfer of that technology or software to the country in which the individual was situated when they

accessed the technology or software. A licence would be required for any such transfer, even if the UK employee abroad had no intention of passing the technology or software on to another person abroad.

This corresponds to the position for physical exports, where taking controlled technology abroad, even if only for personal use and not for onward transmission while abroad, requires a licence.

As with any other controls, where UK persons or employees will have an ongoing requirement to access controlled technology or software electronically while abroad for personal use, when considering licence requirements, they should first consider whether there is an OGEL (e.g. the Military Technology OGEL) which covers the proposed activity, and with whose terms and conditions they can comply. If so, then they should use the OGEL. If not, they should apply for an OIEL or one or more SIELs to cover all potential transfers of controlled technology via an intranet over a specified period. Unless the activities are covered by an OGEL, it is for the company to ensure that the technology or software is no longer accessible from outside the UK beyond the date when the licence expires or is exhausted, and until a new licence is issued.

10. Do the controls apply to transfers of controlled technology or software via a server located abroad, or to controlled technology or software stored on a server located abroad?

Whether or not a licence is required depends on **where the recipient of an electronic transfer is located**, not on where the technology or software may be routed in the course of its transfer. Thus, electronic transfers of military (or dual use) technology to recipients in the UK would not be subject to control simply because the transfers were or might be routed via a server located abroad (assuming the server was not accessible outside the UK by normal means). It is the **geographical location of the recipient** which dictates whether or not a licence is required. Similarly, technology or software on files saved to a server overseas, or on files sent electronically to overseas file storage, would not be subject to control, unless the information in question was to be made accessible from outside the UK in the process.

11. Is a licence needed to take a laptop abroad if it contains controlled technology?

Yes. But we have created a remote access OGEL to cover routine instances of this. This is the **OGEL (Access Overseas to Software and Technology for Military Goods: the Individual Use Only)**. To view the latest version of the licence and check whether you can fulfill the terms and conditions of the licence and register to use the licence, see the

export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>

12. How can there be an 'intangible' transfer of software, when software must, by the definition in the Order, be expressed in a tangible medium?

We prefer to use the terms "transfer by electronic means" or "transfer by non-electronic means". The tangible medium point is simply there to emphasise that software has to be 'written down' somewhere for it to be more than an idea in someone's head. While being transferred the software 'becomes intangible' but for a transfer to take place, the software must appear at the end of the transfer at its destination in some tangible expression i.e. as the same software that left the UK in the first place.

13. Is the Ministry of Defence (MOD) F680 process (pre-approval for licences) affected by the controls in any way?

No. As is the case for physical exports and other controls, any F680 permissions obtained will be subject to the exporter or transferor ensuring they have complied with export control regulations.

14. Will there be any exemptions for providing controlled technology and software electronically to the UK Armed Forces overseas, or any provision for "Crown Immunity"?

Yes. The Crown is not bound by the provisions of the Export Control Act for goods specified by Schedule 2 to the Export Control Order 2008. Therefore, where the Crown owns the military technology or software to be exported, or has similar rights over its disposal, then the exporter may, subject to appropriate letter of crown immunity from the Directorate of Export Services Policy in MoD, carry out the electronic export without a licence.

Where crown immunity is not available, there is potential to use two OGELs designed to assist exporters in these situations.

- **The Open General Export Licence (Military Goods: UK Forces deployed in embargoed destinations)** permits, subject to conditions and restrictions, the export or transfer of most military goods, including software and technology, to UK armed forces or MOD notified civilian contingents operating in certain embargoed destinations, and to warships, naval auxiliaries, or Government

Service ships operating within the territorial waters of those destinations.

- **The Open General Export Licence (Military Goods: UK Forces deployed in non-embargoed destinations)** extends the same coverage to a wider range of destinations that are not subject to embargoes.

For details of these OGELs, and in particular the restrictions and conditions that apply, see the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>.

15. I am not clear about the rules for telephone conversations. When do they need a licence, and do I have to keep records?

A licence will only be needed to enable telephone calls to be made when, during the course of the telephone call, the contents of a document containing controlled technology are divulged, or the content of the document is described in such a way as to achieve the same result.

This is also the case with other electronically aided oral communications (e.g. video conferencing).

It is important that all company employees likely to be affected are made aware of the implications of this control.

