

**EXPORT CONTROL
ORGANISATION**

Guidance on the
supplementary WMD End-
Use Controls (including
Provision of Technical
Assistance)

MARCH 2010

Contents

1.	Introduction	3
2.	The Legislation	3
3.	Controlled transfers of WMD End-Use Technology	4
4.	WMD purposes	4
5.	Provision of Technical Assistance	5
	• What is 'technical assistance'?	6
	• When will I need a licence for providing 'technical assistance'?	6
	• To whom do the 'technical assistance' controls apply?	6
6.	Types of Licences and How to Apply for a Licence	6
	• What end-user documentation will be needed to support my application?	8
7.	Record Keeping and Compliance	8
	• Record Keeping	8
	• Compliance Visits	9
8.	Contacts for Further Advice	10
9.	Frequently Asked Questions	11

1. Introduction

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

This Guidance Note supplements the Export Control Organisation's "Guidance on the WMD End-Use Control".

That document covers the "WMD End-Use" Controls on the physical export of dual-use goods – and the same rules apply to the electronic transfer of dual-use technology – from the European Union (EU). It is available on the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol> .

The guidance here specifically concerns the controls on:

- (i) transfers of technology that are not caught by the controls on exports and electronic transfers out of the UK (namely transfers within the UK, transfers by UK persons¹ outside the EU and transfers from the UK by non-electronic means); and
- (ii) the provision of technical assistance to a person or place outside the EU in connection with WMD or a related missile programme.

2. The Legislation

The controls to which this guidance relates are contained in the Export Control Order 2008, made under the Export Control Act 2002.

The controls also implement the European Joint Action of 22 June 2000 on the provision of technical assistance related to certain military end uses².

¹ The term "United Kingdom person" as used in the Export Control Order 2008 is defined in the Export Control Act 2002 as including both legal persons (a Scottish partnership or a body incorporated under the law of any part of the United Kingdom) and individuals (British citizens, British overseas territories citizens, British Nationals (Overseas), and British Overseas citizens, a person who under the British Nationality Act 1981 (c.61) is a British subject or a British protected person within the meaning of that Act).

² Council Joint Action of 22 June 2000 concerning the control of technical assistance related to certain military end-uses (2000/401/CFSP) as specified in relevant arms embargoes.

3. Controlled transfers of WMD End-Use Technology

In addition to those exports and transfers covered by the guidance referred to above, licences are required for the following activities:

- **Electronic transfer or non-electronic transfer of software or technology within the UK** where you are aware or have been informed by Government that there is a WMD end-use risk and that the final destination is outside the EU. This does not apply to software or technology in the public domain.
- **Electronic transfer or non-electronic transfer of software or technology by a UK person located outside the EU** where the person is aware or has been informed by Government that there is a WMD end-use risk. This only applies where the transfer is to a destination outside the EU or, broadly, where the transferor knows or has been informed by Government that the final destination is outside the EU. It does not apply to software or technology in the public domain.
- **Non-electronic transfer of software or technology from the UK** where you are aware or have been informed by Government that there is a WMD end-use risk and either the immediate destination is outside the EU or you know the final destination is outside the EU. This does not apply to software or technology in the public domain.

Examples of non-electronic transfers include face-to-face communication, personal demonstration, or handing over material recorded on documents or disks.

Note: None of the above controls are based on ‘suspicion’ of a WMD end-use. The person or entity concerned must be aware or have been informed of a WMD end-use outside the EU.

4. WMD purposes

A licence is only needed in relation to transfers covered by this guidance if a person or legal entity is aware, or has been informed by the UK Government³, that a proposed transfer of technology is (or, in cases where the control is triggered by government intervention, may be) intended for use in connection with the “development, production,

³ This can be any Government Department. If a similar notification is received from another EU Government – for example, in cases where the transferor has its main place of business elsewhere in the EU – this may also bring the transfer within the controls.

handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons” (“WMD purposes”).

A person or legal entity would be considered to know that a transfer was intended for WMD purposes, if they had any direct knowledge that the recipient intended to use the technology for WMD purposes. **There is no requirement to make active attempts to check that a proposed recipient of technology does not intend to use information in a WMD programme.**

The UK Government may also inform a transferor that a particular proposed technology transfer to a particular end-user carries a risk of the technology in question being used in a WMD programme or for missiles capable of their delivery, and that to transfer that technology to that person or legal entity without a licence would be unlawful.

