



EXPORT CONTROL ACT 2002

**2007 REVIEW OF EXPORT
CONTROL LEGISLATION**

A CONSULTATIVE DOCUMENT

JUNE 2007

Foreword

I am very pleased to launch this review. The Export Control Act 2002 completely overhauled the UK's export control system for the first time in over 60 years. It provided the comprehensive legislative framework needed in today's increasingly complex world. The Act set out the purposes for which its powers could be used, thus ensuring that the Government is accountable to Parliament for their use. The secondary legislation introduced three years ago broke new ground by introducing controls on electronic transfers of technology for military list goods; and on trading in military list goods between overseas countries, both within the UK and, in some circumstances, by UK persons overseas. We also tightened up controls on technology and technical assistance with potential Weapons of Mass Destruction (WMD) use, to guard against the risk of these finding their way to programmes of concern.

These changes were radical and far reaching. That is why the Government made a public commitment to undertake a Post Implementation Review three years after implementation. This Review will enable us to revisit the new controls in the light of experience to establish whether they are having the intended effect, and that they are not imposing unnecessary or disproportionate business burdens.

The internal assessment of the controls introduced in 2004 undertaken by the Export Control Organisation (ECO) is a useful starting point for the Review. But we also need to look to the future, and this consultation document identifies some potential options for further change, some of which have been identified in discussions with stakeholders. Ultimately our aim is to find an effective and proportionate way to guard against the risk of undesirable exports and related activities, and we look to you to provide the evidence and ideas that will enable us to do so.

I am grateful to all stakeholders for their help so far in ensuring that this consultation paper will allow contributors to take a well informed view in this important, though difficult and complex area. I encourage all those with an interest in export control to contribute their views.

Malcolm Wicks

Minister of State for Science and Innovation

Why is the Government conducting this consultation?

When introducing the secondary legislation in May 2004 to implement new controls under the Export Control Act 2002, the Government made a public commitment to undertake a Post Implementation Review three years after their introduction, in accordance with Cabinet Office 'Better Regulation' Guidelines. The Government sees this as an important opportunity to evaluate the impact and effectiveness of what we did in 2004, and, where appropriate, to assess possible options for change.

In preparation for the Review, the Export Control Organisation (ECO) has carried out its own evaluation of the impact and effectiveness of the controls. It is important to note that this assessment is based mainly on licensing statistics and other case-based information held by the ECO. It is not intended to be a wider assessment, which can only take place through the consultation itself. However, this consultation paper includes the internal evaluation for the benefit of consultees, and seeks feedback on its findings.

This consultation paper specifically flags up issues that have arisen from the ECO's internal evaluation, preparatory discussions with key stakeholders, including industry and Non-Governmental Organisations, and more general commentaries on export control issues. This is not to say that they are the only issues, but they are intended to inform and provide structure to the debate. The paper asks for evidence-based views on the likely impact and effectiveness of any potential change options, as well as inviting views on any alternative options.

The Consultation will run for three months, until **30 September 2007**. At the end of the consultation period, the Government will carefully analyse all responses received. We aim to publish the initial results of that analysis, together with any change proposals, by 31 December 2007.

Issued

Respond by 30 September 2007

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INDEX

	<u>Page Ref</u>
Post Implementation Review	
Executive summary/How to read and respond to this consultation paper	5
Section 1: Export Control Organisation (ECO) internal evaluation	9
Section 2: Possible change options	21
Section 3: Response section for completion	52
Annexes	
1; Abbreviations and Glossary of commonly used terms	93
2: Agreed Terms of Reference for the 2007 review of export controls	95
3: Consultation Code of Practice	97
4: Licence based statistical information on the 2004 controls	98
5: Legal references	101

POST IMPLEMENTATION REVIEW OF THE CONTROLS INTRODUCED IN 2004

Executive Summary

How to read and respond to this consultation paper

1. **Section 1** of this paper is the ECO's internal evaluation of the export controls introduced in 2004 under the Export Control Act 2002. This is provided by way of background and is a retrospective look at the impact and effectiveness of the new controls based on the evidence available to the ECO. It is not intended to be a comprehensive analysis of the impact of the new controls.
2. **Links to the specific questions on business impact and effectiveness in Section 3 are provided throughout Section 1.** *See Bookmarks on left*
3. **Section 2** sets out potential options for changes to the controls. Again these are not comprehensive, and readers are invited to contribute other evidence-based suggestions in their responses. Each module of Section 2 addresses a specific issue, either within the existing controls, or, in a few cases, areas not currently covered by the controls. The modules provide a brief overview of how the controls currently work, set out possible options for change, and ask for evidence-based views on the effectiveness and business impact of each of these options.
4. **Again, links to the specific questions on change options in Section 3 are provided throughout Section 2.** *See Bookmarks on left*
5. The issues covered in Section 2 of this review are set out below, with links to both the relevant parts of Section 2 and the related questions in Section 3.

Restricted Goods and Trade Controls

Section 2.1 "Restricted Goods" and Trade Controls	Section 3 Trade controls/Restricted goods

Ancillary Services

Section 2.2 Ancillary Services	Section 3 Provision of Transport Services

Overseas production of military equipment by UK owned or linked companies

Section 2.3 Overseas Production	Section 3 Overseas production of military equipment

The Military End Use Control (MEUC)

Section 2.4 Military End Use Control	Section 3 The Military End Use Control

Pre-licensing registration system for UK based arms traders

Section 2.5 A pre-licensing registration system for UK based arms traders	Section 3 Pre-licensing registration system for traders

Torture equipment

Section 2.6 Torture Equipment	Section 3 Torture Equipment

Transit and Transhipment

Section 2.7 Transit and Transhipment	Section 3 Transit and Transhipment

WMD controls

Section 2.8 WMD controls	Section 3 WMD controls

Miscellaneous technical/drafting issues

Section 2.9 Miscellaneous Technical Drafting issues	Section 3 Miscellaneous Technical/Drafting issues

6. **Section 3** collates all the questions raised in Sections 1 and 2 into a single questionnaire for your responses. These questions fall into two categories; business impact and effectiveness.

- The business impact questions are designed to test the business impact of changes that have already been introduced, and obtain accurate estimates of the likely business impact of changes that might be introduced as a result of this consultation. They are directed towards business readers, because only businesses are in a position to provide the detailed costings and evidence sought.
- In contrast, the effectiveness questions are designed to test the extent to which the 2004 changes had their desired effect, and to gauge the relative effectiveness of a range of proposals for further change. They are therefore more generally phrased and are open to all readers to express views, backed up by evidence where available.

7. Please use the questionnaire to provide your response, and complete the opening page to show whether you are responding as an individual or representing the views of a company, a Non-Governmental Organisation, or other organisation and – if so - who the organisation represents and, how the views of its members were assembled.

8. Responses to this consultation must be received by **30 September 2007**. These can be submitted by email, letter or fax to the contact below. If responding by E-Mail, please send only Section 3 back to us after completion. You can do this from the Word version either by copying Section 3 to a separate document or by deleting the preceding and following sections and then sending it as a new document to:

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Versions of this document are available in Braille, or on audio cassette on request.

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DTI Publications Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845 015 0010
Fax: 0845 015 0020
www.dti.gov.uk/publications

Impact Assessment

9. The DTI Website as above includes both this consultation document and a copy of the final Regulatory Impact Assessment produced when changes to export controls were introduced in 2004. At this stage, an Impact Assessment has not been produced for any of the change options identified at Section 2. This is because these are not proposals, but are simply potential options that have been identified. We are, through this consultation paper, seeking evidence on the likely impact and effectiveness of each option. Until we have such evidence, it is not possible to judge the impact with any degree of accuracy and so an Impact Assessment will instead be produced after the consultation.

Confidentiality

10. The Government will normally publish all responses to a consultation in full. However, if you regard any of the information you provide as being confidential, it would be helpful if you could use the space provided in Section 3 to explain to us why you believe this to be the case, indicating what particular parts of your response should be regarded as confidential, and whether publication of your response but without the specific name and address details would overcome your difficulties.

11. We must stress though, that we cannot guarantee that any such requests will in all circumstances be satisfied. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA).

12. Under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligation of confidence. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

13. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that any personal details provided will not be disclosed to third parties.

If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

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(A copy of the Code of Practice on Consultation is at Annex 3)

SECTION 1: EXPORT CONTROL ORGANISATION (ECO) INTERNAL EVALUATION

INTRODUCTION

Summary of the 2004 change

1.1 On 1 May 2004, the Government introduced the following new controls in secondary legislation under the Export Control Act 2002:

- The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 introduced controls on the export of technology for military goods by electronic means (including by e-mail, fax and telephone). This brought the controls into line with the existing controls on dual-use technology.
- The same order introduced new controls on both the transfer, by any means, of technology which is or may be intended for use outside the European Community (EC) for a relevant use¹ (as defined in the order) in WMD or a related missile programme; and the provision of technical assistance to a person or place outside the EC in connection with such a relevant end use. These controls apply to anyone in the UK and UK nationals anywhere in the world.
- Under the same order, new controls made it unlawful (for anyone in the UK or any UK person or legal entity anywhere in the world) to provide, or facilitate the provision of, technical assistance related to the supply, delivery, manufacture, maintenance and use of WMD, to a destination outside the EC, without first obtaining a licence. They also enhanced the existing controls on the transfer of WMD technology. In both cases, the controls depend on how much the supplier of the technical assistance or technology knows, or has been told by the Government, about its end-use (i.e. whether it is intended for a WMD programme). Technology transfers within the EC, and even within the UK, are now controlled where the supplier knows at the time of transfer that the technology will be transferred outside the EC without modification.
- The Trade in Goods (Control) Order 2003 prohibited persons trading in goods contained in Parts I and II of Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (they do not apply to software and technology) between two third countries without a licence. The controls on “Restricted Goods”, (torture equipment or long range missiles) require a licence when the activity is carried out in the UK or anywhere in the world by UK nationals. They also control any act calculated

¹ Under the Order, "any relevant use" means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;

to promote the supply or delivery of Restricted Goods, thus bringing within the ambit of export controls, the provision of a range of ancillary services such as promotion, advertising, transport, finance and insurance, when related to Restricted Goods.

- Under the Trade in Controlled Goods (Embargoed Destinations) Order 2004, controls were introduced on trading and other acts calculated to promote the supply or delivery of Military List items to destinations subject to an internationally agreed arms embargo, to mirror the above controls on Restricted Goods.

Basis for the ECO internal evaluation

1.2 This is an internal assessment, drawing on evidence held by the ECO only. It is not a Government-wide assessment, nor does it prejudge what might be the results of the public consultation - it is simply a contribution to a broader debate. The “questions for readers” in this evaluation attempt to gauge the extent to which the conclusions on business impact that the ECO has drawn from our own evidence are supported – or otherwise – by exporters and other interested parties. These can be found at Section 3. You will need to go to the questionnaire at Section 3 in order to respond to the consultation.

1.3 The evaluation comprises two elements;

- *Business impact*; the extent to which the new controls have placed additional burdens upon business. For this element, we looked at the number of applications received on average per annum in comparison to the estimates in the final Regulatory Impact Assessment (RIA) (available on the DTI Website). We also looked at application processing times for Open Individual Export Licences, Standard Individual Export Licences, Open Individual Trade Control Licences and Standard Individual Trade Control Licences following the introduction of the new controls, to gauge whether exporters have received a slower service than previously.
- *Effectiveness*; the extent to which the controls achieved their intended purpose. To measure this, we gathered information from those in the ECO who process licence applications or conduct compliance visits, and exporter feedback from seminars and workshops. Although this evidence is not statistically based, we nevertheless feel that it is an important contribution, which can be supplemented from other sources as the review progresses. It is also legitimate to view any refusals made under the new controls as an indication of effectiveness: these represent transactions which we had no means of stopping before the introduction of the new controls.

Overall findings

1.4 Our key findings are:

- i. The number of licence applications relating to the new controls is significantly less than anticipated under the RIA.
- ii. In general, applications from exporters who apply for licences for activities covered by the new controls are processed within similar timescales to applications relating to previously controlled activities (performance on these has also been sustained or improved since 2004). So exporters who operate in areas controlled only since 2004 are not receiving a worse than normal service - a finding confirmed by feedback received from industry through seminars, ECO workshops and compliance visits to companies – and there has been no knock-on impact on other applications. Overall, our service to exporters has not suffered since the introduction of the new controls. Indeed, a marked improvement is obvious from statistics and echoed in responses to the Customer Survey.
- iii. Inevitably, there were some teething troubles, particularly with exporters' understanding of the new controls on electronic transfers of military technology and the WMD end-use controls on transfers of technology and technical assistance. Awareness campaigns on the new controls, in partnership with industry, have helped us to overcome these; we have seen no evidence that the new controls are affecting industry adversely and no serious non-compliance with them has come to light. But we will need to keep up our training, guidance and awareness effort to ensure that this remains the case.
- iv. The new controls have been effective in contributing to broader non-proliferation aims by allowing us to refuse some applications in circumstances where we could not have intervened prior to 2004. But it has been difficult to gauge their effectiveness in preventing activity by UK persons outside the UK. There have been very few licence applications; some undesirable activity may be continuing, although some effective actions have been taken to prevent or deter undesirable activities overseas.

More detailed explanation of the business impact and effectiveness of each of the new controls is below.

1. ELECTRONIC TRANSFERS/TRANSFER BY INTANGIBLE MEANS (ITT) OF TECHNOLOGY FOR MILITARY GOODS

1.1.1 Controls on the electronic transfer of technology (including by e-mail, fax or telephone) for the production, development or use of any goods on the UK's Military List to any overseas destination were introduced to bring control on the export of technology for military goods into line with the controls on the export of dual-use technology.

Original intention
i. To update the controls on the export of technology for military goods to ensure their continuing effectiveness
ii. To consolidate and rationalise existing legislation

Business Impact

Volume

1.1.2 The total number of individual applications over the three-year post implementation period (1684) is significantly lower than estimated (800-900 per annum)². We also estimate that only a very small number of these applications involved transfer by electronic means without an associated physical transfer of goods or technology (which would of course have required a licence under the old controls). So the number of truly additional applications solely for the electronic transfer of technology is very small. In contrast, registrations for Open General Licences for electronic transfers were generally higher than estimated, with the Technology for Military Goods OGEL being particularly popular.

1.1.3 There are two possible explanations for this, which are linked. Firstly, the original RIA estimates necessarily stemmed from the number of individual transactions that industry estimated would take place, which required a licence. But various proactive measures taken by the ECO meant that many of those transactions did not lead to new individual licence applications. These proactive measures included the automatic conversion of all extant SIELs and OIELs covering export of technology for military goods by physical means to cover electronic transfer of the same technology; and the development of new OGELs – for example covering transfers to UK forces, transfers under MOD contracts, and access to technology for military goods by UK persons working abroad on laptops – to cover many non-sensitive transfers. It then seems that exporters, prompted by the introduction of these new controls, and mindful of the potential administration needed to apply for SIELs or OIELs, sought to register to use available OGELs to the fullest extent.

Questions for readers: 2004 controls on electronic transfers of technology for military goods (business costs)

Has your business been affected by the introduction of controls on the electronic transfer of technology for military goods? **Section 3** includes a range of questions which have been designed to measure the business impact of this measure. Please use the bookmark on the left to go to the questionnaire (questions 1 -8) for responses.

Application Processing times

1.1.4 Application processing times for SIELs and OIELs covering electronic transfers are broadly comparable, with SIELs and OIELs covering previously

² All statistics quoted throughout this paper relate to the period 01/11/03 to 31/12/06. For full details see the Annex.

controlled activities. Exporters are thus not receiving a slower service if their applications cover electronic transfers. Figures show that the percentages of OIEL applications processed within their target time of 60% within 60 working days increased from 64% in 2004 to 74% in 2006, and those for SIEL applications (where the target is to process 70% within 20 working days) increased from 79% in 2004 to 82% in 2006. This demonstrates both that applications under the new controls have been processed within targets, and that the need to administer this additional control has not had an adverse affect on overall performance.

Other impacts

1.1.5 The introduction of this control has had the effect of throwing the spotlight on the export of technology generally. Transfers of technology by physical means were of course controlled before 2004, but following the extension to electronic transfers, more detailed questions were asked about the nature and definition of technology. This increased emphasis on the definition issue was a side effect of the introduction of new controls.

1.1.6 We see this as a positive development, indicating increased awareness of the existing controls, as well as of the new ones. Feedback and compliance visits indicate that exporters have introduced robust procedures and improvements to their internal control and compliance systems to cope with the controls on electronic transfers. In some cases, exporters have found that the internal control systems they already had in place for commercial reasons, for example in relation to the protection of intellectual property and commercially sensitive information, could be used or adapted for export control compliance purposes. Some companies have found that beneficial side effects have resulted, in that they have reduced the chance of accidental transfers that might have adverse business impact. However, this control operates in a fast developing business area and so is likely to continue to pose some challenges for both exporters and administrators. This highlights the need to maintain our awareness, guidance and compliance effort. Plans are already underway to enable the ECO to allocate more resources to the compliance and awareness areas.

Questions for readers: 2004 controls on electronic transfers of technology for military goods (other business impacts)

Has your business been affected by the introduction of controls on the electronic transfer of technology for military goods? **Section 3** includes further questions which have been designed to measure the broader business impact of this measure (ie not specifically cost-related) and seek your views on awareness issues. Please use the bookmark on the left to go direct to the questionnaire (questions 9 -12) for responses.

