

BERR

Department for Business
Enterprise & Regulatory Reform

EXPORT CONTROL ACT 2002

Review of Export Control
Legislation (2007) -
Government's End of Year
Response

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Introduction

On 18 June 2007, the Government launched a public consultation on UK export controls. The public consultation document, "2007 Review of Export Control Legislation: A consultative document", sought the views of respondents, both on the impact and effectiveness of the controls that were introduced in 2004, and on a number of options for further change. The consultation closed on 30 September 2007.

The Government received 23 substantive responses and 5,134 brief E-Mails and letters. All the substantive responses¹, and a sample of the brief E-Mail responses, can be found on the BERR website (<http://www.berr.gov.uk/consultations/page39910.html> - for the main BERR consultation page; and <http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/index.html> - for ECO's consultation page). We thank all those who responded for their contributions.

The Government published its initial response to the consultation on 6 February 2008, and a further response was published in July 2008. Both responses highlighted the areas where the Government would be making changes to current legislation; areas where further discussion was required; and areas where it had decided not to make changes. Where changes to legislation have been agreed, they have been costed and the impact assessments can be found at <http://www.berr.gov.uk/files/file47075.pdf>.

1. Summary of actions and decisions so far

The following changes were announced in the responses, and have either been implemented or are due to be implemented:

- A new control on sting sticks was introduced in April 2008
- The Trade Controls were restructured into Categories A, B and C in order to align them more effectively with the relative risks (these changes have been introduced in two stages, in October 2008 and April 2009).
- The range of activities covered by the Trade Controls will include all forms of transport provision or supporting services by any UK persons where it contributes to the movement of any Category A goods.

¹ This does not include copies of responses that respondents have been asked to be kept confidential.

- For Category B goods, because these are traded legitimately but are of heightened concern, the controls will cover certain activities of transport providers, but the level of control will be proportionate to the level of risk. We have worked closely with stakeholders to ensure that the controls do not capture those activities that are of no concern. The Category B changes will be introduced in April 2009.
- The activities of transport providers will not be controlled in relation to Category C goods.
- We will be correcting an anomaly in the current legislation, by extending extra-territorial controls on some non-military explosives that were not previously controlled, in April 2009. This will extend controls to extra-territorial trading in these goods to supply embargoed destinations, and the provision of associated ancillary services.
- We have put in place administrative changes that make it easier for the Government to revoke or suspend exporters' or traders' ability to use open licences, and are enhancing our awareness programme to raise compliance levels generally, but particularly in relation to traders and the academic community. We are also looking at bringing in civil penalties in addition to existing criminal prosecution powers. However, because of the need for primary legislation, it is unlikely that any fully functioning system could be in place before 2011.

We announced that we had decided not to make any changes in the following areas:

- Not to remove the receipt of a fee, commission or other consideration clause, but to amend the legislation to clarify what is meant by this.
- Not to change the differing definitions of technology, but to improve the guidance in this area.

2. Update on progress since the Government's July 2008 response

We have made the following progress on areas which had not been finalised at the time of the July consultation response:

- **Controls on other activities (i.e. sole provision of transport, finance, insurance and general advertising or promotion) relating to Category B goods.**

As noted in the July response, Category B will cover those items that whilst of concern in some circumstances, are legitimately traded. The sole provision of financing or insurance, and general

advertising and promotion for Category B goods will not be controlled, but active or targeted promotional activities aimed at securing a particular business deal will be.

- **Provision of Transport**

As noted in the July response, we have decided that certain activities relating to transport should be controlled. The exact level of control for goods in Categories A, B and C is specified in the Export Control Order 2008, which was laid before Parliament on 17 December 2008. In summary:

- i. Category A will control **all activities** relating to the provision of transport. Because of the risk associated with Category A goods, this will not be limited to the provision of transport services, but will cover all aspects associated with this, including: agencies providing drivers, pilots and administrative staff to transport providers; individuals involved in loading/unloading goods; driving/piloting/crewing of a vessel, vehicle or aircraft; and companies that provide rental vehicles (including trailers).
- ii. The supply and delivery of Category 'B' goods between two third countries will continue to be controlled. Individuals or entities involved in **arranging** transport, either on its own or as part of a larger package, will also be controlled. What will only be controlled, in limited circumstances, is the actual **provision** of the transport service. For example, a freight forwarder is likely to be involved in **arranging** transport (completing the appropriate paperwork, finding and engaging a transport service, etc) as they are making arrangements on behalf of another UK entity for the movement of items between third countries. This would constitute a controlled activity and therefore be subject to licensing, irrespective of whether or not another UK entity was directly or indirectly involved. However, the activities of a UK transport provider who is **sub-contracted by a UK entity** to provide, for example, a driver and vehicle to move controlled goods would not be controlled.
- iii. the sole provision of transport, (i.e. other than in conjunction with other controlled activities) in relation to Category C goods will not be controlled.

- **Torture End-Use Control**

The UK will be taking this proposal forward at the European level to ensure that UK exporters are not disadvantaged in competition with European competitors, and also to prevent unscrupulous UK exporters from carrying out such activities from another Member State. We will be asking the Commission to introduce a control where the exporter will be required to submit an export licence application where they have reason to believe, or have been informed, that the items could be used for capital punishment, torture or other cruel, inhuman or degrading treatment. This control will supplement the current list of items already controlled in EC Reg 1236/2005. We have taken initial soundings on this proposal from other Member States, and will be meeting with the Commission in early 2009 to discuss it in more detail.

- **Additional controls on equipment for use in destinations of concern/overseas production**

We noted in the July Response that we had concluded that there was not a convincing case for enhancing current controls on the export of controlled goods in this context. However, we accepted, in principle, that there was a case for tightening controls on the export of non-controlled goods.

We said in the July Response that we believe that the best approach is to work with other EU Member States to enhance the current Military End-Use Control (MEUC) contained in EC Regulation 1334/2000. Broadly, we will be proposing that the existing MEUC should be extended to apply to complete equipment where the intended end-use is by the police, military, para-military or security forces in an embargoed destination, and there is a clear risk that it will be used for internal repression, breaches of human rights, or against UK or allied forces. We will also propose extending the control to apply beyond embargoed destinations, to additional listed destinations that are of heightened concern for any of these reasons.

However, before we can make a proposal in the EU, we will need to check that our suggested changes are workable in practice. We will therefore be seeking to identify those exporters who will be most directly affected and seeking their comments and views before proceeding to the next stage of the process.

- **In-Country Transfers**

It has always been our interpretation of the trade control legislation that only those activities related to the cross-border movement of items to an embargoed destination are controlled, and that in-country transfers within the embargoed destination are not. Controlling in-country movements could potentially catch a large number of transfers of no concern. This is consistent with the fact that, with the exception of some WMD controls, all other controls are based purely on cross-border movements. There is also nothing in the current embargoes to suggest that exporting countries should put in place controls on the movement of items within an embargoed destination. We have therefore made some minor changes to the legislation to make this clear.

- **Whether to extend trade controls on activities by UK persons anywhere in the world to cover other weapons, ie beyond cluster munitions, small arms, light weapons, etc.**

This is being discussed by NGO and Industry representatives who hope to make a proposal for the Government to consider. In the event that further changes are agreed as a result of that consideration, another tranche of legislation may still be required after April 2009.

3. Other points raised

Finally, where points were raised during the course of the Review in relation to areas that fell outside its scope, in particular from the Committees on Arms Export Controls, Industry and the NGOs, we will be responding to them separately.