As with other transfers, if a licence is required, you should consider in the first instance whether an OGEL covers the transfer concerned, and whether you are able to comply with its conditions, and if not, should consider other forms of licensing.

Telephone calls transferring controlled technology will, for the purposes of record-keeping, be considered in the same way as other types of electronic transfers.

16. Is information on transfers abroad of technology and software included in the UK Government's Annual Report on Strategic Export Controls?

Yes. Information on licensing decisions in relation to this category of transfer is recorded in the Annual Report from 1 May 2004 onwards.

To view export control licensing statistics and reports including the latest Annual Reports view the Searchable Database at:

<http://www.exportcontroldb.berr.gov.uk/eng/fox/sdb/SDBHome>

The UK Strategic Export Controls Annual Report is published by the Foreign Office and also available from the FCO's website at <http://www.fco.gov.uk>

17. Do the controls apply even if I am only bidding or tendering for a contract?

Yes. If a bid involves the transfer abroad of controlled technology or software, a licence must be obtained. If this is likely to be a regular occurrence you should explore the possibility of making use of an appropriate OGEL, or applying for an OIEL.

18. How long do applications take to process?

For SIELs, all licence applications are processed in the usual way with the aim of completing processing within 20 working days on 70% of applications.

The target for OIELs, because of their generally wide-ranging nature, is 60 working days on 60% of applications.

You should also bear in mind that these targets apply only where we are in receipt of all documentation necessary to be able to process.

There is, of course, no 'processing' associated with OGELs, but you must register their use via SPIRE (<https://www.spire.bis.gov.uk>)

19. Can applications be refused? If so, is there a right of appeal?

All applications are considered on a case-by-case basis with our various advisers and taking into account the Government's commitments and international obligations, including the Consolidated EU and National Arms Export Licensing Criteria. Among the factors taken into account will be the destination, the parties involved and the nature of the technology or software concerned and the use to which they could be put. As such, there will be occasions when applications are refused. If so, we will give you as much information as possible about the reason for refusal, and you will have the right to appeal.

NOTE: The following Q and As below are intended for exporters who are satisfied that a SIEL is the only licensing vehicle available to cover their electronic transfers, and sets out the answers to some commonly asked questions.

20. What if I am obliged to submit a SIEL for a pre-contract exchange of technology; what documents do I need to obtain?

We hope – and expect - that these situations will be few and far between. If you are obliged to use a SIEL for a pre-contract exchange of technology – such as a bid or tender - then some form of end user documentation from the potential customer must be submitted with your application. We do however, recognise that it will not always be easy to obtain full End-Use Certificates from overseas entities who have not yet agreed to purchase anything and may not be clear about exactly what technology they are about to receive. If this proves to be the case, then you should back up your application by submitting some form of commercial documentation from the potential customer; for example, the document under which they commissioned your tender, plus any other correspondence that would help to clarify the situation for us. You will always need to provide technical specifications of what you are transferring; whatever you provide to demonstrate the end-use **must originate from the overseas entity, not from yourselves**, and should be as clear and precise about what is being commissioned and supplied as is possible.

See further guidance about End-User Undertakings and Common Pitfalls to Avoid in Making Export Licence Applications which are available on the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>

21. Should I put in two SIEL applications (one for physical transfers of military technology, and one for electronic)?

No. You should specify the technology that you intend to transfer, but need not specify the means by which you intend to transfer it. To artificially separate applications in this way doubles the workload for both yourself and the Export Control Organisation, for no perceived benefit.

22. But if I put in one SIEL application to cover both physical and electronic transfers of military technology, what happens when the physical transfers are exhausted, but I still need to make further transfers by E-Mail or fax?

As now, Customs will decrement the SIEL each time that a physical transfer takes place until the physical exports are completed. **But the licence remains valid for electronic transfers (of the same technology) until its expiry date.** Self evidently, electronic transfers do not pass through Customs and so will not be decremented against the licence; they can be made **at any time** during the validity period of that licence.

You will however, need to keep a copy of the licence so that it can be examined as necessary, on your next Compliance visit.