Effectiveness

1.1.7 We have to date refused 31 licence applications under the new controls on electronic transfers, for proposed transfers which we could not previously have stopped. It may also be the case (though this is impossible to establish in retrospect), that this extension of the controls prevented exporters who had been refused licences for transfers by traditional means from circumventing that decision by transferring the

same technology electronically. We therefore conclude that this control has had an impact in preventing undesirable transfers, and has enhanced the effectiveness of controls on the export of technology for military goods.

1.1.8 Although we do not specifically seek to identify export control breaches that have used electronic as opposed to physical means, we nevertheless remain unaware of any specific instances in which technology for military goods has ended up in undesirable hands overseas as a result of being transmitted electronically.

Questions for readers: 2004 controls on electronic transfers of technology for military goods (effectiveness)

Section 3 contains questions to seek your views about the effectiveness of this new control. The questions are available for all readers to respond to. Please use the bookmark on the left to go direct to the questionnaire (question 13) to respond.

2. TRADE CONTROLS

1.1.9 The Trade in Controlled Goods (Control) Order 2003 makes it an offence to;

- ❑ arrange the transfer of controlled goods³ from one third country to another third country, or acquire or dispose, or agree to acquire or dispose, of any controlled goods, where that person knows or has reason to believe that such an acquisition or disposal will or may result in the removal of those goods from one third country to another third country;
- ❑ arrange or negotiate, or agree to arrange or negotiate, a contract for the acquisition or disposal of any controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country in return for a fee, commission or other consideration;
- ❑ do any act; or agree to do any act calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

1.2.0 These controls apply to any activities in the UK and specifically exclude transportation, financial, insurance/reinsurance and advertising and promotional services.

1.2.1 Additional controls on “Restricted Goods” (currently long range missiles and torture equipment) state that no person in the UK or UK person worldwide shall directly or indirectly supply or deliver; agree to supply or deliver; or do any act calculated to promote the supply or delivery, of any restricted goods, where that

³ “Controlled Goods”, for the purposes of this report only, means goods classified under ML (other than ML21 and ML22), PL5000 or PL800 to the Order. This covers goods on the Military List plus others related to non-military explosives or devices.

person knows or has reason to believe that his action or actions will, or may, result in the removal of those goods from one third country to another third country. There are no exemptions to the controls on these goods.

1.2.2 The Trade in Controlled Goods (Embargoed Destinations) Control Order 2004 states that no United Kingdom person shall directly or indirectly supply or deliver; agree to supply or deliver; or do any act calculated to promote the supply or delivery of, any controlled goods to any person or place in an embargoed destination as listed in the Order. These controls also apply to destinations covered by UN Sanctions namely Iraq, Sierra Leone, Somalia, Burma and Liberia

Original intention	
i.	To prevent the supply of goods banned from export from the UK because of evidence of use in torture
ii.	To restrict transfers of long range missiles in line with UK's commitment under the Missile Technology Control Regime
iii.	To control UK involvement in trading in military items overseas
iv.	To prevent UK involvement in trading in arms to embargoed destinations

Business Impact

Volume

1.2.3 As with the new controls on electronic transfers, the number of individual applications received over the first three years of implementation (539) is significantly lower than the industry estimates that informed the Regulatory Impact Assessment (900-1500 per annum), and more in line with ECO's internal estimates which were generated prior to public consultation. This is partly because new Open General Licences (covering, for example, trade controls on transfers from and to most OECD countries) cover many of the non-sensitive trading activities. In addition, some UK traders may, for administrative reasons, have decided to route everything through their UK offices so that an export control licence, rather than a trade control licence is required.

Questions for readers: Trade controls on activity within the UK – business costs

Has your business been affected by the introduction of controls on trading in "Controlled Goods" when carried out within the UK? **Section 3** includes a range of questions which have been designed to measure the business impact of this measure. Please use the bookmark on the left to go direct to the questionnaire (questions 14 – 21) to respond.

Questions for readers: Trade controls on UK persons and companies outside the UK – business impact (NB: applies only trading in "Restricted Goods" or "Controlled Goods" to embargoed destinations).

Has your business been affected by the introduction of trade controls on "Restricted Goods" or "Controlled Goods" to embargoed destinations when carried out by UK

persons and companies outside the UK? **Section 3** includes a range of questions which have been designed to measure the business impact of this measure. Please use the bookmark on the left to go direct to the questionnaire (questions 22 – 26) to respond.

Application Processing times

1.2.4 The Government's target is to process 70% of Standard Individual Trade Control Licences (SITCLs) within 20 working days. Performance, at 53% in 2006, fell short of this target. Principally, this is because the Open General Trade Control Licence (OGTCL) and Open Individual Trade Control Licences (OITCLs) together cover most of the less sensitive transactions. This means that traders will only need to apply for SITCLs to cover transactions that are by nature more sensitive cases, and these applications will therefore take longer to process.

Effectiveness

1.2.5 24 applications have been refused. Refusals included trading in relation to portable electric shock devices, small arms and ammunition (all on grounds of a risk of diversion), and proposed activity in relation to embargoed destinations. Since the trade controls cover entirely new areas, any refusal represents the prevention of an activity that, pre-2004, would have been impossible to stop. We investigate all possible breaches of the controls and the new controls have given us the ability to warn or prosecute those found to be in breach.

1.2.6 Some specific operational issues have arisen. The first surrounds the control on "any act calculated" to promote the supply or delivery of "Restricted Goods" or supplies of "Controlled Goods" to embargoed destinations. This control brings a range of activities, including the acceptance by periodicals of advertising material related to long-range missiles, and trade fair related activity, within the controls.

1.2.7 In relation to trade fairs, both the entity hosting the trade fair, and the exhibitors themselves, may need to apply for licences. Many exhibitors may be overseas based and so not familiar with UK export controls. Overseas entities leave the UK after the event and so it is difficult to check that they have complied with the terms of any licence issued in the UK. The ECO has systematically sent out mail-shots to industry, both in the UK and overseas, advising them of the impact of the controls before trade fairs, to warn companies that they may need licences e.g. to advertise goods and to give them enough time to apply for them. The ECO, in conjunction with event organisers and other government departments, has also worked to ensure that stands where unlicensed activity is taking place have been withdrawn from exhibitions. However, trade fairs remain an area that, will, by nature, continue to generate administrative challenges.

1.2.8 The second is the application of the trade controls to UK persons operating overseas. Only three UK persons overseas have applied for individual licences, leading to the issue of 3 SITCLs and 1 OITCL to UK persons operating in Jordan or UAE. There have been no refusals relating to extra-territorial activity (although there has been at least one documented instance in which a UK person overseas decided to

cease trading activity when confronted by the need to apply for a trade control licence).

1.2.9 This may suggest a number of things: the activity may not be happening to any significant degree; as noted above, UK exporters may have decided to arrange their business so that all items are exported from the UK for administrative reasons, thus no “trading” takes place; or, in the worst case, UK persons overseas may be unaware that they are affected by these controls, or if they are aware, judge that there is no realistic prospect of the UK Government taking enforcement action against them and therefore decide to disregard them.

Questions for readers: Trade controls on activity within the UK - effectiveness
Section 3 seeks views on the effectiveness of the trade controls on trading and related activities taking place within the UK. These questions are available for all readers to respond to. Please use the bookmark on the left to go direct to the questionnaire (questions 27) to respond.

Questions for readers: Trade fairs and other promotional activities – effectiveness

Section 3 contains a number of questions specifically on the subject of trade fairs and other promotional activities. These questions are directed both at those exhibiting at trade fairs and other readers. They are designed to obtain views and evidence on the effectiveness of the controls on trade fairs and similar promotional events. Please use the bookmark on the left to go direct to the questionnaire (questions 28 – 30) to respond.

Questions for readers: Trade controls on UK persons outside the UK – effectiveness (NB: applies only to trading in “Restricted Goods” or “Controlled Goods” to embargoed destinations).

Section 3 contains questions to seek your views about the effectiveness of this new control. These questions are available for all readers to respond to. Please use the bookmark on the left to go direct to the questionnaire (questions 31 - 32) to respond.

3. CONTROLS ON THE TRANSFER OF TECHNOLOGY AND PROVISION OF TECHNICAL ASSISTANCE FOR “RELEVANT USE” IN RELATION TO WMD

1.3.0 The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 enhanced the existing controls on the transfer of technology for WMD, by making it unlawful (for anyone in the UK or any UK person or legal entity anywhere in the world) to provide, or facilitate the provision of, technical assistance related to a relevant use⁴ in WMD, to a destination outside the

⁴ Under the Order, "any relevant use" means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;

EC, without first obtaining a licence. These controls apply where the supplier of the technical assistance or technology is aware, or has been informed by the Government, that it is intended for any relevant use in connection with WMD (in contrast with the pre-existing end use control relating to the export of goods and technology for WMD purposes, under these new controls there is no requirement to apply on the basis of “suspicion” of WMD use, although we do advise that all reasonable enquiries are made should there be any suspicions). Technology transfers within the EC, and even within the UK, are now controlled where the supplier knows at the time of transfer that the technology will be transferred outside the EC for a relevant use

Original intention

To contribute to non-proliferation, national and international security through effective controls on the transfer of technology and the provision of technical assistance in connection with a WMD programme.
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Business Impact

Volume

1.3.1 Only 32 applications have been made under the new WMD controls. This is consistent with our expectation that this would be a low volume, specialist area of the controls. Licences have been issued almost exclusively for radiation detection systems (which will always, by definition, fall within the definition of “relevant use” – see below), although there has been at least one for transferring technical data relating to a long- range missile to a country not of WMD concern.

Application Processing times

1.3.2 Application processing performance for WMD related OIELs and SIELs is above average (100% of SIELs completed within 20 working days and 96.4% of OIELs). The reason for this is that the applications that have been received have been straightforward as they are from established, knowledgeable companies with customers in lower risk destinations.

Other impacts: Chemical, Biological, Radiological or Nuclear (CBRN) equipment

1.3.3 By its nature, CBRN protective equipment may often be for a “relevant use”⁵ as defined in the Order. This is because whilst protection itself is not a relevant use, protective equipment is caught if it is, or may be intended for use in connection with another relevant use, such as handling or maintenance. Companies supplying equipment in these circumstances are therefore caught by these controls if they transfer technology which they know is intended for use outside the EU or provide

⁵ Under the Order, "any relevant use" means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;

related technical assistance. As a result of more recent discussions with industry, we have established that the key business need is to be able to supply CBRN equipment for detection and identification purposes only, and so have agreed to extend OGEL coverage further to allow exports for these purposes, in certain circumstances. This will give the CBRN industry greater flexibility and the ability to respond more quickly whilst not compromising counter-proliferation objectives.

Questions for readers: Business impact of new WMD controls

Has your business been affected by the introduction of new controls on the provision of technical assistance or transfer of technology in connection with WMD purposes?

Section 3 includes a range of questions which have been designed to measure the business impact of this measure. Please use the bookmark on the left to go direct to the questionnaire (questions 33 – 39) to respond.

Other impacts: academia

1.3.4 The new controls on technical assistance and technology transfer apply to activities within the UK and thus catch the transfer of information, for example from researcher to student, in the academic environment. But where the transfer takes place within the UK, they apply only where the person transferring the information knows that the recipient intends to use it in connection with a WMD programme outside the EU, and in addition, only when the information provided is not already in the public domain. This was always expected to be a highly specialised area generating little licensing activity – as has proved to be the case.

1.3.5 In the period leading up to the introduction of these controls, the academic community expressed serious concerns about their potential impact on their activities. The minimal impact of this control in practical terms suggests that these concerns have not been borne out. However, the effectiveness of this element of the controls will need continued monitoring. We are already in touch with the academic community on awareness within this sector, and will continue to work closely with them.

Questions for readers: Business impact of new WMD controls – for those involved in academic activity:

Section 3 contains questions designed to specifically measure the business impact upon those engaged in academic activity, of the introduction of new controls on the provision of technical assistance or transfer of technology for WMD purposes. Please use the bookmark on the left to go direct to the questionnaire (question 40 - 41) to respond.

Effectiveness

1.3.6 Two case examples illustrate the practical effect of these new controls, which is to extend the breadth of action we can take on WMD cases. In the first case, two licences had been issued, the first to export machinery to a destination of WMD concern (but to a bona fide end user within that country), the second to provide training in the UK to staff of that end user to enable them to operate it. Subsequent to

issue, the licences were both revoked following the receipt of new information that led us to believe that there was a risk that the machinery would be diverted to a WMD programme. The new controls enabled us to prevent the transfer of technology via training within the UK, in addition to our existing power to preventing the export of the machinery.

1.3.7 In the second case, following risk assessment of the application by ECO which did not reveal any concerns about the declared site or end user, non-licensable scientific equipment was exported to a destination with a WMD programme of concern. When the machinery reached its destination, the UK exporter was asked to install it at an address different to that supplied at the time of application. Because this new address gave rise to concerns, we advised the exporter to apply for a licence, under the new controls, for the provision of technical assistance in installing it; and that it was highly likely that this application would be refused. At that point, the exporter decided not to proceed with installing the machine.

1.3.8 There have been no extra-territorial applications relating to these new controls.

Questions for readers: Effectiveness of new WMD controls

Section 3 contains questions to seek your views about the effectiveness of these new WMD controls. These questions are available for all readers to respond to. Please use the bookmark on the left to go direct to the questionnaire (questions 42 – 44) to respond.

AREAS NOT SPECIFICALLY COVERED ABOVE

1.3.9 The questions in the boxes above are intended to address the major issues and concerns which we are aware have arisen from the new controls. However, if you feel that there are matters concerning the business impact or effectiveness of the 2004 controls that these questions do not address, and would like to provide comments and evidence, then a special box at Section 3 enables you to provide us with this information. This link below takes you to that box.

Please use the bookmark on the left for Section 3, Page 64, “Areas not specifically covered in Section 1”.

SECTION 2: POSSIBLE CHANGE OPTIONS

The case for change

1. The legislation introduced in 2004 represented a radical strengthening of export controls. But export controls are by their nature, always applied to a moving target. The 2004 changes reflected the need to update them to address changing business practices, and to ensure that recent business developments did not provide routes for unscrupulous exporters or traders to put controlled goods or technology into the hands of undesirable end users. It may never be possible to achieve a “perfect” export control system that guarantees no UK involvement in undesirable activities. But, there would be a strong case for further change if we were to identify gaps in the existing controls that risked either undermining the Government’s counter proliferation aims, undermining the Government’s support for international human rights, or allowing UK technology or equipment to be diverted for use by terrorists. We would also need to conclude that there was scope for effective action and that the proposed action was proportionate to the risk. This is the common theme to all the specific proposals explored in Section 2.

The options

2. The following section is forward-looking, and sets out and explains potential change options that have emerged from the Government’s own analysis and stakeholder input into preparations for the Review. Each of the modules below addresses a specific change issue. The modules provide a brief overview of how the controls currently work, set out possible options for change, and ask for evidence-based views on the effectiveness and business impact of each of these options.

3. **Links to the specific questions on change options in Section 3 are provided throughout Section 2.** *These can be accessed by using the bookmarks on the left.*

4. The relevant legislation is also highlighted where appropriate, and links to the relevant part of the legislation included; readers can therefore click on the legislation box to access the extract directly.

5. Although this section covers a wide range of change options, it is not comprehensive, and is not intended to pre-empt the outcome of the consultation. So at the end of Section 2, we have included a section titled “Change options not specifically identified above”, to give readers the opportunity to put forward, and justify, any other change proposals that we have not covered. Section 3 provides a box for readers to complete to register their proposal and provide supporting arguments and evidence.

2.1 “Restricted Goods” and Trade Controls

How the controls currently work

2.1.1 Current controls in this area follow a two tiered structure. Controls apply to the export or transfer of any “Controlled Goods” and to trading of in those goods when carried out from the UK. Additional controls apply in relation to a very limited range of goods - known as “Restricted Goods” - comprising torture equipment, long range missiles (which includes Unmanned Air Vehicles) and their components where specially designed, and “Controlled Goods” to embargoed destinations.

2.1.2 In these cases, the extra acts controlled are:

- Trading activities carried out by UK persons anywhere in the world;
- Any act calculated to promote the supply or delivery of those goods: this includes the provision of ancillary services (defined as transportation services, financing or financial services, insurance or reinsurance services, and general advertising or promotion services).

Legislation

The relevant legislation in this area is contained in the Trade in Goods (Control) Order 2003 and the Trade in Controlled Goods (Embargoed Destinations) Order 2004.

Please use the bookmark on the left to view the detail of this legislation in Annex 5.

Issues

The case for change

2.1.3 In introducing the 2004 legislation, the Government accepted the need for new controls to control UK involvement in the supply of military goods and technology between two countries outside the UK. We also established a principle that the supply of certain goods or technology, or supplies to embargoed destinations were inherently undesirable, and on that basis, controlled the activities of UK persons in supporting or facilitating such supplies not just within the UK but from anywhere in the world.