Any notification from the UK Government informing a person or legal entity that a licence is required, will be **made in writing** and will make clear that it constitutes “informing” for the purposes of the Order and that a licence is required for a particular proposed transfer. The Export Control Organisation (ECO) will normally issue such notifications.

Under the controls on physical export and electronic transfer of goods and technology out of the EU, a licence may be required if an exporter or transferor knows, or is informed by a competent authority (in most UK cases, this is the UK Government), or **has grounds for suspecting**, that the exports or transfers would, or may, be intended for WMD purposes. There is no corresponding requirement under the controls on other transfers of technology, to the “grounds for suspecting” provision. However anyone with clear grounds for suspicions, or actual suspicions, about a possible WMD end-use, is advised to contact the Export Control Organisation for advice on whether in the particular circumstances of the proposed transfer a licence would be required.

5. Provision of Technical Assistance

The controls make it unlawful for anyone in the UK or any UK person or legal entity outside the EU to provide, or facilitate the provision of, technical assistance outside the EU in relation to the supply, delivery, manufacture, maintenance or use of any goods, which they know, or which the UK Government has informed them is, or may be, intended for WMD purposes, without first obtaining a licence. The control applies only to the provision of technical assistance outside the EU, or where the technical assistance is provided within the EU but is ultimately for use outside the EU.

- **What is ‘technical assistance’?**

Technical assistance is defined in the Export Control Order 2008 as any technical support related to repairs, development, manufacture, assembly, testing, use, maintenance or any other technical service.

- **When will I need a licence for providing ‘technical assistance’?**

You will need a licence if you know, or have been informed by the UK Government, that any technical assistance you propose to provide outside the EU, or whose ultimate destination is outside the EU, is (or, in cases where the control is triggered by government intervention, may be) intended for WMD purposes.

In practice it is likely that technical assistance will often be accompanied by the physical or electronic transfer of technology in the context of a project, contract or transaction. It is therefore recommended that the licence application for the project, contract or transaction in question specifies all the activities for which a licence is required, or that applications for licences covering the provision of technical assistance are cross referenced to all other related applications, in order to assist processing. We also recommend that you send us a covering letter explaining in detail exactly what you propose to do.

- **To whom do the ‘technical assistance’ controls apply?**

As explained in [Section 4](#) above, the controls apply to anyone in the UK (whether an individual, company or other legal entity) or any United Kingdom person outside the EU.

Further questions on technical assistance are covered in ‘Frequently Asked Questions’ ([Section 9](#)).

6. Types of Licences and How to Apply for a Licence

Licence applications falling within the WMD end-use control are by definition sensitive and subject to detailed assessment. Therefore, Open General Export Licences (OGELs) are not normally appropriate for this category of transfer, and Standard Individual or Open Individual Licences (SIELs or OIELs) will need to be applied for.

The **exception** is for transfers or assistance in support of UK Defence Contracts or to deployed UK forces, where there are no exclusions in the relevant OGELs.

Licence applications should be made via the ECO's licensing database – SPIRE at <https://www.spire.bis.gov.uk> – unless specified below that applications should be made in writing.

When seeking permission to undertake a particular proposed activity, you should give full details of any technology transfer or provision of technical assistance which will be involved (i.e. the activity proposed, the technology/software/goods involved, end-users/consignees, intended purpose and end use of the transfer). We will send you a response in writing via SPIRE, and if our decision is not to give permission for the proposed activity, we will give you as much information as we can about the reasons why, and you will have the right of appeal against our decision.

The following table is a guide to the action you need to take if your proposed activity in relation to WMD requires a licence.

Type Of Export/Transfer/Assistance	Licence Application?
Exports /Transfers <u>from</u> the UK	
Physical export of goods/technology from the UK to a destination abroad	SIEL (apply via SPIRE)
Electronic transfer of technology from the UK to a destination abroad	SIEL (apply via SPIRE)
Non electronic transfer of technology from the UK to an EU or non EU destination abroad	SIEL (apply via SPIRE)
Transfers <u>within</u> the UK	
Non electronic transfer of technology within the UK	Apply in writing to ECO for permission
Electronic transfer of technology within the UK	Apply in writing to ECO for permission
Transfers by UK persons <u>outside</u> the UK	
Electronic transfers by a UK person overseas to a person or place overseas	Apply in writing to ECO for permission
Electronic transfers by a UK person overseas to the EU (including to the UK)	Apply in writing to ECO for permission
Non electronic transfer of technology by a UK person overseas to a person or place	Apply in writing to ECO for permission

overseas	
Non electronic transfer by UK person overseas to the EU (including to the UK)	Apply in writing to ECO for permission
Provision of Technical Assistance	Apply in writing to ECO for permission