23. What happens if I only use my SIEL to make electronic transfers?

In this unlikely event, Customs will never decrement the licence. If, during the two year validity period, you are certain that you have made all the electronic transfers that you need to, then you can return the licence to the ECO, with a covering letter to explain that you have exhausted the licence entirely by electronic means (and retain a copy for later inspection at a Compliance visit). However, **if in doubt, retain the licence for its full validity period**; since once the licence is returned as exhausted then you will have to apply again for any further transfers.

24. What is the best way to set out my SIEL application?

The first question to address is whether your technology transfers could reasonably be considered as “minimum technology”. “Minimum technology” is considered to be the minimum necessary for the installation, operation, maintenance (checking) and repair of goods to be exported. An everyday parallel would be the type of manual that is supplied when you purchase a television or washing machine. Typically, it will provide operating instructions, some basic specifications (eg operating voltage, operating temperature range etc) and some simple fault-finding guidance. Similarly, if, for example, a range of aircraft components are being exported, then handbooks and technical manuals intended to support those items in the state in which they were exported, would not need to be listed as a separate item on the application form; your application need only refer to the **equipment** being exported.

There will however, be occasions where the technology cannot be considered “minimum”. This may apply:

- Where there is no equipment being exported – for example, where your export is a one off transfer of technology, or is in support of equipment that was not supplied by you
- Where the technology is required to support a complete system, but the goods are components of that system
- Where the technology is a follow on from previous licence applications (eg in fulfilment of a long term contract), but is essentially different from the technology that was originally

supplied – for example, handbooks or publications relating to equipment that has been upgraded since its original supply.

In these instances, (and if you have been advised that **OGELs or OIELs are not available**) you will need to refer to the technology and describe it in a precise way so that ECO can determine its licensability (You need to do this by consulting the relevant control entries on the **UK Military List**). This list is available on the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>

Remember, the same degree of detail is needed to describe technology as it is to describe goods. If for example, the technology relates to an aircraft, then what aircraft model is it; and what part of that aircraft (eg engine, navigation system, weapons system) does it relate to.

25. How do I complete the quantity box where electronic transfers are involved?

It is vital that the quantity covers all **physical** transfers. However, for electronic transfers, the quantity is irrelevant; the number of emails or faxes sent is not a risk factor for us when assessing applications, and neither will our Compliance Unit be counting electronic transfers on their subsequent visits.

26. What about values for electronic transfers?

Make a best judgement on how much the customer is contracted to, or is likely to spend. If, for example, the technology that is to be transferred electronically has already been paid for as part of the contract for previous supplies of goods, then insert a nominal value; if it is all covered by one separate support contract, that will be the value; if it will be paid for as needed on a number of occasions, then previous or similar contracts might enable you to judge how much is likely to be spent by the customer.

27. What happens if I need to make electronic transfers to more than one destination?

Whilst a SIEL can cover a large number of electronic transfers, it remains specific to **one end user**. Normally, this will mean that one address has to be given on the end user undertaking (see above). Where electronic transfers are to be made to a large body (eg one of the national armed forces of the country in question), then they can also be made to regional units **of that body** using the same SIEL application, provided that you provide details of the destinations and electronic addresses.

28. Is it possible to have a temporary SIEL or OIEL to cover electronic transfers?

Only in limited circumstances. If technology passes outside your company's control and on to a third party overseas, then in reality that is a permanent transfer, even if you bring that technology back to the UK. This means that the normal documentation associated with permanent exports (in the case of SIELs, End-Use Certificates) must be obtained. However, if the technology remains under the strict control of your company and is not passed on to any third parties, then it can be covered by a temporary SIEL or OIEL that has been issued for the temporary export of the goods themselves; either because it qualifies as "minimum technology" (see question 25 above), or, if it does not qualify, through being separately itemised on the licence application form.

Examples might be where a company takes its own military equipment overseas for trial or exhibition purposes and needs technology to accompany that export to cover possible repair and maintenance.

29. How do Compliance Unit deal with SIELs that include electronic transfers?

Their focus is upon ensuring that the parameters of the SIEL were not breached – ie, that electronic transfers did not go beyond the type of technology that was licensed, or to bodies that were not specified on the end user undertaking. This will include ensuring that engineers or others who transfer technology are aware of the parameters of the relevant licences.

How you keep these records is up to you. The information might, for example, form part of your contract or project plans, or you may want to keep a central spreadsheet. Compliance Unit need to be assured that you have good procedures in place to ensure that the correct licence is used for the export where one is necessary.