2.1.4 Similar extra-territorial controls are used by a number of other countries, in particular the US. The case for further change is therefore not so much one of principle as one of degree and practicality. There is also a choice to be made between blanket extra-territorial controls, and extra-territorial controls which are focused on the specific categories of equipment, activities, or destinations which concern us. The latter approach would provide the most efficient means of targeting our resources at undesirable activities, and of enforcing controls effectively, but it raises some searching issues. Can we identify these categories with sufficient precision to focus extended extra-territorial controls? If we can, then how do we ensure that we do not impose unreasonable burdens where there is legitimate supply or activity? And how

do give ourselves a reasonable chance of actually enforcing any new controls? Below we explore whether changes to the structure and coverage of the “Restricted Goods” category might achieve these objectives.

Structure: A new “Middle Category”?

2.1.5 Arguably, the “acts calculated” provision applying to “Restricted Goods” controls should be reserved for items for which we would never normally grant a licence. Also, this provision has in practice caught some activities which are arguably not of concern, such as the publication of trade directories. A possible alternative option for equipment which is more sensitive but where there is legitimate trade would be the introduction of a third category between “Restricted Goods” and “Controlled Goods”: a “Partially Restricted Goods” category. Under this category, the core activity of trading in these goods would still be controlled if carried out by a UK person anywhere in the world, as would other acts calculated to support that trading, including transportation, financing/financial services, and insurance or re-insurance; but the more peripheral acts, such as the promotion or advertising of these goods at trade fairs or in periodicals would not be controlled (although clearly, any specific sales achieved by these methods would be).

Coverage: Should we reduce the “Restricted Goods” category?

2.1.6 It is right that the most rigorous controls should apply to equipment the supply of which is inherently undesirable. But whilst this is true of torture equipment and supplies to embargoed destinations, the case is less strong for long range missiles. Missiles with a range of over 300km and carrying a payload in excess of 500kg are classified as Category 1 under the Missile Technology Control Regime (MTCR) and are thus subject, in accordance with MTCR obligations to a “presumption of denial” (because this is the internationally agreed threshold of WMD concern). But whilst this is in effect, a message to the international community that applications to export them must be looked at very seriously, it does not preclude their supply and says nothing about trade controls. Long range missiles are a legitimate defence weapon for the UK and many other nations and so there are many occasions when licences will be granted. There is no evidence that they have been the subject of trading activities. An added complication is that Unmanned Air Vehicles are in effect classified as long range missiles, because their range is variable and so use beyond 300km is often feasible. These will often carry no warhead at all and yet are still subject to the most rigorous level of control. This difficulty is recognised and currently under discussion in the MTCR.

Coverage: should we extend controls on some categories of equipment?

2.1.7 Certain types of military equipment are widely viewed as being of greater concern than others. These are set out below:

Small Arms and Light Weapons (SALW)

2.1.8 For some time, there has been wide concern about the illicit manufacture and trade of SALW – the “grey arms” market. Despite existing controls in the UK and elsewhere, SALW still find their way to conflict zones, particularly in the developing

world. Being relatively low cost and readily transportable, they lend themselves to trading activity. SALW have been referred to as the ‘new weapons of mass destruction’.

2.1.9 These concerns have been reflected on the international stage. Many agreements and guidelines have been brought about as concern continues to grow; for example, the United Nations (UN) Programme of Action on SALW, the UN Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition; and the adoption of the EU Common Position on the control of arms brokering and the Wassenaar Arrangement (WA) best practice guidelines for exports of SALW. In addition, the need to curb the proliferation of SALW is a key driver in the push for an International Arms Trade Treaty, on which negotiations are now underway.

2.1.10 SALW are not currently in the “Restricted Goods” category. As such, UK trade controls on SALW currently always apply where the activity takes place within the UK, but apply to activities in the UK and carried out by UK nationals overseas only where the intended supply is to an embargoed destination. The demand for more stringent controls to be in place on SALW, namely to trading by UK persons operating anywhere in the world, has come from a number of quarters. This could be achieved by moving SALW into the “Restricted Goods” or a new “Partially Restricted Goods” category.

MANPADs

2.1.11 The Wassenaar Arrangement recognises that MANPADs are of special concern because of their potential use in terrorism. Thus, the UK adheres to the Wassenaar guidelines/standards on the export of MANPADs to non-state actors. This special treatment could be reinforced by adding MANPADs to the “Restricted Goods” or a new “Partially Restricted Goods” category. However, this would raise the issue of whether MANPADs are sufficiently undesirable in all circumstances to be included in one of these categories, or whether this should only apply to MANPADs for use by non-state actors, in order to address the threat of terrorist use. We would also need to carefully consider the extent to which components and other associated technology and support equipment should be made subject to these more stringent controls.

Dumb Cluster Munitions⁶

2.1.12 The Government recognises the concerns that have been raised about the humanitarian impact of dumb cluster munitions and is committed to improving the reliability of all munitions, including cluster munitions, with the aim of achieving lower failure rates and leaving less Unexploded Ordnance (UXO). In March 2007, the Ministry of Defence announced that all dumb cluster munitions would be withdrawn from use by the UK MoD with immediate effect.

2.1.13 There is also increasing international concern about these munitions. The Government of Norway convened an international meeting in Oslo in February 2007,

⁶ “Dumb” cluster munitions are those that have numerous sub munitions, each of which has an explosive content, but which either do not have a target discrimination capability or do not have a self-destruct, self-neutralisation or self-deactivation capability.

to discuss how to effectively address the humanitarian problems caused by cluster munitions. The UK Government attended this conference and supports the Oslo Declaration, which commits us to seeking by 2008, a legally binding international instrument that will “prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians”.

2.1.14 At present, dumb cluster munitions are treated in the same way as any other military goods for export licensing purposes; no special measures apply. For logistical reasons, they may not be as attractive to terrorists as MANPADs or SALW, but nevertheless, in light of the commitments entered into above, there is an argument for applying more stringent controls and moving them into the “Restricted Goods” or a new “Partially Restricted Goods” category. If we were to do so, the treatment of components would again require careful attention.

2.1.15 If any or all of the possible changes set out above were made, there is an argument that the “Restricted Goods” category should only cover items for which the Government would never normally grant a licence (eg goods to an embargoed destination), with the new “Partially Restricted Goods” category covering items of particular concern, and all other Military List goods remaining in the “Controlled Goods” category.

Specific issues to consider

2.1.16 Where trading in specified types of goods is accepted as a matter of particular concern, extension of the “Restricted Goods” – or creation of the new “Partially Restricted Goods” category to cover such goods would certainly give the government a firm legal basis on which to act on activities taking place wholly outside the UK, and the potential to prosecute wrongdoing. However, such extensions would produce a range of serious challenges, including:

- *Increased administrative and business caseload:* We would be extending extra-territorial controls into areas where, unlike for example, torture equipment, trading is not always undesirable. There would be an increased burden on the Government's licence processing system, though we do not yet know the scale of the increase. It also would generate additional burdens on industry.
- *Awareness:* As with any extra-territorial control, raising awareness outside the UK about the regulations would be of prime importance. The Government would need to ensure that UK persons overseas, some of whom may retain only tenuous links with the UK, were aware that their trading activities were controlled. This would present a number of practical difficulties.
- *Defining coverage:* Agreeing clear definitions of what items and activities are covered, to achieve the desired result, would be a big challenge. For example, some components might have a general purpose but might also be used in equipment of concern. It might therefore be difficult to focus controls on components appropriately.

- *Enforcement:* Extra-territorial controls are by nature very difficult to enforce. Obtaining evidence for prosecutions from the destination in which activities take place – and which may take place quite legally in that destination - can be problematic, and unless the UK had an extradition treaty with that destination a prosecution would depend on the offender returning to the UK. There is also potential for a clash of jurisdictions with potential adverse impact on international relations and future co-operation in other enforcement areas. As a consequence, there is a risk that the Government would be able to bring few successful prosecutions against suspected offenders.

2.1.17 These difficulties would be most relevant to SALW. In particular, there could be a real risk of administrative overload because there is a legitimate global market in SALW and many transactions do not give rise to concerns in terms of conflict or human rights abuses. There would need to be an agreed definition of SALW in the context of the Military List, and it is likely that some weapons, eg sporting weapons, might be difficult to categorise. One possible approach would be to designate certain SALW as being sufficiently undesirable to warrant full extraterritorial controls; and/or to limit the extraterritorial controls to destinations of concern in terms of conflict and human rights.

2.1.18 A more radical option would be to place any Military List goods or technology in the new “Partially Restricted Goods” category, thus controlling trading in all these items by UK persons operating throughout the world. However, there must be a question mark over whether this would be a proportionate response to the risk. In taking this step we would bring in very stringent trade controls on a whole range of equipment, and to many destinations which are of no concern to the UK, thus risking adding significant administrative and business burdens in order to licence activity which is of no real concern.

Questions for readers: “Restricted Goods” and Trade Controls

Section 3 contains a wide range of questions on the subject of “Restricted Goods” and Trade Controls. These questions:

- Invite readers to express their views, with supporting arguments and evidence, on whether particular categories of equipment should be subject to a higher degree of control than currently, (ie from “Controlled Goods” to “Restricted Goods” or “Partially Restricted Goods”), or to a lesser degree of control (ie from “Restricted Goods” to “Partially Restricted Goods” or “Controlled Goods”)
- Invite business respondents to express their views, with supporting arguments and evidence, on how their business would be affected if extra controls were applied to a range of goods (with specific reference to Small Arms and Light Weapons, MANPADs, and dumb cluster munitions)

Please use the bookmark on the left to go direct to the questionnaire (questions 45 – 77) to respond.

2.2 Ancillary Services

How the controls currently work

2.2.1 Where trading is in “Restricted Goods” or involves the supply of “Controlled Goods” to an embargoed destination, the following ancillary services are controlled:

- Transportation
- Financing or financial services
- Insurance or re-insurance
- General advertising and promotion services

2.2.2 For all other trading, the legislation specifically exempts those services from control. In this way, the current legislation aims to focus the most stringent controls on transactions of the highest concern, while only controlling the activities that make a significant and direct contribution to trading in relation to other transactions.

Legislation

Article 4 of the Trade in Goods (Control) Order 2003 (paras (1) to (5)) sets out the provisions relating to the transfer, acquisition or disposal of controlled goods, which exclude the provision of ancillary services.

Article 3 of the same Order, and Article 3 of the Trade in Controlled Goods (Embargoed Destinations) Order 2004, set out the contrasting provisions which do apply to the provision of ancillary services in these limited situations.

Please use the bookmark on the left to go to the text of the relevant legislation in Annex 5.

Issues

2.2.3 There have been some calls for additional controls on ancillary services. However, these have related to services in relation to goods which are not currently included in the “Restricted Goods” category, for example, Small Arms and Light Weapons. If that category were expanded to cover other goods, such as SALW, then the control on the supply of ancillary services would automatically be extended to transactions involving those goods. In this sense, proposals to extend coverage of ancillary services are in effect about the coverage of the “Restricted Goods” category. Section 2.1 discusses a number of options for altering or expanding the Restricted Goods category and so these are not repeated here.

2.2.4 There is however a proposal on ancillary services which is unrelated to the extension of the “Restricted Goods” classification. This is that those providing transport services to traders should be required to obtain documentary proof that the export to which their transport service relates is properly sanctioned by the relevant licensing authorities. The current legislation states that where transport services are being supplied in respect of movements of “Restricted Goods” or “Controlled Goods” to embargoed destinations, they are controlled where the provider “knows or has

reason to believe that his actions will or may result in the removal of those goods from one third country to another third country”. There is an argument that, where supplies relate to these highly sensitive and risky situations, we should specifically require transport providers to obtain documentary evidence that services they provide to others are to support an appropriately licensed transaction, rather than leaving it to them to judge whether they fall within the control. The following discusses how such a change might be implemented.

Require transport providers to obtain documentary evidence by altering the secondary legislation

2.2.5 The existing secondary legislation could be amended to require transport providers to obtain this. However, this might present the following challenges:

- *It might be difficult for transport providers to obtain documentary evidence.* Where the country in question did not control trading, transport providers would either need to contact a third country exporter with whom they may have had no dealings, or ask the trader to do so on their behalf. This might not be straightforward.
- *Potential competition issues:* If the UK were to act unilaterally, then UK transport providers could be at a competitive disadvantage to some or all of their overseas counterparts.
- *Licence shopping:* imposing this requirement on UK transport providers would not necessarily prevent transactions of concern because traders could simply source transportation services from other countries.

Require transporters to obtain documentary evidence through a licence condition

2.2.6 Although this would avoid the need to amend the legislation, and would therefore be a simpler and quicker option, the end result, and the potential disadvantages for transport providers, could well be the same. In addition, because of the nature of the transactions, conditions could only come into play after the licence was issued, as opposed to being an element of the licensing risk assessment.

No change

2.2.7 At present there is insufficient evidence to enable us to assess the scale of this problem. For example, it is not clear whether, where equipment is brokered between third countries in areas of concern geographically far removed from the UK, it is in fact more common for non-UK transport providers, who would be located closer to the transactions concerned, to be used.

2.2.8 In this context, and bearing in mind the potential challenges presented by both of the above change options, the most effective option might, rather than changing the controls or licence conditions, be simply to provide better guidance, information and, potentially, awareness events for transport providers to enable them to make better

informed judgements. This could also have wider benefits in terms of increased awareness of export and trade controls generally.

Questions for readers: provision of transport services

Section 3 contains a range of questions on the subject of the provision of transport services, for both general readers and transport providers. These questions:

- Invite all readers to express their views and provide evidence indicating whether there is a problem in this area, and if so, its scale
- Ask transport providers to comment and provide evidence on the business impact of changing the controls and introducing new licence conditions as above
- Ask transport providers to comment on ECO guidance and suggest any improvements

Please use the bookmark on the left to go direct to the questionnaire (questions 78 – 82) to respond

2.3 Overseas production of military equipment by UK owned or linked companies/ Licensed Production Overseas

What is meant by Licensed Production Overseas (LPO)?

2.3.1 In the context of this consultation:

- Licensed production overseas is taken to describe the situation where a business based outside the UK produces goods under a licence granted by, or contract or other agreement with a UK company. This could cover a range of production relationships: one example would be an overseas production facility producing artillery from components exported from the UK company. The production facility would then typically sell the artillery on to customers in other destinations. A licensed production facility might be owned or simply linked in some way to the UK company, or might be an entirely separate body which simply purchased components as part of a business relationship.
- An overseas subsidiary is taken to mean an overseas company which is institutionally controlled by a UK parent (for example, the UK parent has a majority shareholding). It may require ongoing support from the UK parent in terms of supplies of controlled goods or technology, or it may be entirely self-standing, employing local staff and using local materials, leaving the UK parent to do no more than share the profits.

How the controls currently work

2.3.2 The current controls are as follows:

- Those exporting from the UK are required to apply for an export licence for the export of all controlled (military or dual use) items. This would include, for example, the export of components, technology, and production equipment for any overseas production facility;
- Transfers of controlled technology (eg blueprints) and software by electronic means (email, fax, telephone) are controlled;
- Licences are required under various sanctions orders for technical assistance for embargoed destinations;
- Licences are required under the new WMD controls for technical assistance for “any relevant use”;
- Trading activities linked to exports from the licensed production facility or overseas subsidiary are also controlled where there is some UK involvement in the movement of the goods.

2.3.3 If in making a licence application, exporters say that the proposed exports (or trade) are for licensed production, including by subsidiary companies or entities, the licence assessment will take account of the specific risks associated with this. The licence assessment will take account of the specific risks associated with this. The current controls therefore apply to many elements of the supply line on which licensed and subsidiary production depends. The current controls however only apply to goods on the Military or Dual Use lists (unless the Military End Use Control applies (see Section 2.4).

The case for change

2.3.4 Like its overseas counterparts, the UK defence industry is no longer autonomous. Defence manufacturing is now a complex, globalised process, with international collaboration firmly to the fore. Components and equipment will often leave the UK to be turned into the final product elsewhere. This mirrors what is happening in many industries, and is happening for perfectly legitimate business reasons; but it inevitably presents additional challenges for export controls. In particular, it would conflict with the Government's counter proliferation aims, and its broader support for international human rights, if UK exporters were able to systematically use overseas linked companies or production facilities to supply destinations or end users where the same supplies would undoubtedly be refused if applications were put before the UK authorities.

2.3.5 There have been some recent examples where equipment or components originating from the UK have been exported to destinations of concern. These have involved goods for which (when they left the UK for further processing overseas) no UK licence was required, but which would have required a licence if exported from the UK in the form in which they subsequently left the overseas production facility. These cases raise difficult questions about what is reasonable and practical in terms of both due diligence and the reach of UK jurisdiction. We consider a number of options for dealing with this sort of scenario below, and in the section on the Military End Use Control. These focus on a) whether the Government should be seeking to exert more control over licensed production and / or subsidiaries of UK companies; and b) where goods with a potential military or repressive use are not normally controlled, whether their end use should also be a consideration in assessing whether a licence is required. Both would require the UK company to take a close interest in the ultimate output of the production facility.

Options

- **Treat overseas production or subsidiaries as if they were UK exporters and oblige them to apply to the UK for licences to export their products from the overseas destination**

2.3.6 In practice this option is not legally viable because it would seek to apply UK controls where there is no UK jurisdiction. As far as we are aware, no other country has sought to apply extra-territorial controls to this extent. Because it would raise the possibility of conflicts of jurisdiction, this option could also have an adverse impact on the UK's relationships with the host countries. In addition, controlling and enforcing controls with this extent of extraterritoriality would be virtually impossible.