- **What end-user documentation will be needed to support my application?**

An End-User Undertaking will be required from the end-user, whether both for physical exports, electronic or non-electronic transfers or for the provision of technical assistance. The format is the same for electronic and non-electronic transfers as it already is for physical exports. Full guidance on the suggested format for end-user undertakings is available from the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>

7. Record Keeping and Compliance

- **Record Keeping**

In practice predominantly individual licences or permissions are issued in relation to the WMD controls. The licences or permissions will themselves specify the record-keeping requirements which relate to them (although the Export Control Order 2008 imposes minimum record-keeping requirements in relation to OGELs), but in general, companies and individuals will need to keep the following **minimum information for 3 years**:

- a description of the technology or goods sent or technical assistance provided (type of technology or technical assistance, means by which it is transferred, what it is to be used for) to whom it is sent or provided (end user and consignee information, including destination countries involved wherever possible) and the period of time over which the activity takes place (start and end dates).

In addition:

- the Compliance Officer (see also below) will ask to see evidence that the company or individual holding the licence or permission is complying with any other specific conditions of the licence that may have been imposed at time of issue

- the licence must be returned to the ECO on completion of the permitted transfer of technology/technical assistance, or on expiry of the licence (whichever comes first).

- **Compliance Visits**

Auditing and compliance activities are carried out by Compliance Officers from the Export Control Organisation (ECO) to assess whether a company has appropriate measures in place to ensure compliance with Export Control legislation, and whether relevant licence conditions have been met. The Compliance Unit will notify you of a compliance visit approximately 6 weeks in advance, specifying the areas they will be examining during the visit.

In practical terms, it will mean that companies/individuals holding any licences or permissions issued under this Order the controls must demonstrate to Compliance Officers:

- an understanding of export control legislation as it relates to their company or situation
- how 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 any transfer or export)
- 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”?)
- if applicable, a knowledge of the ratings⁴ of any licensable goods, technology or software and of any related goods that they are exporting or transferring (ideally written down)
- that procedures (ideally in writing) are in place to ensure those pieces of technology or software which need a licence are covered by one, and the person who is transferring or exporting it knows the licence conditions.

In addition Compliance Officers:

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

⁴ A “rating” is the exact classification of the item in question under the Military or Dual Use Control Lists in the Export Control Legislation
Supplementary Guidance on WMD Page 9 of 16

- will examine current back-up records and systems that are kept by companies as specified in the notification of visit.

If, at the time of visit, companies or individuals do 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 may want to refer also to the ECO Publication, "**Export Control Compliance – Code of Practice**" available on from the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>.

8. Contacts for Further Advice

The Export Control Organisation publishes its information online at:
<http://www.businesslink.gov.uk/exportcontrol>
<http://www.bis.gov.uk/exportcontrol>

For specific queries about the WMD controls:
Special Caseworking Licensing Unit
Export Control Organisation
3rd Floor
1 Victoria Street
London SW1H 0ET
Tel: 020 7 215 4594
Fax: 020 7215 4539
E-mail: lu3.eca@bis.gsi.gov.uk

For advice on whether goods, technology or software are controlled please apply for a rating via SPIRE at <https://www.spire.bis.gov.uk>
Information on the Rating Enquiry Service is available on export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>

9. Frequently Asked Questions

- 1. My goods are on a Control List (e.g. Annex I to Council Regulation (EC) No 428/2009), and I have been granted a licence to export them. Does this mean I have to apply for an end-use licence/permission as well?**

No. You will not need an additional licence to export the goods but you may need a licence to provide technical assistance in relation to them.

- 2. How long will applications take to process?**

Standard individual licence applications will be processed in the usual way with the aim of completing the process, provided we have received all the necessary documentation, within 20 working days on at least 70% of applications.

