

**EXPORT CONTROL  
ORGANISATION**

Export Control Act 2002 -  
Review of Export Control  
Legislation (2007) : Impact  
Assessment - changes not  
assessed in July 2008

JANUARY 2009

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>BERR</b>	<b>Title:</b> <b>Impact Assessment of Review of Export Control Legislation (2007) changes not assessed in July 2008</b>	
<b>Stage:</b> Final/Implementation	<b>Version:</b> 1	<b>Date:</b> 11 December 2008
<b>Related Publications:</b> Public Consultation, Initial & Further Response to the Public Consultation, and July 2008 Impact Assessment - <a href="http://www.berr.gov.uk/consultations/page39910.html">http://www.berr.gov.uk/consultations/page39910.html</a>		

**Available to view or download at:**

<http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control>

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**What is the problem under consideration? Why is government intervention necessary?**

Legislation introduced in 2004 represented a major strengthening of export controls. Even though a "perfect" export control system is almost impossible to achieve, there has been a case put for further change to guard against 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 undesirable end use, eg by terrorists. Government intervention is necessary to find an effective and proportionate way to guard against the risk of undesirable exports and related activities.

**What are the policy objectives and the intended effects?**

The Government is committed to a responsible, effective, open and transparent strategic export control regime. The intended effect is to maintain an effective system of controls to ensure that UK involvement in strategic exports does not contribute to internal repression, regional instability, external aggression and serious undermining of the development of poor nations, but to do so in a way that does not place unnecessary or disproportionate burdens on legitimate business.

**What policy options have been considered? Please justify any preferred option.**

These changes stem from the review of export controls, which commenced in June 2007 with the launch of a public consultation seeking views on a wide range of change options. Chosen options have then implemented in 3 stages with 2 stages having been completed already. In this 3rd stage extra-territorial trade controls are further extended to cover Light Weapons, and are adjusted for Long Range Missiles. Controls are also tightened on Category B Goods that are in transit or transhipped through the UK. All changes other than transit and transhipment were costed in the 1st Impact Assessment.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

Within three to five years of the legislation coming into effect.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Ian Pearson

.....Date: 15 December 2008

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description: Extra controls on Transshipment of Category B Goods and Cluster Munitions.</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' Business costs - Annual costs of £5,100 - £27,600. Government costs - Annual administration costs of £7,140 - £38,640, annual enforcement costs of £68,000 to £368,000.			
	<b>One-off</b> (Transition) <span style="float: right;">Yrs</span>		£		
	<b>Average Annual Cost</b> (excluding one-off)		£ 80,240- £434,240	<b>Total Cost (PV)</b>	<b>£ 571000-£3089000</b>
	Other <b>key non-monetised costs</b> by 'main affected groups' Apart from the costs incurred by the government for processing licence applications, other costs could pertain to awareness raising and enforcement of these extra controls.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' Benefits from these controls cannot be estimated as they are by their nature not readily quantifiable. The government's main aim is to have an effective and transparent strategic export control regime, to ensure that UK involvement in strategic exports does not contribute to regional instability and external aggression.			
	<b>One-off</b> <span style="float: right;">Yrs</span>		£		
	<b>Average Annual Benefit</b> (excluding one-off)		£	<b>Total Benefit (PV)</b>	<b>£</b>
	Other <b>key non-monetised benefits</b> by 'main affected groups' The controls control the transit or transshipment of weapons of heightened concern through the UK when they are destined for a list of high risk countries. Though the benefits for the UK public and overall global security might be significant, it is not possible to monetise them.				

**Key Assumptions/Sensitivities/Risks** Assumed an extra 17 to 92 transshipment licences per year - a wide range due to a lack of firm data and the difficulty of estimating the possible increase in licence applications in light of greater awareness (see 'Increase in licences' section on pages 4-5).

Price Base Year 2008	Time Period Years 7	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	UK		
On what date will the policy be implemented?	6th April 2009		
Which organisation(s) will enforce the policy?	HMRC		
What is the total annual cost of enforcement for these organisations?	£ 68k - £368k		
Does enforcement comply with Hampton principles?	Yes		
Will implementation go beyond minimum EU requirements?	Yes		
What is the value of the proposed offsetting measure per year?	£		
What is the value of changes in greenhouse gas emissions?	£ Nil		
Will the proposal have a significant impact on competition?	No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium      Large
Are any of these organisations exempt?	No	No	N/A      N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of    £ 5k-£28k	Decrease of    £	<b>Net Impact</b> £ 5k-£28k

Key:

Annual costs and benefits: Constant Prices

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **Issue**

The legislation introduced in 2004 represented a major strengthening of export controls. The 2004 changes were aimed at ensuring that recent business developments did not enable unscrupulous exporters or traders to put controlled goods or technology into the hands of undesirable end users. There has been a case put for further change to guard against 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 undesirable end use, e.g. by terrorists.

Government intervention is necessary to find an effective and proportionate way to guard against the risk of undesirable exports and related activities.

### **Purpose and intended Effects**

The Government is committed to a responsible, effective, open and transparent strategic export control regime. A lack of effective controls on strategic exports could contribute, inter alia, to internal repression, regional instability, external aggression and serious undermining of the development of poor nations.