- **Control the licensed production agreement itself**

2.3.7 Under this option a UK parent would be required to apply for a licence before entering into a production/licensing agreement with an overseas facility. This approach is already employed by a number of other EU Member States, including Sweden and Germany (the Government is currently researching what lessons we could learn from those models). This might have the benefit of providing the licensing authority with a greater degree of control over the initial establishment of arrangements that might cause concern in the longer term and – unlike current UK controls - would not rely on the UK exporter exporting listed goods or technology. Because the Government’s export control advisers would not necessarily have the expertise to examine a commercial contract, this would probably involve a requirement for the UK exporter to give certain assurances or undertakings in relation to key elements of the contract relating to end use and onward supply.

2.3.8 There are a number of serious challenges which would need to be overcome with this approach;

- A control on production agreements would require a change to primary legislation, because it would not fall within the purposes set out in the Export Control Act for which controls may be introduced. This means that it could only be a long term option because it would need to go through the Parliamentary process
- A new control could not be retrospective. The European Convention on Human Rights prevents us from criminalising conduct that has already taken place (see Article 7). So any new legislation that we introduced could not affect steps taken by the UK parent and its overseas link to establish the overseas facility (for example the granting by the UK parent of intellectual property rights) where those steps were taken before the new legislation came into force. This in turn would lead to inconsistent treatment between businesses with arrangements already in place and those seeking to develop them.
- Because the control would be tied to a specified form of agreement, it might be relatively easy to circumvent, for example by setting up a different type of agreement.
- It would be difficult for the Government to risk-assess applications for licences prior to production rights being granted. Unless the decision was clear-cut (i.e. the application involved a facility in a country subject to a binding arms embargo or a known proliferation or diversionary risk) then information would be needed on the potential markets for the equipment produced overseas, which might well not be known at that time.

- **Make export licences for supplies to licensed production facilities or subsidiaries subject to conditions relating to the relevant commercial contracts**

2.3.9 Export licences are often subject to conditions, for example stipulating transportation routes, or confidentiality arrangements. Under this approach, any UK export licence could include a condition requiring the commercial contract underpinning the production agreement to satisfy certain conditions. These might, for example, state that the contract must require the licensed production facility or subsidiary to seek permission from the UK company before making any onward supplies, or onward supplies to specified high risk destinations. The UK company would then be obliged to seek approval, in the form of a Standard Individual Export Licence (SIEL), to supply the listed goods or technology that the LPO or subsidiary would need to fulfil those orders. Any changes to a contract would also require the UK exporter to submit a new application.

2.3.10 Because of the link between the export licence and the commercial contract, the UK exporter would need both to assure itself of the bona fides of the overseas operation before entering into the agreement, and to ensure that it had measures in place to control the activities of the overseas operation once it was set up. Any breach of the licence conditions by the UK exporter would (as now) be a criminal offence, and its other existing licences could be revoked. Breaches would also be taken into account in assessing any future export licence applications it made, including the assessment of the risk of diversion. A breach caused by the actions of the overseas operation could also have direct consequences for that operation if it led the UK exporter to discontinue its business with it (the overseas operation might however be able to set up alternative sources of supply, but this would depend on the products being produced, and whether they carried the UK company's badge). Thus, there would be incentives for both parties to comply.

2.3.11 Again there would be challenges to overcome:

- This approach could only apply to listed goods or technology. It would not therefore cover the types of situation which have arisen in this area (but see also Section 2.4, which explores whether the Military End Use Control could be extended to cover non-controlled items).
- Unilateral changes to UK controls in this area might put UK business at a disadvantage to its international competitors, and lead overseas facilities to avoid dealing with UK companies (which would lessen the amount of control we currently have).
- Notwithstanding the incentives to compliance mentioned above, any direct enforcement consequences could only fall upon the UK exporter, which might not have had any direct involvement in the breach. Getting sufficient evidence from overseas to support any criminal prosecution in the UK would be difficult.

2.3.12 In the case of both of the above approaches, it would be important to define what forms of overseas production were controlled in order to manage the administrative and business burden. Like many other industries today, the defence industry operates on a globalised basis and offshore outsourcing of routine functions which would not be of concern e.g. software development and design work, is commonplace.

- **No Change**

2.3.13 It could be argued that the current controls are easy to understand and operate, and there are no grey areas in terms of what is or is not controlled. In the case of the first option above, it is unclear what value requiring a licence for the production agreement, would add to the current controls.

2.3.14 It is also important to bear in mind that other initiatives are being pursued internationally to help other governments to strengthen their export controls, for example the current negotiations on the Arms Trade Treaty and the ongoing international outreach work being undertaken by the UK. In time, these broader initiatives may allow us to rely on export control systems overseas to ensure that goods or components originating from the UK will not be re-exported to destinations or end users that the UK would find unacceptable. But until that time, the no change option suffers from the weaknesses that apply to all of the approaches outlined above, in that it leaves controls applying only to exports of listed goods or technology and relies upon the production facility or overseas subsidiary requiring continuous support from the UK exporter. If either is self-sufficient this option, like all of the others, does not work.

A possible approach which would catch non-controlled exports is enhanced use of the Military End Use Control. This is discussed in greater detail at Section 2.4

Questions for readers: Overseas production of military equipment by UK owned or linked companies

Section 3 contains a range of questions for both general readers and business respondents. These questions:

- ❑ Invite readers to provide evidence on the scale of the problem
- ❑ Ask for views and evidence on the issue of whether controls need strengthening
- ❑ Ask for views on which change option would be the most effective way of strengthening controls
- ❑ Asks business respondents to identify, and provide evidence on, the business impact of the change options

Please use the bookmark on the left to go direct to the questionnaire (questions 83 – 87) to respond

2.4 The Military End Use Control

How the control currently works:

2.4.1 The Military End Use Control (MEUC) currently applies only where the UK exporter has been informed by the UK authorities, that the proposed exports are or may be intended for:

- incorporation in a third country into military list equipment;
- for the development, production or maintenance of such equipment; or
- for use in a plant for production of such equipment

in an **embargoed destination**.

Or:

- incorporated into a piece of larger Military List equipment that has been exported without a valid export licence to any destination.

2.4.2 If the exporter is aware that the proposed export is or may be intended for any of the uses described above, they must inform the ECO, which will decide whether they must apply for a licence and inform them accordingly.

Legislation

The relevant legislation in this area is contained in the EC Dual Use Regulation 1334/2000, Article 4.

Please use the bookmark on the left to view the detail of this legislation in Annex 5.

Issues arising

2.4.3 Thus, the Military End Use Control **does not control complete items** that, whilst not strategically controlled, could nevertheless be of significant use to the military in an embargoed destination (for example complete vehicles not specifically designed for military use), or indeed in other destinations of concern. It was originally introduced to assist the implementation of embargoes, and so it is currently limited to items ultimately destined for embargoed destinations. It does not control exports to non-embargoed destinations, even though some of these may be of concern.

2.4.4 It should be noted that the Military End Use Control is an area of EU competence. The scope for unilateral UK changes is therefore limited, and it would anyway be preferable to negotiate changes at EU level to ensure all Member States were applying the same standard of control, and to avoid the risk of exporters exploiting differences in approach by exporting through Member States with less stringent controls.

2.4.5 The options for the Military End Use Control are explored below:

Extend the control to cover specifically listed items of complete equipment that might be of significant operational value to the military in an embargoed

destination (*nb under this option, the control would still apply only where the exporter has been informed that a licence is required*).

2.4.6 To attempt to control any item, however small and low value, which might conceivably be used by the military in an embargoed destination, would be virtually impossible in operational terms – exporters of any non-controlled goods to those destinations would need to apply to the ECO for advice on whether licences were required, and the processing system would not be able to cope with this level of demand. However, it might be possible to identify a limited range of equipment that could be of significant use to the military. Non-military specification heavy vehicles are the most often quoted example, and it might also be possible to identify a limited range of high technology equipment that could be easily defined and had clear potential to be used as a substitute for military designed equivalents. Views are invited on these suggestions, or on suggestions for other types of equipment that might fall within this definition.

2.4.7 Implementing this option would generate a range of issues and challenges, namely:

- How to determine what is “significant”?
- How to arrive at clear and unambiguous definitions for the individual “significant” items so as to avoid confusion over what did and did not require a licence?
- The current MEUC applies to components, development, production and maintenance equipment for Military List goods. If it were extended to “significant” complete non-military items, should it also be applied to the components of those items?
- Any list-based control on **complete** items (as opposed to components) would not apply to other types of (i.e. non-listed) complete equipment even if the exporter, or the Government, were aware these were for military use in an embargoed destination.

Extend country coverage beyond embargoed destinations

2.4.8 There are a number of countries that, whilst not subject to embargo, and thus not within the coverage of the current Military End Use Control, do have significant internal repression and regional conflict issues. This could be addressed by extending the coverage of the MEUC to a wider set of destinations. Agreeing which countries to include will present a challenge and any country list will need to be kept under constant review. However, views are invited on whether such countries should be added to the coverage of the MEUC.

- Please note that, unless combined with option 1, extending the destination coverage of the MEUC would still only control exports of components, and development, production and maintenance equipment. It would not control complete items. This could be addressed by the further option below.

Extend coverage to both non-controlled components (as now) and specifically listed items of complete equipment that might be of significant value to the military in an embargoed destination or other agreed destination of concern

And a final option

Extend coverage to include both non-controlled components (as now) and any significant non-controlled complete item where the exporter knew, or had been informed by the Government, that the item was for use by the military in an embargoed destination or other destination of concern

2.4.9 This would move away from a list-based approach to an end-use approach. This would be a very challenging option, in the following respects:

- ❑ Because it is potentially a very far-reaching option, it could risk overburdening both the licensing system and business. A very wide range of goods could be caught by the control. As such, there is a question over whether it would be proportionate to the risk we are trying to address.
- ❑ The wide-ranging nature of this option increases the risk of there being a conflict with EC law, which only allows interference with trade in very limited circumstances and demands that that interference is “proportionate”.
- ❑ It would introduce uncertainty for exporters as to whether any non-controlled item supplied to the military in any of these destinations was significant and thereby controlled.

2.4.10 We understand the German authorities operate a system on these lines, and are exploring this further.

No change

2.4.11 It could be argued that the current control is a proportionate response to the risk. It enables us to control the most potentially harmful transactions whilst not imposing disproportionate business or administrative burdens.

Questions for readers: Military End Use Control

Section 3 contains a range of questions on the subject of the Military End Use Control, for both general readers and business respondents. These questions:

- ❑ Invite readers to provide evidence on the scale of the problem
- ❑ Ask for views and evidence on the issue of whether controls need strengthening
- ❑ Ask for views on which change option would be the most effective way of strengthening controls
- ❑ Asks business respondents to identify, and provide evidence on, the business impact of the change options

Please use the bookmark on the left to go direct to the questionnaire (questions 88 -94) to respond

2.5 A pre-licensing registration system for UK based arms traders

How the controls currently work:

2.5.1 The current controls are transaction-based. Traders require licences for specifically controlled activities, but do not need to be registered with the Government in order to be eligible to make an application. The EU Common Position on the control of trading, which was adopted in June 2003 states that Member States may establish a register of arms traders, but points out that registration or authorisation to act as a trader would in any case not replace the requirement to obtain the necessary licence or written authorisation for each transaction.

2.5.2 Some have suggested introducing a pre-licensing registration system whereby traders would need to be registered with the Government before applying for any trade licences. This is on the basis that it would give the Government a time window, before any licence applications are submitted, in which to vet potential traders to see whether they are eligible to apply for a trade licence. This time could also be used to inform traders more about the relevant controls, perhaps linked to a test of basic awareness and understanding. It has also been argued that the ability to strike a trader off the register (and thus prevent them applying for licences) would be a useful additional tool in the Government's enforcement armoury.

2.5.3 A secondary question is whether any information on traders gathered at the pre-licensing registration stage should be published.

Issues

2.5.4 Introducing a pre-licensing registration system could be achieved via secondary legislation. However, a register would be an authorisation scheme under the EU Services Directive (2006/123/EC). Article 9 of this Directive would require the UK to demonstrate an overriding public interest in creating a register in order to be able lawfully to do so. Such an interest might be difficult to demonstrate because the Government already has this information (from licence applications) therefore, creating a register would not add anything to the current licensing system.

2.5.5 To institute such a system, we would first need to decide who would be required to register. Possible options are:

- Anyone trading in listed military goods or technology. Bearing in mind that trading covers a wide range of legitimate activities by companies which are well aware of the controls, (e.g. multi-national defence companies transferring items between overseas subsidiaries as part of the production process) this could give rise to large numbers of applications for transactions which would not be of concern;
- Anyone trading in, or exporting listed military goods or technology. If the register was extended (to all traders, exporters, or indeed both), it might usefully be linked to an assessment of basic understanding of the controls.
- Anyone trading in specified "high risk" items;

- Anyone trading in “high risk” items to specified sensitive destinations.

2.5.6 We would also need to:

- define the criteria for registration. This would be a challenge as there are no accepted standards in this area on which the criteria could be based, and applicants who had not previously been involved in trading would have no track record.
- determine the circumstances in which registration would be refused, or a company could be removed from the register.
- institute a process for handling appeals against decisions to refuse to register, or to remove a trader from the register. This might require an independent adjudicator or a tribunal.

2.5.7 Whilst none of the above are likely to be insuperable problems, a number of issues then arise to question the value of creating a pre-licensing system. These are explored in greater detail below:

- The Government already has powers to refuse and revoke licences, and to take enforcement action in relation to breaches of licence conditions and illegal trading. The register would not give the Government additional powers, nor would it prevent UK involvement in undesirable activities. In reality therefore, would the register add anything in practice?
- It would add another layer of complexity/bureaucracy to existing licensing controls and as such, could lead to delays in the licensing process for those not already registered. Is the argument for introducing this additional layer sufficient to justify this?
- In practice, traders may be unlikely to apply to register on a speculative basis (ie. simply because they might, at some future date, need to indulge in trading activity), but are more likely to apply to register shortly before their first trade transaction. This might not allow sufficient time for the registration checks, thus delaying the business. Should there therefore be a specified minimum time (e.g. three months) between an application for registration and first licence application?
- We would need to be sure that inclusion in the register did not imply general Government approval of the company’s activities.

Publication of a register

2.5.8 If a pre-licensing registration system were introduced, views are invited on whether the register should be published, and if so, what details should be included in the public register. Industry is invited to comment in particular on whether confidentiality and competition issues would arise. Readers should bear in mind that publication would require a change to primary legislation (and so could not be

achieved quickly), since the act of publishing details of those who have registered would be outside the declared purposes of the Export Control Act.

No Change

2.5.9 The current trade controls require any trader who wishes to conduct a licensable trade transaction to provide full relevant details on their licence application form. The trader cannot proceed with the transaction until the Government, having carried out whatever checks are necessary, issues the relevant licence. Would a pre-licensing registration system add anything to this in practice?

2.5.10 If someone failed to register, they would by definition have traded without a licence, and be subject to the existing penalties. It is difficult to envisage what further enforcement options would be added by a prior registration requirement. A trader's registration status would make no difference to the investigation and prosecution of offences.

Questions for readers: A pre-licensing registration system for UK based traders

Section 3 contains a wide range of questions on the subject of the potential introduction of a register. These questions invite all readers to express their views, supported by arguments and evidence, on:

- Whether a pre-licensing registration system should be introduced
- Whether a register should be published
- Whether a register might be expanded to cover anyone who wished to apply for a trade control or export licence and possibly linked to some assessment of basic understanding of the controls
- Whether there should be no change to the current system

The questions also seek evidence from businesses, on the business impact of introducing a pre-licensing register.

Please use the bookmark on the left to go direct to the questionnaire (questions 95 - 96) to respond.

2.6 Torture Equipment

How the controls currently work

2.6.1 The Trade in Goods (Control) Order 2003 classified as “Restricted Goods” a limited range of security and paramilitary equipment that was already subject to UK export controls because of evidence of use in torture. Under Article 3 of the Trade in Goods (Control) Order 2003, any person within the United Kingdom, or a United Kingdom person anywhere within the world is prohibited from supplying or delivering, or doing any act calculated to promote the supply or delivery of “Restricted Goods” without a licence from the Secretary of State.

2.6.2 In 2006, the Export Control (Security and Para-Military Goods) Order, implementing the EU Torture Regulation, expanded the range of Restricted Goods to include most equipment controlled by that Regulation, including thumb-cuffs, shackle boards and leg irons. However, the status of three categories of item which, prior to the adoption of the Torture Goods Regulation, were previously treated only as listed goods, was unchanged. These categories were:

- Portable devices for the purpose of riot control or self protection by the administration or dissemination of an incapacitating chemical substance
- Pelargonic acid vanillylamide (PAVA)
- Oleoresin capsicum

Legislation

Please use the bookmark on the left to view the text (in Annex 5) of Schedule 2, Para 2 of the Trade in Goods (Control) Order 2003, which sets out the coverage of torture equipment within export control legislation.