- 3. Can applications be refused? If so, is there a right of appeal?**

Yes, they may be refused and you may appeal. All applications are considered on a case-by-case basis with our advisers taking into account the UK 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 of any exports or transfers, the parties involved, and the nature and utility of the goods, technology, or software, or technical assistance concerned and the use to which it could be put. So there may be circumstances when applications are refused. If so, we will give you as much information as we can about why we have refused, and you will have the right to appeal. For further details on appeals, see the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>

- 4. How are the controls enforced?**

HM Revenue and Customs (HMRC) regulate physical goods at the point of export from the UK and also enforce controls on the overseas transfer of technology and provision of technical assistance where it is caught by the WMD end-use controls. Investigations are intelligence-led and Customs will prosecute where they find evidence of a deliberate breach. Offences involving the transfer of technology within the UK are a matter for the Police.

- 5. If I have been informed by the UK Government that my goods and/or technology or software and/or technical assistance are for**

use outside the EU in connection with WMD, must I apply for a licence?

Yes, if you want to proceed with the export of the goods, transfer of the technology or provision of the technical assistance. You may decide not to proceed further. In that case there is no need to apply for a licence and no further action will be required. Alternatively, if you decide to apply for a licence, the application will be considered, as with any other licence application, on its individual merits.

6. I have been informed by ECO that I will need to apply for an export licence because my technology or software may be used in WMD. If I then purchase that technology or software elsewhere overseas and provide it to the same end-user, will I be committing an offence?

Yes, assuming you are a UK person. In this situation, owing to the information you have been given, your transfer of technology or software from overseas is almost certainly subject to control.

7. Won't any conversation with a prospective customer about nuclear, biological and chemical equipment now count as a technology transfer under the legislation?

No. A licence is only required if a transfer of software or technology, or provision of technical assistance, is actually to take place. Thus, for example, a licence will not be required for a discussion with a prospective client about the general capabilities of particular types of equipment, contractual arrangements, etc. Discussions of this nature prior or subsequent to a transfer are not in themselves licensable.

8. What is the difference between technical assistance and the transfer of technology?

The controls on technical assistance and technology transfer are closely related, and in practice it is likely that the provision of technical assistance will often accompany the transfer of technology. However, there may also be a circumstance (for example, repairs or maintenance) where technical assistance is provided, which does not involve the transfer of technology.

9. What sort of things should I be looking for if I want to address any suspicion I might have that proposed technical assistance or a technology transfer is for use in connection with WMD?

That depends on the circumstances of the case, but would include the sort of checks you would normally make before doing business with

anyone and, in particular, should specifically cover investigation of anything that led you to be suspicious in the first place.

For example, you should consider the capability of the goods and technology you are selling or providing, and not just the end use stated by the intended recipient.

You should find out as much as you can about the end user and any other party to the transaction from the customer recipient (whether end user or dealer/agent/intermediary) who wants to buy the goods and consider whether the information you are given is genuine.

Also make sure that you record what you have done to address your suspicions, and any information on which your conclusions are based, including any written assurances.

10. I've made further enquiries, but I'm not satisfied with the answers. Is there any other way to check that my customer is not involved in a WMD related programme?

You can submit a "rating" enquiry via SPIRE – <https://www.spire.bis.gov.uk>. Your application will be assessed by the ECO's Technical Assessment Unit in terms of the goods you wish to export against the proposed activities and decide whether a licence will be required. If your goods or technology are specified in the control legislation, the relevant control entry will be stated in the ECO's written response to the rating enquiry. If there are end use concerns, the written response will reflect that and provide advice on what you should do next.

11. Can I use an OGEL for a transfer under the WMD end use controls?

In most cases, no. The majority of OGELs contain a specific condition stating that if the exporter suspects, knows, or has been informed, that the goods items are or may be intended for WMD purposes, the OGEL cannot be used. The exceptions to this are the UK Defence Contracts OGEL and the UK Forces OGELs.

12. What about technology transfer or technical assistance to UK Armed Forces operating in an embargoed destination?

There is an OGEL to permit such support to UK Forces deployed in embargoed destinations, details of which can be found in the guide on Military OGELs which is published on the export control pages on the Businesslink website at <http://www.businesslink.gov.uk/exportcontrol>

13. Don't the controls mean that any nuclear, biological and chemical company in the UK needs a licence to talk within the UK to MOD about supplying UK troops?