The case for change

2.6.3 Although controls on this type of equipment are as stringent as any within the UK legislative framework, they cover items which it has been agreed at EU level constitute the greatest risk of use in torture. They do not control any other general purpose equipment that could conceivably be used for torture (e.g. ropes, blowtorches, and power drills). There have been calls for the current controls to be extended to include more items, or for an end use control for equipment that could be used for torture or for cruel, inhumane or degrading treatment to be introduced. Such extensions would clearly be in line with the UK’s support for international human rights and the strong lead that the Government has already taken in the field of torture equipment.

Change options

- **Adding items to the list of torture equipment (either by extending the item coverage of the EU Regulation or by introducing unilateral UK controls on items not currently listed in the EU Regulation)⁷.**

2.6.4 An extension of the list might have the advantage of clarity, in that the controls would only apply to equipment on the list, therefore, it should be relatively easy for suppliers to determine whether their equipment needs a licence. There would potentially be two ways to extend the list of controlled items: at EU or at UK level. Introducing unilateral UK controls would be possible in principle under EC law. However, the introduction of unilateral controls is generally undesirable because they create uneven playing fields between UK and other exporters both in terms of regulatory standards and competition. This is likely to be an issue even in the area of torture equipment as there will be some legitimate trade, unless the items brought under control have no other use than in torture, (which is unlikely given that we would have hoped to have already identified and listed these in the EU Regulation).

2.6.5 There are also practical and administrative difficulties with the list-based approach. These include:

- It would never realistically be possible to list everything that could ever conceivably be used in torture or cruel, inhumane or degrading treatment;
- For many items, it would be difficult to arrive at workable definitions (e.g. “hanging ropes”).
- It is also difficult to envisage a large category of equipment that is designed for the purpose of torture that is not already controlled. To add to the list items of more general use could mean bringing into the net of export controls a range of innocuous items, leading to business, administration and enforcement effort which is disproportionate to the risk.
- Adding general purpose items (e.g. ropes, drills, blowtorches) would:
 - bring an entirely new area of business (e.g. the DIY sector) into the export control arena, with associated awareness and enforcement problems; and
 - risk flooding the licensing process with large numbers of applications for transactions of no concern.

An EU or UK end use control on torture equipment

2.6.6 A torture end use control would apply to any non-controlled goods exported for use in torture or cruel, inhuman or degrading treatment, and would operate on the basis of knowledge of end use. Unlike the WMD or Military end use controls, this

⁷ Nb. The assumption is that any new listed items would be subject to both export and trade controls, as is the case with items on the current list

would potentially catch a vast range of household items, and would therefore vastly expand the current controls.

2.6.7 The control could bite if a person had either been informed by the Government, or knew, that the equipment that he was intending to export would be used for torture. There is also the option of including a “suspicion” clause, though this might widen the net too far, and place unrealistic burdens of due diligence on the exporter given the range of household items that could potentially be caught.

2.6.8 In principle, a torture end use control could lawfully be introduced unilaterally by the UK, but care would need to be taken to ensure that the control was justified and proportionate. As with additions to the Torture Regulation control list, it would be preferable to make any changes at EU level in the interests of regulatory and competitive parity.

2.6.9 The following practical and administrative difficulties also need to be recognised:

- End use controls are notoriously difficult to operate, not least because of the difficulty of determining the circumstances in which a licence is required. If the control required the exporter’s knowledge of end use, then it might seldom if ever be engaged: customers are highly unlikely to be open about end use, and are more likely to try to conceal it. Whereas with the Military and WMD end use controls there is to some extent public domain information which informs exporters, and underlying intelligence which informs the licensing decisions, this is unlikely to be the case with torture end use. On the other hand, if the control came into operation when an exporter suspected that the goods were to be so used, then this raises additional questions about how to define grounds for suspicion.
- It would be extremely difficult to apply an end use control to trading in torture equipment. It would be extremely unlikely that a trader, operating at arms length between two third parties, probably never seeing the equipment or its customer, and not being privy to the full background paperwork, could accurately determine the use to which a general purpose product would be put. Neither the WMD nor the Military end use controls apply to trading.

No Change

2.6.10 It could be argued that the current controls are a proportionate response to the risk of UK involvement in inherently undesirable activities. Although there has been some recent adverse media coverage on this issue, in practice this has focused on either imports into the UK, or other countries’ controls. It is unclear what the scale of the problem is for the UK.

Torture Equipment: Questions for readers

Section 3 contains a range of questions on the subject of control of torture equipment. These questions:

- ❑ Invite readers to provide evidence on the extent to which there is UK involvement in the supply of torture equipment
- ❑ Ask for views and evidence on the issue of whether controls need strengthening
- ❑ Ask for views on whether we could most effectively strengthen controls by:
 - Adding items to the EU Regulation
 - Adding items to UK controls
 - Introducing an EU torture end use control
 - Introducing a UK end use control
- ❑ Ask business respondents to identify, and provide evidence on, the business impact of each of the above

Please use the bookmark on the left to go direct to the questionnaire (questions 97 – 102) to respond

2.7 Transit and Transshipment

How the controls currently work

2.7.1 The UK legislation, in the form of an exception for transit and transshipment, allows goods on the Military and Dual Use lists to pass through the UK en route to another destination via a pre-determined route without the need for a UK licence, provided that the exporter has complied with the laws of the originating country.

2.7.2 There are however, limitations to the exception. It does not apply to a range of sensitive goods (landmines, torture and paramilitary equipment, and any goods destined for use in a WMD programme) or certain sensitive destinations (including all currently embargoed destinations) as listed in the legislation. In practice this means that transit/transshipment licences are required for any listed goods en route to Iran or North Korea; and for any goods on the Military list en route to any other embargoed destination. The legislation also places an upper limit of 30 days on the time that the goods can stay in the UK, and stipulates that they must remain on board a vessel or aircraft, or be on a through bill of lading or through air waybill for the duration of that period. Articles (11) and (12) (see below) of the transit/transshipment exception set out conditions for its use in full.

2.7.3 The transit/transshipment legislation is therefore designed to facilitate legitimate trade by allowing goods to pass through the UK when they are not the subject of controls or have been appropriately approved in the originating country, whilst enabling the UK to intervene, and potentially halt, the onward movement in the case of goods or destinations of concern.

2.7.4 The UK licence application will usually be made by a person established in the UK and appointed by the overseas owner of the goods to act on his behalf (typically a freight forwarding agent). Where the conditions of the exemption cannot be met - for example because the goods will remain in the UK longer than 30 days after importation – there are currently four Open General Transshipment Licences (OGTLs) which may be used. All of these OGTLs specifically exclude transshipment for equipment or destinations to which the transshipment exemption does not apply.

Legislation

The relevant legislation is Part IV of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, articles (10) to (12).

Please use the bookmark on the left to view the details in Annex 5.

Questions for readers: transit and transshipment

Section 3 contains a range of questions on transit and transshipment, both for general readers and for businesses involved in transit and transshipment transactions. These questions:

- Invite readers' views on the current controls and any evidence that change is

needed

- Ask for evidence from business respondents of any difficulties they have encountered in complying with the current controls
- Ask for views from business respondents on the guidance provided by ECO in this area, and any suggestions for improvement

Please use the bookmark on the left to go direct to the questionnaire (questions 103 – 106) to respond

2.8 WMD controls

How the controls currently work

2.8.1 The WMD end use control allows the government to impose an export licensing requirement on goods software or technology which are not normally controlled, if the exporter knows, suspects or has been informed that they are or might be intended for any relevant use⁸ in connection with WMD. This control existed before 2004 but was then supplemented by a range of new WMD controls, under the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003.

Legislation

The starting point here is the EC Dual Use Regulation 1334/2000, Article 4. Please use the bookmark on the left to view details in Annex 5.

Please use the bookmark on the left to the relevant sections of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 in Annex 5.

Both are under WMD controls 2.8

2.8.2 These new controls made it unlawful (for anyone in the UK or any UK person or legal entity anywhere in the world) to provide, or facilitate the provision of, technical assistance related to the supply, delivery, manufacture, maintenance and use of WMD, to a destination outside the EC, without first obtaining a licence. They also enhanced the existing controls on the transfer of WMD technology. In both cases, the controls apply where the exporter knows, or has been informed by the UK Government that the supply is destined for use in connection with a WMD programme. Technology transfers within the EC, and even within the UK, are now controlled where the supplier knows or has been informed, at the time of transfer, that the technology will be transferred outside the EC without modification. However, the new controls are not just triggered simply by a “suspicion” of WMD use.

2.8.3 The new controls are wide-ranging, but the Government has developed a range of OGLS to prevent them generating excessive bureaucracy for the sake of licensing activity which is not of concern. The key example of this is the Chemical Biological Radiological and Nuclear (CBRN) sector, where, by its nature, protective equipment may often be for a “relevant use” as defined in the Order, but many supplies are to the UK MOD for potential use outside the EU and so not considered to be high risk. A new OGEL was developed for MOD contracts to deal with this issue when these controls were introduced, and OGEL coverage has recently been extended further, so as to allow the supply of CBRN equipment to the armed forces of UK, NATO and similar countries where it is for detection and identification purposes only.

⁸ Under the Order, "any relevant use" means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;

Questions for readers: WMD controls

Section 3 invites all readers to provide views on whether the WMD controls should be changed, and if so how, with supporting arguments and evidence.

Please use the bookmark on the left to go direct to the questionnaire (question 107) to respond.

2.9 Miscellaneous Technical Drafting issues

2.9.1 The ECO's internal evaluation has suggested that there may be a number of areas where the secondary legislation might benefit from some technical changes. We stress that these do not represent "loopholes" or "anomalies". It is simply that particular parts of the legislation, in the light of experience, do not seem to fit well together, or could be expressed in clearer or better ways. Examples include:

I Differing definitions of technology

2.9.2 Export control legislation contains three definitions of technology. In practical terms the impact of this may be limited, since exporters are likely to work on the basis of ECO guidance rather than by direct reference to the legislation, but it could cause some confusion. The solution might lie either in re-drafting the legislation - although we would need to carefully assess whether that was desirable overall and avoid any unwelcome knock on effects - or perhaps simply in improving guidance for exporters.

Legislation

Please use the bookmark on the left to see the definitions of technology in the export control legislation in Annex 5.

Questions for readers: differing definitions of technology

The questions in **Section 3** invite all readers to identify any practical difficulties caused by these differing definitions of technology and to identify any business impact of harmonising definitions.

Please use the bookmark on the left to go direct to the questionnaire (questions 108 – 109) to respond.

II Trade controls: coverage of explosive goods and technology

2.9.3 Three Orders in the secondary legislation set out the type of goods to which trade controls apply and the specific activities which are then controlled. However, the combined effect of the interaction of these Orders (for details, see the link to the legislative text below) is that whilst trading in non-military explosive goods (as described under entry PL8001 of Part II of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003) to embargoed destinations is controlled, the additional controls which normally relate to embargoed destinations (and to any trading in "Restricted Goods"), including controls on activity carried out wholly outside the UK and controls on the provision of ancillary services and other acts, "calculated to promote the supply or delivery of goods", do not apply.

2.9.4 This appears to be an inconsistency. In changing the legislation to correct it we would however, need to avoid causing unforeseen business consequences, and so are seeking views from readers on the potential impact of doing so.

Legislation

Please use the bookmark on the left to view the link to relevant legislative provisions in Annex 5.

Questions for readers: Trade controls: coverage of explosive goods and technology

The questions in **Section 3** invite readers to identify the potential business impact of tidying up legislation in this area. Please use the bookmark on the left to access these questions (110).

III Trade controls: receipt of a fee or commission

2.9.5 For “Controlled Goods” (not “Restricted Goods” or “Controlled Goods” to embargoed destinations, where different provisions apply), the legislation states that “no person shall, in return for a fee, commission, or other consideration, do or agree to do any act calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods from one third country to another third country”. It is difficult at this stage to see why the receipt of a fee, payment, commission or other consideration is an important distinction in this context, and it introduces into the prosecution process an additional legal test for no obvious value.

2.9.6 However, removing these words would bring significantly more activities within the controls. For example, an employee of a UK company putting an overseas customer in touch with an overseas subsidiary for legitimate reasons, such as to make it easier for that subsidiary to deal with a potential order, would be caught; whereas on the current wording, unless that employee or their company were specifically paid for the referral, there would be no need for a licence. It is therefore vital both to gauge the scale of the problem and, if necessary, develop a response that is proportionate.

Legislation

Please use the bookmark on the left to view the relevant provisions of the Trade in Goods (Control) Order 2003 in Annex 5.

Questions for readers: Trade controls: receipt of a fee or commission

The questions at **Section 3**:

- ❑ Invite views on whether controls should be extended to encompass acts calculated to promote the arrangement or negotiation of a contract to move controlled goods between third countries, regardless of whether a fee, commission or other consideration had been received.
- ❑ Ask for evidence from business respondents on the likely business impact of such an extension of controls.

Please use the bookmark on the left to access questions 111-112 for your response.

IV Guidance

2.9.7 In addition to any legal drafting changes, some of the above issues are likely to benefit from improved guidance, and there will be a more general need to review standing guidance in the light of the outcome of the review.

Questions for readers: Guidance

Section 3 provides an opportunity for readers to identify any areas or issues within export control that would benefit from improved guidance. Please use the bookmark on the left to go to question 113 or go direct to the questionnaire to respond.

CHANGE OPTIONS NOT SPECIFICALLY IDENTIFIED ABOVE

2.9.8 Section 2 has covered a wide range of potential change options, but it cannot be entirely comprehensive. Therefore, Section 3 provides space for you to put forward, and justify, any change proposal which is not covered here.

Please use the bookmark on the left to go to “Change Options not specifically identified”, or go to page 91.

SECTION 3: RESPONSE SECTION FOR COMPLETION

Please use the boxes below to state if you are responding as an individual or representing the views of a company or other organisation and provide the extra details requested as appropriate.

Please provide your name and address

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(Please tick)

I am responding as an individual	
I am a responding on behalf of an organisation	
I am a responding on behalf of a company	

If you are responding on behalf of an organisation:

The organisation represents:

The views of the members of the organisation were assembled by:

If you are replying on behalf of a company, please indicate;

the number of employees:

0-1 1-49 50-249 250-1000 1000-5000 ▶ 5000

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its annual turnover (£):

◀ 0.5m 0.5-1m 1-5m 5-20m ▶ 20m+

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Please indicate whether you would like your identity or whole or part of your response to remain confidential.

GUIDANCE ON COMPLETING THIS QUESTIONNAIRE

This questionnaire collates all the questions raised in Sections 1 and 2 into a single questionnaire for your responses. These questions fall into two categories; business impact and effectiveness.

- The business impact questions are labelled “for business readers” and are designed to test the business impact of changes that have already been introduced, and obtain accurate estimates of the likely business impact of changes that might be introduced as a result of this consultation. They are directed towards business readers, because only businesses are in a position to provide the detailed costings and evidence sought.
- In contrast, the effectiveness questions are designed to test the extent to which the 2004 changes had their desired effect, and to gauge the relative effectiveness of a range of proposals for further change. They are therefore more generally phrased and are open to all readers to express views, (they are therefore labelled “for all readers”) backed up by evidence where available.

Responses to this consultation must be received by **30 September 2007**. These can be submitted by email, letter or fax to the contact below. If responding by E-Mail, please send only Section 3 back to us after completion. You can do this either by copying Section 3 to a separate document or by deleting the preceding and following sections and then sending it as a new document.

QUESTIONS ARISING FROM SECTION 1: ECO'S INTERNAL EVALUATION

For business readers

Controls on intangible transfers of technology for military goods (business costs)

Q1 Has your business been affected by the introduction of controls on the electronic transfer of technology for military goods?

Yes No

Please tick yes or no and move on to Questions 2 and 3 if you answered yes.

Q2 As part of the consultation prior to the introduction of these controls, did you assess the likely impact upon your business in terms of:

- Set up costs?

- Ongoing administrative costs (licence applications and associated record keeping)?

- Ongoing staff training and awareness costs?

Please indicate by ticking the appropriate box(es).

Q3 If you responded yes to the question above, how did the actual impact compare with your original estimates? Overall, has the cost been higher or lower than you originally estimated? Please complete the grid below to provide fuller details.

Set up costs		Annual ongoing administrative costs		Annual ongoing staff training and awareness costs	
Estimate	Reality	Estimate	Reality	Estimate	Reality

Q4 A range of Open General Licences were introduced to mitigate the impact of these new controls. These were:

- Technology for Military Goods;
- Access Overseas to Technology for Military Goods: Individual Use Only;
- Exports or Transfers in Support of UK Government Defence Contracts;
- UK Forces Embargoed Destinations;
- UK Forces Non-Embargoed Destinations.

Q5 Are you aware of the above OGLs?

Yes No

If so, please indicate whether you have registered to use these OGLs as listed below and the number of transactions that you have undertaken under cover of each respective OGL.

OGL title	Registered to use OGL (yes/no)	Number of transactions per year for which OGL utilised
Technology for Military Goods		
Access Overseas to Technology for Military Goods: Individual Use Only		
Exports or transfers in Support of UK Government Defence Contracts		
UK Forces Embargoed Destinations		
UK Forces Non-Embargoed Destinations		

Q6 Do you understand what you need to do to meet the conditions of these OGLs?

Yes No

Q7 Have you found these OGLs to be of value in limiting the costs to your business?

Yes No

Q8 Do you have any other comments on the business impact of the new controls on electronic transfers? (Please provide supporting evidence).

Controls on electronic transfers of technology for military goods (other business impacts)

Q9 Beyond the cost-related questions above, can you identify any other ways in which the introduction of controls on electronic transfers has impacted upon your business? (Please provide details and supporting evidence).

Q10 Are there any areas relating to this new control that remain unclear to you?

Yes No

If yes, please state what these areas are.

Q11 Have you used the ECO's guidance on the control of electronic transfers?

Yes No

If so, please indicate the extent to which you found the guidance useful and suggest any further enhancements as appropriate.

Q12 Do you consider that there are any extra steps which ECO could take to raise awareness of this new control?

Yes No

If yes, please state what these steps may be

For all readers

Controls on electronic transfers of technology for military goods (effectiveness)

Q13 Please provide any relevant comments (with supporting evidence) about the effectiveness of these new controls.

For business readers

Trade controls on “Controlled Goods” (activity within the UK) – business impact

Q14 Has your business needed to apply for licences from the ECO under the controls on the trading of “Controlled Goods” when carried out within the UK?

Yes No

Q15 As part of the consultation prior to the introduction of these controls, did you assess the likely impact upon your business in terms of:

- Set up costs?

- Ongoing administrative costs (licence applications and associated record keeping)?

- Ongoing staff training and awareness costs?

Please indicate by ticking the appropriate box(es).

Q16 If so, how did the actual impact compare with your original estimates? Overall, has the cost been higher or lower than you originally estimated? Please complete the grid below to provide fuller details.

Set up costs		Annual ongoing administrative costs		Annual ongoing staff training and awareness costs	
Estimate	Reality	Estimate	Reality	Estimate	Reality

Q17 The Open General Trade Control Licence (OGTCL) was introduced to mitigate the impact of these new controls. Are you aware of this OGTCL?

Yes No

Please indicate whether you have registered to use the OGTCL and the number of transactions that you have undertaken under cover of it.

OGL title	Registered to use OGL (yes/no)	Number of transactions per year for which OGL utilised
Open General Trade Control Licence		

Q18 Have you found this OGL to be of value in limiting the costs to your business?

Yes No

Q19 Has the introduction of this trade control led your business to change its pattern of trading or business process in any way (e.g. by turning down business involving certain destinations or ensuring that goods come to the UK so that they require an export, rather than a trade control licence)?

Yes No

Q20 If you answered yes, please tell us what these changes are.

Q21 Do you have any other comments on the business impact of these trade controls? (Please provide supporting evidence)

Trade controls on UK persons outside the UK – business impact (NB: applies only to trading in “Restricted Goods” or “Controlled Goods” to embargoed destinations).

Q22 Has your business needed to apply for licences from the ECO under the controls on trading in “Restricted Goods” or “Controlled Goods” to embargoed destinations, for activities carried out outside the UK?

Yes No

Q23 As part of the consultation prior to the introduction of these controls, did you assess the likely impact upon your business in terms of:

- Set up costs?

- Ongoing administrative costs (licence applications and associated record keeping)?

- Ongoing staff training and awareness costs?

Please indicate by ticking the appropriate box(es).

Q24 If so, how did the actual impact compare with your original estimates? Overall, has the cost been higher or lower than you originally estimated? Please complete the grid below to provide fuller details.

Set up costs		Annual ongoing administrative costs		Annual ongoing staff training and awareness costs	
Estimate	Reality	Estimate	Reality	Estimate	Reality

Q25 Has the introduction of this trade control led your business to change its pattern of trading or business process in any way (e.g. by turning down business to certain destinations or ensuring that goods come to the UK so that they require an export, rather than a trade control licence)?

Yes No

If so, please tell us what these changes are.

Q26 Do you have any other comments on the business impact of the trade controls on “Restricted Goods” or “Controlled Goods” to embargoed destinations? (Please provide supporting evidence).

Trade controls on “Controlled Goods”; activity within the UK – effectiveness

For all readers

Q27 Do you have any other comments or evidence on the effectiveness of the trade controls on trading in “Controlled Goods” carried out from within the UK? If so, please provide details.

Trade fairs and other promotional activities

For those exhibiting at trade fairs

Q28 Have you needed to apply for trade control licences for activity at trade fairs and similar events?

Yes No

Q29 Do you have any comments about the impact of the trade controls on your trade fair activity, the effectiveness of the Government’s awareness programme, or any suggestions for further improvement?

For other readers

Q30 Please provide any evidence which suggests that breaches of controls are taking place at trade fairs and similar events (e.g. trading of military equipment without appropriate licences; promotion of torture equipment or sales to embargoed destinations, etc).

Trade controls on UK persons outside the UK – effectiveness (NB: applies only to trading in “Restricted Goods” or “Controlled Goods” to embargoed destinations).

Q31 Please provide any evidence which suggests that UK persons overseas are carrying out trading activities of concern

Q32 Do you have any other comments or evidence on the effectiveness of the trade controls on the activities of UK persons operating overseas?

For business readers

Business impact of new WMD controls

Q33 Have you applied for licences from ECO under the new controls on the provision of technical assistance or transfer of technology in connection with WMD?

Yes No

If yes, please indicate the nature of your business and the type of activity which has now become licensable.

Q34 As part of the consultation prior to the introduction of these controls, did you assess the likely impact upon your business in terms of:

- Set up costs?
- Ongoing administrative costs (licence applications and associated record keeping)?
- Ongoing staff training and awareness costs?

Please indicate by ticking the appropriate box(es).

Q35 If so, how did the actual impact compare with your original estimates? Overall, has the cost been higher or lower than you originally estimated? Please complete the grid below to provide fuller details.

Set up costs		Annual ongoing administrative costs		Annual ongoing staff training and awareness costs	
Estimate	Reality	Estimate	Reality	Estimate	Reality

Q36 A range of Open General Licences have the effect of mitigating the impact of these new controls. Please indicate whether you are aware of, or have registered to use these OGLs as listed below and, where appropriate, the number of transactions that you have undertaken under cover of each respective OGL.

OGL title	Aware? (yes/no)	Registered to use OGL (yes/no)	Number of transactions per year for which OGL utilised
Exports or transfers in Support of UK Government Defence Contracts			
UK Forces Embargoed Destinations			
UK Forces Non-Embargoed Destinations			

Q37 Do you understand what you need to do to meet the conditions of these OGLs?

Yes No

Q38 Have you found these OGLs to be of value in limiting the costs to your business?

Yes No

Q39 Do you have any other comments on the business impact of the new WMD controls? (Please provide supporting evidence).

For those involved in academic activity

Business impact of new WMD controls – for those involved in academic activity;

Q40 Has the introduction of new controls on the provision of technical assistance or transfer of technology in connection with WMD, (or any other of the controls introduced in 2004) impacted upon your academic activity?

Yes No

If so, please indicate what specific activities have been affected, and by which controls.

Q41 Do you have any comments about:

- the impact of the new WMD controls upon your academic activities?

- the effectiveness of the Government's awareness programme?

- suggestions for improvement?

Please use the spaces provided to provide evidence as appropriate

For all readers

Effectiveness of new WMD controls

Q42 Do you provide technical assistance overseas (e.g. installing, repairing, maintaining equipment)?

Yes No

Q43 If so, have there been occasions when you have suspected that you were being approached to supply these services in connection with WMD programmes of concern?

Yes No

Q44 Do you have any other comments on the effectiveness of these new WMD controls in preventing the supply of technical assistance or technology in support of WMD programmes of concern?

AREAS NOT SPECIFICALLY COVERED IN SECTION 1

If you feel that there are matters concerning the business impact or effectiveness of the 2004 controls that have not been addressed in this paper, please provide any comments and supporting evidence using the box below.

QUESTIONS ARISING FROM SECTION 2: POSSIBLE CHANGE OPTIONS

Trade Controls/ “Restricted Goods”

Section 2.1 explained which goods are currently subject to more stringent controls, through being classified as “Restricted Goods”, and suggested a number of categories of equipment to which “Restricted Goods” categorisation might be extended. It also explained the concept of introducing a new category of “Partially Restricted Goods” to which some extra controls would apply.

The table below invites you to express your views on whether any of the potential changes listed there should be enacted. For each item listed, please mark an x in the relevant box to show which treatment you think should apply.

Equipment category	Treat as “Restricted Goods”	<u>Treat as New Middle Category;</u> “Partially Restricted Goods”	Treat as “Controlled Goods”
Long Range Missiles			
UAVs			
Small Arms and Light Weapons, associated ammunition			
MANPADs			
Dumb Cluster Munitions			

For all readers

<p><u>Long Range Missiles/UAVs</u></p> <p>Q45 If you think that either or both of these should move out of the “Restricted Goods” category, please say why and any provide any evidence you have that the current controls are too strict.</p> <p>Q46 Should UAVs be categorised differently from long range missiles, or should the same controls apply to both? Please provide reasoning and evidence to support your view.</p>

Small Arms and Light Weapons (SALW)

Q47 If you think that SALW should be subject to a more stringent category of control, please say why and provide any evidence you have in support of this.

MANPADs

Q48 If you think that MANPADs should be subject to a more stringent category of control, please say why and provide any evidence you have in support of this.

Dumb Cluster Munitions

Q49 If you think that dumb cluster munitions should be subject to a more stringent category of control, please say why and provide any evidence you have in support of this.

Q50 Are there any other types of controlled goods, or specific activities, that you believe should be subject to more stringent control? If so please:

- Say which goods
- Say whether you think these should be treated as “Partially Restricted Goods” or “Restricted Goods”

Partially Restricted

Restricted

- Provide reasoning and evidence of the scale of the problem which you would wish to address

For business readers

Long Range Missiles (LRMs)/Unmanned Air Vehicles (UAVs)

Q51 Is your business involved in the:

- Supply of these goods between third countries?

UAVs LRM

- Provision of transportation services in support of the supply of these goods between third countries?

UAVs LRM

- Provision of financing or financial services in support of the supply of these goods between third countries?

UAVs LRM

- Provision of insurance or reinsurance services in support of the supply of these goods between third countries?

UAVs LRM

- Provision of general advertising or promotion services in respect of these goods?

UAVs LRM

Q52 If you have ticked any of the above, please state the current impact upon your business in terms of:

- Number of licences applied for per year

UAVs LRM Both/Total

- Ongoing administrative costs (licence application and record keeping)

UAVs LRM Both/Total

- Ongoing staff training and awareness costs

UAVs LRM Both/Total

Small Arms and Light Weapons

Q53 Are you a UK person (or are you responsible for or directly aware of UK persons) involved in the supply, from a country outside the UK, of SALW to other third countries?

Yes No

Q54 If so:

- Where are you based?
- Which countries do you supply to?
- How many transactions per year are you involved in?

Q55 If the Government were to control your activities in relation to the trading of SALW as above, please indicate, for your business;

- Estimated start up costs
- Estimated ongoing administrative costs for licence application and record keeping
- Estimated ongoing staff training and awareness costs

Q56 Does your business provide services in support of the supply of SALW between two overseas destinations?

Yes No

-

If so please indicate whether this is:

- the provision of transportation services;
- the provision of financing or financial services;
- the provision of insurance or reinsurance services.

Please indicate by ticking the appropriate box(es).

Q57 For each of these categories above where applicable, please state:

- Which countries you usually supply to

- How many transactions per year you will usually be involved in (with a country by country breakdown)

Q58 If the Government were to control the supply of these ancillary support services, please indicate, for your business:

- Estimated set up costs;
- Estimated ongoing administrative costs (licence application and associated record keeping);
- Estimated ongoing staff training and awareness costs

Q59 Does your business supply general advertising or promotion services in respect of SALW?

Yes No

If so, please indicate how many transactions per year you will usually be involved in and the nature of the service provided

Q60 If the Government were to control the supply of general advertising or promotion services for SALW, please indicate, for your business:

- Estimated set up costs

- Estimated ongoing administrative costs (licence application and associated record keeping)

- Estimated ongoing staff training and awareness costs

Q61 Please provide any other evidence you have that would be relevant to the question of whether to exert stricter trade controls on SALW.

MANPADs

Q62 Are you a UK person (or are you responsible for or directly aware of UK persons) involved in the supply, from a country outside the UK, of MANPADs to other third countries?

Yes No

If so:

- Where are you based?

- Which countries do you supply to?

- How many transactions per year are you involved in?

Q63 If the Government were to control your activities in relation to the trading of MANPADs as above, please indicate, for your business:

- Estimated start up costs;

- Estimated ongoing administrative costs (licence application and record keeping);

- Estimated ongoing staff training and awareness costs.

Q64 Does your business provide services in support of the supply of MANPADs between two overseas destinations?

Yes No

If so please indicate whether this is:

- the provision of transportation services
- the provision of financing or financial services
- the provision of insurance or reinsurance services

Q65 For each of these categories above where applicable, please state:

- Which countries you usually supply to
- How many transactions per year you will usually be involved in (with a country by country breakdown)

Q66 If the Government were to control the supply of these ancillary support services in respect of MANPADs, please indicate, for your business:

- Estimated set up costs
- Estimated ongoing administrative costs (licence application and associated record keeping)
- Estimated ongoing staff training and awareness costs

Q67 Does your business supply general advertising or promotion services in respect of MANPADs?

Yes No

If so, please tell us how many transactions per year you will usually be involved in and the nature of the service provided

Q68 If the Government were to control the supply of general advertising or promotion services for MANPADs, please indicate, for your business:

- Estimated set up costs

- Estimated ongoing administrative costs (licence application and associated record keeping)

- Estimated ongoing staff training and awareness costs

Q69 Please provide any other evidence you have that would be relevant to the question of whether to exert stricter trade controls on MANPADs:

Dumb Cluster Munitions

Q70 Are you a UK person (or are you responsible for or directly aware of UK persons) involved in the supply, from a country outside the UK, of dumb cluster munitions to other third countries?

Yes No

If so:

- Where are you based?
- Which countries do you supply to?
- How many transactions per year are you involved in?

Q71 If the Government were to control your activities in relation to the trading of dumb cluster munitions as above, please indicate, for your business:

- Estimated start up costs
- Estimated ongoing administrative costs (licence application and record keeping)
- Estimated ongoing staff training and awareness costs

Q72 Does your business provide services in support of the supply of dumb cluster munitions between two overseas destinations?

Yes No

If so please indicate whether this is:

- the provision of transportation services
- the provision of financing or financial services
- the provision of insurance or reinsurance services

Please indicate by ticking the appropriate box(es)

Q73 For each category above where applicable, please state:

- Which countries you usually supply to

- How many transactions per year you will usually be involved in (with a country by country breakdown)

Q74 If the Government were to control the supply of these ancillary support services in respect of dumb cluster munitions, please indicate, for your business?

- Estimated set up costs

- Estimated ongoing administrative costs (licence application and associated record keeping)

- Estimated ongoing staff training and awareness costs

Q75 Does your business supply general advertising or promotion services in respect of dumb cluster munitions?

Yes No

-

If so, please indicate how many transactions per year you will usually be involved in and the nature of the service provided

Q76 If the Government were to control the supply of general advertising or promotion services for dumb cluster munitions, please indicate, for your business;

- Estimated set up costs
- Estimated ongoing administrative costs (licence application and associated record keeping)
- Estimated ongoing staff training and awareness costs

Q77 Please provide any other evidence you have that would be relevant to the question of whether to exert stricter trade controls on dumb cluster munitions

For all readers

Other categories of equipment

This box provides space for any other comments that you might have on the treatment of “Restricted Goods”. If you think that particular categories of goods (other than SALW, MANPADs, or dumb cluster munitions) should be subject to more rigorous control, then please state what the goods are, and whether they should be classified as “Partially Restricted Goods” or “Restricted Goods”, with supporting arguments and evidence.

Goods category	Treat as “Restricted Goods” (yes/no)	Treat as Partially Restricted Goods (yes/no)

Supporting arguments and evidence

Provision of transport services

For all readers

Q78 Please provide any evidence that UK transport providers are transporting “Restricted Goods” between third countries, or transporting other “Controlled Goods” to embargoed destinations

Q79 Do you think that transport providers should be:

- Required, by legislation, to obtain documentary evidence that the overseas transfer for which they are providing transport has been approved by the relevant licensing authorities? If so, why

- Required, by inserting UK licence conditions, to obtain documentary evidence that the overseas transfer for which they are providing transport has been approved by the relevant licensing authorities? If so, why

- There should be no change beyond providing improved guidance and information for transport providers

Please indicate by ticking the appropriate box(es)

For transport providers

Q80 Do you provide transport services relating to the movement of “Controlled Goods”?

Within UK Outside UK

Yes	No	Yes	No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q81 What do you estimate would be the impact of requiring you to obtain documentary evidence that the overseas transfer for which you are providing transport has been approved by the relevant licensing authorities? Please provide details of any specific difficulties that you would expect to encounter.

Q82 Do you consider that the guidance provided by ECO is adequate to enable you to judge whether your actions require a licence?

Yes No

If not, please suggest any improvements that might be made.

Overseas production of military equipment by UK owned or linked companies

For all readers:

Q83 Do you have evidence to indicate that an overseas licensed production facility, or an overseas subsidiary of a UK parent company has exported an end product to an undesirable end-user? If so, please give details:

Product

Export Destination

Do you think that:

- The granting of production rights to an overseas facility should require a licence?