Only where there is going to be a genuine technology transfer for direct use by MOD for WMD purposes outside the EU, which in practice is probably quite rare. General discussions about capabilities and contracts do not count as technology transfer, so do not need a licence. Neither do technology transfers to MOD in the UK (or elsewhere in the EU) that pertain purely to a procurement or manufacturing process for UK Forces where the process is confined to the UK or EU, because the transfer here would be for a use within the UK or EU, not outside it, and so it would not be licensable. The fact that once the equipment is procured it may then be used by HM Forces outside the EU does not in itself make the original technology transfer to MOD licensable. The UK Defence Contracts OGEL covers most of the limited number of licensable communications of companies with MOD. ECO have also issued a small number of individual licences to cover specific potential circumstances where the OGEL would not apply.

14. Do I need a licence to provide technical assistance or transfer technology in support of equipment previously supplied to customers for WMD purposes outside the EU?

Yes. ECO has issued OIELs to a number of companies to allow the provision of technical assistance and transfers of technology or software to support the equipment of customers where the applicant holds or has in the past held an export licence for that equipment to that customer and the support is for WMD purposes outside the EU. If you already hold a licence for goods, you do not need an additional licence to export or transfer the minimum technology required for the installation, operation, maintenance or repair of those goods at the same destination.

15. Do nuclear, biological and chemical-related technology transfers in the UK or EU between sub-contractors and prime contractors in the course of manufacturing equipment in the UK or EU require a licence?

No. Such transfers of technology or software would not be expected to be licensable because even if the technology may be indisputably for WMD purposes (e.g. detection), the act of transferring technology is confined to the UK or EU. The act is therefore not licensable because the technology being transferred between sub-contractor and prime is not for use outside the EU by either sub-contractor or prime but rather for use in the UK to construct a piece of equipment. Moreover, if the equipment then becomes the property of the Ministry of Defence (MOD), the question of the export of the platform by MOD is a separate matter. The fact that a completed platform might be used by HM Forces outside

the EU is irrelevant to the question of the licensability of technology transfers in the UK between companies manufacturing it because such transfers were between sub-contractor and prime, not direct to MOD for MOD's use outside the EU.

16. Doesn't an NBC equipment manufacturer still need a licence if he has technology or software incorporated in a piece of equipment which HM Forces then take abroad?

No. For the purposes of export licensing, technology or software transferred in the course of construction and incorporated into another platform has no independent existence. An exporter's intellectual property rights are irrelevant for export licensing purposes. Export licensing considerations apply to the MOD's export of the whole platform. If a military platform, its export would be covered by Crown immunity. As with any other incorporated components, NBC (or dual-use) components or technology incorporated in the manufactured platform do not require separate licences in their own right.

17. Do I, as a nuclear, biological and chemical detection equipment manufacturer, need a licence for pre-contract discussions at trade exhibitions?

You might. Not for general public presentations or promotion, provided any information you gave out was already in the public domain. But, for example, explaining to a prospective client the detailed technical specifications underpinning operation of a nuclear, biological and chemical product in a certain environment could be a licensable technology transfer. ECO have issued licences for a number of UK companies to make such transfers in pursuit of new business, specifying the requirement to have F680 cover in place.

18. Do I need a licence to transfer NBC technology to UK or other EU emergency services?

Possibly, if you have specific reason to believe that the recipient emergency service may use the technology outside the EU for WMD purposes. If there is no more than a theoretical likelihood that at some future point use for WMD purposes may take place outside the EU in respect of a particular emergency service provider, then a licence would not normally be required. If the transfers were in respect of manufacturing equipment in the UK or EU for use by the emergency services, then that act would not be licensable because the act would be confined to a transfer to a UK manufacturer (not the blue light service itself) within the UK or EU, and the UK manufacturer would not be making use of it for WMD purposes outside the EU.

19. Do technology transfers or technical assistance in relation to nuclear, biological and chemical personal protective suits automatically fall within the scope of 'WMD purposes'?

No, but a licence will often still be needed because unless the suits are purely for protection, article 4 of Council Regulation (EC) No 1334/2000 or article 6, 10, 11, 12 or 19 of the Export Control Order 2008 may apply; and technology transfers may in any case be licensable because the technology is controlled on the military or dual-use lists. Nuclear, biological and chemical (NBC) personal protection suits are nonetheless different from NBC detection equipment, which will always count as a use for WMD purposes. Exporters should use the ratings service if in doubt about the licensability.