Yes No

- Licences for the export of listed goods or technology from the UK to an overseas LPO or subsidiary, should stipulate conditions on the commercial contract governing that supply?

Yes No

- Controls in this area should remain as they are?

Yes No

Please provide supporting reasoning and evidence to justify your choice above.

For business readers:

Q84 Does your business have an ongoing business relationship with an overseas licensed production facility or subsidiary?

Yes No

If yes, please provide details of what is supplied and for what purpose

Q85 Do you think that:

The granting of production rights to an overseas facility should require a licence?

Yes No

Licences for the export of controlled goods or technology from the UK to an overseas LPO or subsidiary, should stipulate conditions on the commercial contract governing that supply?

Yes No

Controls in this area should remain as they are

Yes No

Q86 Please indicate whether and how your business would be affected if:

- a licence were required for the granting of production rights
- export licence conditions stipulated the coverage of the commercial contract governing your supplies to the LPO or overseas subsidiary

Please provide for your business, in respect of each of the above:

Estimated start up costs

Licensing of Production Rights Extra conditions on export licences

- ❑ Estimated ongoing administrative costs (licence application and record keeping)

Licensing of Production Rights Extra conditions on export licences

- ❑ Estimated ongoing staff training and awareness costs

Licensing of Production Rights Extra conditions on export licences

Q87 Please provide supporting reasoning and evidence to support your answers together with details of any other benefits or difficulties that you believe would be caused to your business by either of the above changes.

The Military End Use Control

For all readers:

Q88 Please provide any evidence you have that significant items of equipment have been supplied from the UK for the use of the military in embargoed destinations or other destinations of concern.

Type of equipment

Destination/end use

Q89 Do you consider that the scope and coverage of the Military End Use Control should:

- Extend to cover specifically listed items of complete equipment that might be of significant operational value to the military in an embargoed destination?

Yes No

If so, please tell us which items of complete equipment should be covered.

- Extend beyond embargoed destinations?
- Extend to cover both non-controlled components and specifically listed items of complete equipment that might be of significant operational value to the military in an embargoed destination?
- Extend to cover non-controlled components and any significant non-controlled complete item where the exporter knew, or had been informed by the Government, that the item was for use by the military in an embargoed destination or other destination of concern?
- Remain as it is?.

Please indicate by ticking the appropriate box(es)

Q90 Please provide reasoning and evidence in support of your choice above.

For business readers:

Q91 Please indicate whether and how your business would be affected if either of the above options were introduced

Q92 In your view, which of the above options would be easiest to implement for your business?

Q93 Please provide, for the above options your best estimate for your business of:

- Start up costs

Option 1 Option 2 Option 3 Option 4

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- Ongoing administrative costs (licence application and record keeping)

Option 1 Option 2 Option 3 Option 4

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- Ongoing staff training and awareness costs

Option 1 Option 2 Option 3 Option 4

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Q94 For each of the above options, if introduced, please provide details of any other benefits or difficulties that you believe will result for your business.

Option 1

Option 2

Option 3

Option 4

Pre-licensing registration system for traders

For all readers:

Q95 Should traders be required to register in order to be eligible to apply for a licence to conduct specific transactions?

Yes No

<input type="checkbox"/>	<input type="checkbox"/>
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Four options have been identified in this area. Please indicate which of the four options you favour, with supporting arguments and evidence in the larger boxes below:

- Introduce a pre-licensing registration system for traders for confidential Government use only

- Introduce a pre-licensing registration system for traders and publish the information

- Introduce a pre-licensing registration system for both traders and exporters, possibly linked to a test of basic awareness of the controls

- No change.

For business readers:

Q96 Four options have been identified in this area. Please indicate whether your business would be affected by either of these options, using the larger box below to provide details:

- Introduce a pre-licensing registration system for traders for confidential Government use only

- Introduce a pre-licensing registration system for traders and publish the information

- Introduce a pre-licensing registration system for both traders and exporters, possibly linked to a test of basic awareness of the controls

- No change.

Torture Equipment

For all readers

Q97 Do you think that controls on torture equipment should be altered by:

- Adding extra items to the list of torture equipment (either by extending the coverage of the EU Regulation or by introducing unilateral UK controls on items not currently listed in the EU Regulation);
- Introducing an end use control on equipment that could be used for torture or other cruel, inhumane or degrading treatment;
- No change

Q98 Do you have evidence of UK involvement in supplies of torture equipment?

Yes No

If so, please provide details below.

Q99 Which of the above options do you consider would be more effective in dealing with the problems, and why (please provide examples or evidence).

Option 1

Option 2

Option 3

Q100 If you favour change to the controls, do you think this should be at UK or EU level?

UK EU

If yes, please provide reasoning to support your view.

For business readers

Q101 Please indicate how practical and costly the potential changes would be for your business to implement as follows:

Number of new transactions brought under control
Extend list of items Introduce torture end use control

<input type="checkbox"/> Implementation costs	
Extend list of items	Introduce torture end use control
<input type="text"/>	<input type="text"/>
<input type="checkbox"/> Ongoing costs	
Extend list of items	Introduce torture end use control
<input type="text"/>	<input type="text"/>
<input type="checkbox"/> Staff training and awareness	
Extend list of items	Introduce torture end use control
<input type="text"/>	<input type="text"/>

Q102 In terms of business impact, would your preference be for any change to be introduced at UK or EU level?

UK EU

What are the reasons for your choice?

Transit and Transhipment

For business readers

Q103 Are you involved in organising the transit or transhipment, via the UK, of strategically controlled goods from one third country to another third country?

Yes No

If yes, have you had to apply for, or use, transit/transshipment licences? Please provide details below.

Standard Individual Transshipment Licence (SITL); number of occasions used in last year.	Open General Transshipment Licence (OGTL); number of occasions used in last year.

Q104 Please provide details of any difficulties you have encountered in:

- determining whether transit/transshipment licences are needed

- applying for transit/transshipment licences

- otherwise complying with export control requirements.

Q105 Are you aware of the ECO guidance on transit/transshipment controls, including related OGTL coverage?

Yes No

If so, can you suggest any improvements that could be made to this guidance?

For all readers

Q106 Do you think that the current controls on transit/transshipment, as set out at Section 2.7, should be changed in any way?

Yes No

If you have answered yes above, please provide details of why (ie the issue which your change is designed to deal with and evidence of the size or scale of the problem) and what change you would recommend.

WMD controls

For all readers

Section 1 of this document flags up some specialised areas where concerns have been expressed about the impact or effectiveness of these controls. We are not however, aware of any specific proposals for legislative change in this area. The questions that follow are therefore of a more generalised nature.

Q107 If you consider that the WMD-related controls on the transfer of technology or provision of technical assistance, as set out at Section 2.8 should be changed, please provide details of why (ie the issue which your change is designed to deal with and evidence of the size or scale of the problem) and what change you would recommend.

Miscellaneous Technical/Drafting issues

Differing definitions of technology:

For business readers

Q108 To what extent – if at all - do the differing definitions of technology referred to in Section 2.9 cause you practical difficulties in understanding, implementing or administering export controls? (Please provide details)

Q109 What would be the business impact of agreeing one common definition (if possible indicate estimated costs or savings as well as providing details of broader impact)?

Trade Controls: coverage of explosive goods and technology

For business readers

Q110 If the Government were to take action to control ‘acts calculated’ to promote the supply or delivery of non-military explosive goods to embargoed destinations, and the involvement of UK persons overseas in trading those goods, would this impact upon your business?

Yes No

If so, please explain how your business would be affected and provide estimates of:

- Initial set up costs

- Number of licensable transactions per year

- Annual ongoing costs

- Annual ongoing training and awareness costs

Trade Controls: receipt of a fee or commission

For all readers

Q111 Would you support the extension of controls to cover any ‘act calculated’ to promote the arrangement or negotiation of a contract to move “Controlled Goods” between third countries, regardless of whether a fee, commission or other consideration had been received?

Yes No

Please provide evidence to support your view where possible.

For business readers

Q112 If the Government were to take action to control these activities, would this impact upon your business?

Yes No

If so, please explain how your business would be affected and provide estimates of:

- Initial set up costs

- Number of licensable transactions per year

- Annual ongoing costs

- Annual ongoing training and awareness costs

Please also provide detail of any other business consequences

Guidance issues

For all readers

Q113 Can you identify any areas of export control that would, in your view, benefit from improved guidance from ECO?

Yes No

Please provide details of the area/issue and suggestions for what guidance could be provided and via what medium

CHANGE OPTIONS NOT SPECIFICALLY IDENTIFIED

For all readers

Section 2 covers a wide range of change options, but it cannot be entirely comprehensive. Therefore, the box below provides space for you to put forward and justify any proposal that has not been covered.

My change proposal is:

My grounds for wanting this change are as follows:

The following evidence supports my case for change:

SECTION 4: ANNEXES

Annex 1: Abbreviations and Glossary of Commonly Used Terms

Annex 2: Agreed Terms of Reference for the 2007 review of export controls

Annex 3: Consultation Code of Practice

Annex 4: Licensing statistics in relation to the 2004 controls

Annex 5: Legal references

ANNEX 1: ABBREVIATIONS AND GLOSSARY OF COMMONLY USED TERMS

ABBREVIATIONS

ATAS	Academic Technology Approval Scheme
CBRN	Chemical, Biological, Radiological or Nuclear substances
COARM	Co-ordinating Committee on Arms Control
DCMS	Department of Culture, Media and Sport
DFID	Department for International Development
DPA	Data Protection Act
DTI	Department of Trade and Industry
ECHR	European Convention on Human Rights
ECO	Export Control Organisation
FAC	Foreign Affairs Committee
FCO	Foreign and Commonwealth Office
FOIA	Freedom of Information Act
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
ITT	Intangible Transfer of Technology
LPO	Licensed Production Overseas
MEUC	Military End Use Control
MoD	Ministry of Defence
NGOs	Non-Governmental Organisations
OECD	Organisation for Economic Co-operation and Development
OGDs	Other Government Departments
OGs	Open General Licences
OGTCLs	Open General Trade Control Licences
OIELs	Open Individual Export Licences
OITCLs	Open Individual Trade Control Licences
OSCE	Organisation for Security and Co-operation in Europe
PQs	Parliamentary Questions
RIA	Regulatory Impact Assessment
SALW	Small Arms and Light Weapons
SIELs	Standard Individual Export Licences
SITCLs	Standard Individual Trade Control Licences
TIC	Trade and Industry Committee
WMD	Weapons of Mass Destruction

GLOSSARY OF COMMONLY USED TERMS

Below we explain a number of terms which are used throughout this paper. Please note that the meanings set out below are used for the purposes of this paper only.

- “Controlled Goods”: goods classified under ML (other than ML21 and ML22), PL5000 or PL8000 in Schedule 1 to the Order. This covers goods on the Military List plus others related to non military explosives or devices. These are the goods to which trade controls are applied.
- “Dual-Use List”: goods software and technology listed in Annex I to the Regulation. Such goods are not designed for military use but could be used for both military and civil purposes.
- Licensed Production Overseas (LPO): where a business based outside the UK produces goods under a licence granted by, or contract or other agreement with a UK company. An LPO facility might be owned or simply linked in some way to the UK company, or might be an entirely separate body which simply purchases components as part of a business relationship.
- Listed Goods: All goods which are specifically listed as subject to strategic export controls
- “Military List”: goods, software and technology listed in Part I of Schedule 1 to the Order. Such goods are either those which have been agreed internationally to have been specially designed for a military purpose (ML) or those which at a national level we believe have a military or para military connection (PL) ;
- Overseas Subsidiary: an overseas company which is institutionally controlled by a UK parent (for example, the UK parent has a majority shareholding). It may require ongoing support from the UK parent in terms of supplies of controlled goods or technology, or it may be entirely self-standing, employing local staff and using local materials.
- “Relevant Use”; "any relevant use" is defined in the Order as being for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons.
- “The Order”: The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003.
- “The Regulation”: Council Regulation (EC) No.1334/2000.
- “Restricted Goods”: specific categories of goods (currently only long range missiles and torture equipment) to which extra controls are applied on trading by UK persons overseas and other acts calculated to support that trading.

ANNEX 2: TERMS OF REFERENCE FOR ECA REVIEW 2007

SCOPE

1. To examine the secondary legislation introduced in 2004 as a result of the Export Control Act 2002⁹ to determine;
 - whether these new controls achieved their desired effect
 - whether the resulting impact upon business was proportionate and at an acceptable level
 - whether any unintended or undesirable consequences – commercial or otherwise - have resulted
2. To review the Government's administration and enforcement of the controls introduced under secondary legislation in 2004, and identify any administration and enforcement issues arising.
3. To determine whether any of these new controls should be extended, adapted or abolished, taking account of evidence gained from the work carried out at points 1 and 2 above.

METHODOLOGY

The review will be conducted fully in accordance with Cabinet Office Better Regulation principles and will follow an evidence based approach.

Better Regulation principles

The changes to secondary legislation were introduced in 2004 in accordance with Cabinet Office Better Regulation principles, including a public consultation exercise and a Regulatory Impact Assessment.

The Final Regulatory Impact Assessment will be revisited during the course of this review, using information held within ECO, to confirm that its findings still hold good, and the conclusions of this internal work will form part of the consultation paper. Further evidence generated as a result of the public consultation exercise will be taken into account before final conclusions are reached on the impact of the secondary legislation introduced in 2004.

Similarly, the assessment of any proposals for new, extended, or altered controls will follow Cabinet Office Better Regulation principles, with the production of an initial Regulatory Impact Assessment, adequate public consultation, and a commitment to further review the impact of any necessary further changes to secondary legislation at a later date.

⁹ Whilst primary legislation under the Export Control Act 2002 is not the subject of this review, if a change is agreed which can only be effected through amending primary legislation, then this course of action will be followed.

Evidence based approach

The key element of the Government's own internal assessment of the effectiveness of existing controls, will be the Government's evidence, (mostly gleaned from licensing statistics and other case-based information). Contributions to the review from other parties should similarly be based on firm evidence, consistent with the Government's commitment to evidence-based policy making and Better Regulation principles. In particular, requests to restrict, change or extend controls, or introduce entirely new ones, should be backed up by evidence of the scale or impact of the problem that needs solving and/or the business consequences of adopting any particular resolution method.

TIMETABLE

A public consultation will commence in June 2007, with the broad issue of a consultation document. The deadline for receipt of responses will be September 2007.

Autumn 2007 will be the period for evaluating responses and reporting back to Ministers, with recommendations for change as appropriate. The review will be completed by December 2007, by which time the Government will publish details of the actions it will take. Any legislative amendments will be subject to Post Implementation Review in accordance with Better Regulation principles as above.

ANNEX 3: CONSULTATION CODE OF PRACTICE

The Consultation Code of Practice Criteria:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>

Comments or complaints:

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Kathleen McKinlay
Consultation Co-ordinator
Better Regulation Team
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET
Telephone: 0207 215 2811
Email: Kathleen.McKinlay@dti.gsi.gov.uk

ANNEX 4: LICENCING STATISTICS IN RELATION TO THE 2004 CONTROLS

1. Data and information on intangible transfers of military technology (ITT)

Applications received from November 2003 to 30 Dec 2006								
Licence type	Pre-consultation estimates	Final RIA forecast estimated no. of applications (pa)	Actual Nos applications/registrations received			Percentage of variance for applications received for each year/original annual estimates		
			03/04	05	06	03/04	05	06
“Miltech” ¹⁰ OGEL	Not estimated	20 - 40	199	49	49	398%	23%	23%
“Individual Use” ¹¹ OGEL	Not estimated	170 – 200	280	28	47	40%	-86%	-77%
“Modcons” ¹² OGEL	Not estimated	Not estimated	171	30	50			
UK Forces Embargoed Destinations	Not estimated (licence not envisaged at time of RIA)	Not estimated (licence not envisaged at time of RIA)	42	17	14			
UK Forces Non-Embargoed Destinations	Not estimated (licence not envisaged at time of RIA)	Not estimated (licence not envisaged at time of RIA)	35	21	21			
SIEL (Miltech ITT)	100 - 200	800 - 900	452	354	328	-50%	-61%	-64%
OIEL (Miltech ITT)	Not estimated	Not estimated	247	152	151			
Total Individual Applications (OIELs and SIELs)			699	506	479			

¹⁰ Full title: ‘Technology for Military Goods’. This permits the transfer of specified technology to certain destinations

¹¹ Full title: ‘Access Overseas to Technology for Military Goods: Individual Use Only’. This permits, subject to certain conditions, the transfer or export of certain technology to specified destinations, where it is accessed from overseas by persons, whilst temporarily abroad but who would normally be based within the UK. They must be authorised by their employer to access their technology and information technology systems in the UK and the permission includes where necessary the export of licensable technology on a portable computing device (e.g. a laptop), and for individual use in connection with the business of the exporter where the technology will not be disseminated to any unauthorised parties.

¹² Full title: ‘Exports or transfers in Support of UK Government Defence Contracts’. This licence permits, without further authority but subject to certain conditions, exportation of specified military goods to certain destinations, the provision of technical assistance for any relevant use to specified destinations and the transfer of software and technology by any means to a person or place within the UK if he has reason to believe it is intended for any relevant use to a specified destination; the transfer of software or technology by any means by a UK person for a relevant use from any country outside the EC to any country specified providing the export or transfer is for the purpose of an eligible United Kingdom Government Defence Contract.

Processing times:

Licence type	Licence	% Completed within 20 or 60 working day target as relevant
Standard Individual Licence applications	SIEL (Miltech ITT)*	82%*** (Jan-Aug 06); (73% 2005)
Open Individual Licence applications	OIEL (Miltech ITT)*	74% *** (Jan-Aug 06); (62% 2005)

* These figures are based on licences issued for line items with an ML22 rating (for both physical and electronic transfers of technology)

*** These figures are based on all licences issued.

2. Data and information on trafficking and brokering (including extra-territorial provisions relating to restricted goods or embargoed destinations)

Applications received from 1 May 2004 to 30 Dec 2006								
Licence type	Pre-consultation estimates	Final RIA forecast estimated no. of applications (pa)	Actual Nos applications/registrations received			Percentage of variance for applications received for each year/original annual estimates		
			04	05	06	04	05	06
Open General Trade Control Licence (OGTCL)	Not estimated	550	263	42	46	-52%	-92%	-92%
Standard Individual Trade Control Licence (SITCL)	100-250	900-1500	131	144	98	-91%	-90%	-93%
Open Individual Trade Control Licence (OITCL)	Not estimated	Not estimated	80	40	46			
Total Individual Applications (OITCLs and SITCLs)			211	184	144			

Processing times:

Licence type	Licence	% Completed within 20 or 60 working day target as relevant
Standard Individual Licence applications	SITCL	53% ** for 2006
Open Individual Licence applications	OITCL	86% for 2006

** This represents a decrease in performance caused by events unrelated to the introduction of the new controls and outside of ECO's control that is, the UNSCR on Iraq and the sensitivities surrounding these licence applications.

Refusals: Data from May 2004 to October 2006

Type of licence	No Issued 2004	No of refusals	No Issued 2005	No of refusals	No Issued 2006	No of refusals
OITCL	36	0	19	3	43	2
SITCL	65	1	86	5	70	13
Total	101	1	105	8	113	15

3. Data and information on the transfer of technology and provision of technical assistance that could aid a WMD programme

There was one refusal in 2005.

Applications received from 1st Nov 2003 (the commencement of the six month implementation period) to 31 August 2006			
Licence type	Pre-consultation estimates	Final RIA forecast (for 12 month period)	Actual Nos applications/ registrations received to 31 August 2006
Standard Individual Licence applications			
WMD (new “end-use” controls)	Not estimated	Very small	4
Open Individual Licence applications			
WMD (new “end-use” controls)	Not estimated	Not estimated	28
Total Individual Applications (OIELs and SIELs)			32

Processing times:

Licence type	Licence	% Completed within 20 or 60 working day target as relevant
Standard Individual Licence applications	WMD (new “end-use” controls)	100%
Open Individual Licence applications	WMD (new “end-use” controls)	96.4%

ANNEX 5: LEGAL REFERENCES

Restricted Goods and Trade Controls (see Section 2.1)

Trade in Goods (Control) Order 2003

Supply or delivery of restricted goods

3. (1) Subject to the provisions of this Order, no person shall directly or indirectly -
- (a) supply or deliver
 - (b) agree to supply or deliver; or
 - (c) do any act calculated to promote the supply or delivery of

any restricted goods, where that person knows or has reason to believe that his actions will, or may, result in the removal of those goods from one third country to another third country

- (2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly -
- (a) supply or deliver
 - (b) agree to supply or deliver; or
 - (c) do any act calculated to promote the supply or delivery of

any restricted goods, where that person knows or has reason to believe that his actions will, or may, result in the removal of those goods from one third country to another third country

- (3) Paragraph (1) applies to any act, or any part of any act, done in the United Kingdom
- (4) Paragraph (2) applies to any act, or any part of any act, done outside the United Kingdom or the Isle of Man

Trade in Controlled Goods (Embargoed Destinations) Order 2004

Supply and delivery of controlled goods

3. – (1) Subject to the provisions of this Order, no person shall directly or indirectly -
- (a) supply or deliver
 - (b) agree to supply or deliver; or
 - (c) do any act calculated to promote the supply or delivery of

any controlled goods to any person or place in an embargoed destination

- (2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly -
- (a) supply or deliver
 - (b) agree to supply or deliver; or
 - (c) do any act calculated to promote the supply or delivery of

any controlled goods to any person or place in an embargoed destination

- (3) Paragraph (1) applies to any act, or any part of any act, done in the United Kingdom
- (4) Paragraph (2) applies to any act, or any part of any act, done outside the

United Kingdom or the Isle of Man

Ancillary services (See Section 2.2)

Trade in Goods (Control) Order 2003

Transfer, acquisition or disposal of controlled goods

4. - (1) Subject to the provisions of this Order, no person shall -

- (a) arrange the transfer of controlled goods from one third country to another third country; or
- (b) acquire or dispose, or agree to acquire or dispose, of any controlled goods, where that person knows or has reason to believe that such an acquisition or disposal will or may result in the removal of those goods from one third country to another third country.

(2) Subject to the provisions of this Order, no person shall -

- (a) arrange or negotiate; or
- (b) agree to arrange or negotiate,

a contract for the acquisition or disposal of any controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(3) Subject to the provisions of this Order, no person shall in return for a fee, commission or other consideration -

- (a) do any act; or
- (b) agree to do any act,

calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.

(4) Paragraphs (1), (2) and (3) apply to any act, or any part of any act, done in the United Kingdom.

(5) Paragraphs (1), (2) and (3) shall not apply to any person whose sole involvement in relation to the transfer, acquisition or disposal of any controlled goods is to provide or agree to provide -

- (a) transportation services,
- (b) financing or financial services,
- (c) insurance or reinsurance services, or
- (d) general advertising or promotion services.

Trade in Goods (Control) Order 2003

Supply or delivery of restricted goods

3. (1) Subject to the provisions of this Order, no person shall directly or indirectly -

- (d) supply or deliver
- (e) agree to supply or deliver; or
- (f) do any act calculated to promote the supply or delivery of

any restricted goods, where that person knows or has reason to believe that his actions will, or may, result in the removal of those goods from one third country to another third country

(3) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly -

- (a) supply or deliver
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of

any restricted goods, where that person knows or has reason to believe that his actions will, or may, result in the removal of those goods from one third country to another third country

(3) Paragraph (1) applies to any act, or any part of any act, done in the United Kingdom

(5) Paragraph (2) applies to any act, or any part of any act, done outside the United Kingdom or the Isle of Man

Trade in Controlled Goods (Embargoed Destinations) Order 2004

3. – (1) Subject to the provisions of this Order, no person shall directly or indirectly -

- (c) supply or deliver
- (d) agree to supply or deliver; or
- (e) do any act calculated to promote the supply or delivery of

any controlled goods to any person or place in an embargoed destination

(2) Subject to the provisions of this Order, no United Kingdom person shall directly or indirectly -

- (d) supply or deliver
- (e) agree to supply or deliver; or
- (f) do any act calculated to promote the supply or delivery of

any controlled goods to any person or place in an embargoed destination

(3) Paragraph (1) applies to any act, or any part of any act, done in the United Kingdom

(5) Paragraph (2) applies to any act, or any part of any act, done outside the United Kingdom or the Isle of Man

Military End Use Control (See Section 2.4)

EC Dual Use Regulation 1334/2000, Article 4

2. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an arms embargo decided by a common position or joint action adopted by the Council or decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or part, for a military end-use. For the purposes of this paragraph, 'military end use' shall mean:

- (a) incorporation into military items listed in the Military List of Member States;

- (b) use of production-, test- or analytical equipment and components therefore, for the development, production or maintenance of military items listed in the abovementioned list
- (c) use of any unfinished products in a plant or the production of military items listed in the abovementioned list

3. An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for use as parts or components of military items listed in the national military list that have been exported from the territory of that Member State without authorisation or in violation of an authorisation prescribed by national legislation of that Member State.

Torture equipment (See Section 2.6)

Trade in Goods (Control) Order 2003, Schedule 2

2. Restraints specially designed for restraining human beings, as follows—

- (a) Leg-irons, gangchains, shackles and individual cuffs or shackle bracelets except those that are ‘ordinary handcuffs’. ‘Ordinary handcuffs’ are handcuffs which have an overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 240mm when locked and have not been modified to cause physical pain or suffering;
- (b) Restraint chairs unless designed for disabled persons;
- (c) Shackle boards;
- (d) Thumb-cuffs and thumb-screws, including serrated thumb-cuffs;
- (e) Electric shock belts.

3. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (e.g., electric-shock batons, electric-shock shields, stun-guns and electric- shock dart-guns).

4. Components specially designed or modified for the devices in paragraph 3.

Transit and Transshipment (See Section 2.7)

Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003

PART IV – EXCEPTIONS TO THE CONTROLS IN PARTS I, II AND III

10) Subject to article 5 and paragraph (11) below, nothing in article 3, 4(1), 4(2)(a), (b), (c)(ii) or (4) shall be taken to prohibit the exportation of any goods which are goods in transit provided that the conditions in paragraph (12) below are met.

(11) Paragraph (10) does not apply to -

- (a) anti-personnel landmines;
- (b) any goods falling within paragraph c. or g. of entry PL5001 in Part I of Schedule 1 to this Order;
- (c) components specially designed for goods falling within sub-paragraph (a);
- (d) equipment, software or technology falling within entry ML18, ML21 or ML22 in Part I of Schedule 1 to this Order specifically related to goods falling within sub-paragraph (a) or (b);
- (e) any goods being exported to a destination in Iran, Iraq, Libya or North Korea; or
- (f) any goods of a description specified in Schedule 1 to this Order being exported to any country or destination specified in Schedule 3 to this Order.

(12) The conditions are that -

(a) the goods remain on board a vessel or aircraft for the entire period that they remain in the United Kingdom or are goods on a through bill of lading or through air waybill and in any event are exported within 30 days of their importation;

(b) the destination of those goods following exportation from the United Kingdom has been determined in the country from which they were originally exported prior to their original exportation in connection with the transaction which has given rise to transit or transshipment and has not been changed prior to their exportation from the United Kingdom, or the goods are being returned to that country; and

(c) the goods in question were exported from that country in accordance with any laws or regulations relating to the exportation of goods applying therein at the time of exportation of those goods.

WMD controls (See Section 2.8)

Article 4.1 of the EC Dual Use Regulation 1334/2000

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.

Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003

End-Use Controls on the transfer of all software and technology by any means

Electronic transfer of all software and technology and end-use controls

8. - (1) Subject to the provisions of this Order, no person shall transfer by any electronic means any software or technology to a person or place within the United Kingdom, where -

(a) he has been informed by the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or

(b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used outside the European Community.

(2) Subject to the provisions of this Order and where paragraph (3) applies, no United Kingdom person shall transfer by any electronic means any software or technology from any place outside the European Community to -

(a) a person or place outside the European Community; or

(b) a person or place in any Member State, if he knows at the time of transfer that such software or technology is intended for use outside the European Community and no processing or working is to be performed on that software or technology in any Member State to which it is to be transferred.

(3) This paragraph applies where -

(a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or

(b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(4) Subject to the provisions of this Order, no United Kingdom person shall transfer by any electronic means any software or technology from any place outside the European Community to a person or place within the United Kingdom where -

(a) he has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or

(b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used outside the European Community.

(5) For the purposes of paragraphs (1) and (4) a person has reason to believe that software or technology may be used outside the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Secretary of State that it may be or is intended to be so used.

(6) Nothing in paragraph (1), (2) or (4) shall be taken to prohibit the transfer of any software or technology in the public domain.

(7) Paragraph (1), (2) or (4) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

Non-electronic transfer of all software and technology and end-use controls

9. - (1) Subject to the provisions of this Order, and where paragraph (2) applies, no person ("the person concerned") shall transfer by any non-electronic means any software or technology to -

(a) a person or place outside the European Community; or

(b) a person or place in any Member State if he knows at the time of transfer that such software or technology is intended for use outside the European Community and no processing or working is to be performed on that software or technology in any Member State to which it is to be transferred.

(2) This paragraph applies where -

(a) the person concerned has been informed by the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or

(b) the person concerned is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(3) Subject to the provisions of this Order, no person shall transfer by any non-electronic means any software or technology to a person or place within the United Kingdom where -

(a) he has been informed by the Secretary of State that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or

(b) he is aware that such software or technology is intended, in its entirety or in part, for any relevant use,

if he has reason to believe that such software or technology may be used outside the European Community.

(4) Subject to the provisions of this Order and where paragraph (5) applies, no United Kingdom person shall transfer by any non-electronic means any software or technology from any place outside the European Community to -

(a) a person or place outside the European Community; or

(b) a person or place in any Member State if he knows at the time of transfer that such software or technology is intended for use outside the European Community and no processing or working is to be performed on that software or technology in any Member State to which it is to be transferred.

(5) This paragraph applies where -

(a) the United Kingdom person has been informed by a competent authority that such software or technology is or may be intended, in its entirety or in part, for any relevant use; or

(b) the United Kingdom person is aware that such software or technology is intended, in its entirety or in part, for any relevant use.

(6) For the purposes of paragraph (3) a person has reason to believe that software or technology may be used outside the European Community if he knows that it may be or is intended to be so used or if he has been informed by the Secretary of State that it may be or is intended to be so used.

(7) Nothing in paragraph (1), (3) or (4) shall be taken to prohibit the transfer of any software or technology in the public domain.

(8) Paragraphs (1), (3) and (4) do not prohibit the transfer of any software or technology in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

PART III

CONTROLS ON THE PROVISION OF TECHNICAL ASSISTANCE

End-use control on technical assistance

10. - (1) Subject to paragraphs (3) and (4), no person shall directly or indirectly provide to a person or place outside the European Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which -

(a) he has been informed by the Secretary of State is or may be intended, in its entirety or in part, for any relevant use; or

(b) he is aware is intended, in its entirety or in part, for any relevant use.

(2) Subject to paragraphs (3) and (4), no United Kingdom person shall directly or indirectly provide from a place outside the European Community to any person or place outside the European Community any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which -

(a) he has been informed by the Secretary of State is or may be intended, in its entirety or in part, for any relevant use; or

(b) he is aware is intended, in its entirety or in part, for any relevant use.

(3) For the purposes of paragraphs (1) and (2) -

(a) a person directly provides technical assistance if in particular he provides technical assistance or agrees to do so; and

(b) a person indirectly provides technical assistance if in particular he makes arrangements under which another person provides technical assistance or agrees to do so.

(4) Paragraphs (1) and (2) do not prohibit the provision of any technical assistance in relation to which a licence in writing has been granted by the Secretary of State, provided that all conditions attaching to the licence are complied with.

Tidying up work: differing definitions of technology (See Section 2.9)

Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003

Interpretation

2. - (1) In this Order the following expressions have the meanings given to them below, save where an expression is also defined in a Schedule where it has, for the purposes of that Schedule, that meaning –

technology" means information (including but not limited to information comprised in software and documents such as blueprints, manuals, diagrams and designs) that is capable of use in connection with the development, production or use of any goods;

SCHEDULE 1

Articles 3 and 6

PROHIBITED GOODS, SOFTWARE AND TECHNOLOGY

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

Technical Note:

"Information" may take forms including, but not limited to: blueprints, plans, diagrams, models, formulae, tables, "source code", engineering designs and specifications, manuals and instructions 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.

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

"user-accessible programmability" means the facility allowing a user to insert, modify or replace "programmes" by means other than:

a. A physical change in writing or interconnections; or

b. The setting of function controls including entry of parameters.

EC Dual Use Regulation 394/2006, Annex 1 Definitions

Technology'' (GTN NTN All) means specific information necessary for the ''development'', ''production'' or ''use'' of goods. This information takes the form of 'technical data' or 'technical assistance'.

N.B. 1: 'Technical assistance' may take forms such as instructions, skills, training, working knowledge and consulting services and may involve the transfer of 'technical data'.

N.B. 2: 'Technical data' may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape or read-only memories.

Tidying up work on Trade Controls: coverage of explosive goods and technology (See Section 2.9)

Trade in Goods (Control) Order 2003

Interpretation

2. - (1) In this Order:

"controlled goods" means goods used and unused, specified in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003[2], the transfer, acquisition or disposal, of which are prohibited by this Order, but does not include goods which are "restricted goods". For the avoidance of doubt, "controlled goods" does not include software and technology;

Trade in Controlled Goods (Embargoed Destinations) Order 2004

Interpretation

2. - (1) In this Order -

"controlled goods" means goods used and unused, specified in Part 1 of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003[2], the supply and delivery of which are prohibited by this Order. For the avoidance of doubt "controlled goods" does not include software and technology.

Tidying up work on Trade Controls: receipt of a fee or commission (See Section 2.9)

Trade in Goods (Control) Order 2003

Transfer, acquisition or disposal of controlled goods

4.

(3) Subject to the provisions of this Order, no person shall in return for a fee, commission or other consideration -

(a) do any act; or

(b) agree to do any act,

calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods, where that person knows or has reason to believe that such a contract will or may result in the removal of those goods from one third country to another third country.