The overarching objectives of the UK Government's strategic export control policy are to:

- 1) Maintain an effective system of controls to ensure that UK involvement in strategic exports does not contribute to regional instability, internal repression, external aggression or seriously undermine the development of poor nations, while supporting a strong domestic defence industry and legitimate transfers of strategic goods and technology.
- 2) Play a leading role in strengthening international regulation of the arms trade.
- 3) Prevent the proliferation of weapons of mass destruction.

In 2007 the Government launched a Post Implementation Review of the Export Control legislation introduced in 2004 under the Export Control Act 2002. Widespread changes to strengthen export and trade controls were announced in its initial and further responses to its public consultation, which closed on 30 September 2007. These government responses can be viewed at <http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/index.html>.

Changes to the legislation have been introduced in three tranches. The first two tranches have already been enacted by virtue of The Export Control (Security and Para-military Goods) Order 2008 (S.I.2008 No. 639) and The Trade in Goods (Categories of Controlled Goods) Order 2008 (S.I.2008 No 1805). The third tranche changes are being introduced by The Export Control Order 2009. Elements of this Order were costed in the first Impact Assessment dated 14 July 2008. The changes to transit and transshipment controls were the only significant uncostered change. This Impact Assessment seeks to address that.

### **Transit and Transshipment – How the controls currently work**

The current 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 pre-determined destination without the need for a UK licence, provided that the exporter has complied with the laws of the originating country.

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 for any Military List goods to certain sensitive destinations (including all currently embargoed destinations) as listed in the legislation. In particular 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.

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.

## **Transit and Transshipment - Summary of prospective policy changes**

### **1. Extending transshipment controls for category B goods**

Category B goods (Small Arms, Light Weapons, MANPADs, and Long Range Missiles (including UAVs)) will always need a transshipment licence when transitting or being transhipped through the UK en route to 74 countries. Previously a transshipment licence was only needed when these goods were going to 22 fully embargoed countries.

Destination countries for which a transshipment licence **is already required** are: Democratic People's Republic of Korea, Iran, Armenia, Azerbaijan, Burma (Myanmar), Democratic Republic of the Congo, Ivory Coast (Côte d'Ivoire), Lebanon, Sudan, Uzbekistan, Zimbabwe, Afghanistan, Argentina, Burundi, China (People's Republic), Iraq, Liberia, Rwanda, Sierra Leone, Somalia, Tanzania, Uganda.

The additional 52 countries where a transshipment licence **will now be required** are: Albania, Angola, Belarus, Benin, Bosnia/Herzegovina, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Colombia, Congo (Brazzaville), Dubai, East Timor (Timor-Leste), Eritrea, Ethiopia, Gambia, Georgia, Ghana, Guinea, Guinea Bissau, Haiti, Hong Kong Special Administrative Region, Jamaica, Kenya, Kyrgyzstan, Libya, Macao Special Administrative Region, Mali, Mauritania, Moldova, Montenegro, Morocco, Namibia, Nepal, Niger, Nigeria, Oman, Pakistan, Russia, Senegal, Serbia, Sri Lanka, Syria, Taiwan, Tajikistan, Togo, Trinidad & Tobago, Turkmenistan, Ukraine, Venezuela, Yemen.

## **Costs to business**

### *Application Costs:*

**Increase in licences** - It is difficult to accurately estimate how many extra transshipment licences this legislation will generate because there is no way of establishing how many transshipments through the UK there are of goods destined for the additional 52 destinations. However, only 8 transshipment licences were applied for in 2007. A low estimate can be reached by considering the proportion of standard individual export licences (SIELs) that went to the additional countries that are newly included in transshipment legislation. In 2007 there were 190 applications for SIELs to the 74 countries that will now need a transshipment licence in certain circumstances. Of these, 61 were for the 22 countries where a transshipment licence is already needed, and 129 were for the extra 52 countries which are newly added. So by including the extra 52 countries, the applications for SIELs increases by 211% ( $129/61 \times 100$ ). Assuming a similar proportion of transshipment licences will be needed for the extra 52 countries we estimate that 25 transshipment licences in total will be needed due to the inclusion of the extra countries. This gives us a lower estimate of an extra 17 transshipment licences (25 minus the current level of 8) that will be applied for in light of new legislation.

We consider this a lower estimate as there may be an 'awareness boost'. By this we mean that the very act of publicising that the rules have changed, and issuing new guidance makes businesses critically examine their affairs and some find that they need licences for their activities even for acts that were licensable before those changes were introduced. To an extent, this was the case when a new electronic licensing processing system (SPIRE) was introduced. Consultation with businesses in the transshipment sector gave us a higher estimate of between 75 and 100 transshipment licence applications with the new regulations in place - i.e. between 67 and 92 extra licences as a result of regulation. This wider use of the regulation would come about not only through a large list of countries but also as a result of greater clarity in the regulations.

**Having considered the limited data available and public consultation we estimate that the new regulation will lead to an extra 17 to 92 transshipment licences being applied for.**

Cost per licence: Since application costs for business are likely to be similar to SIELs, we use the cost figure in the July 2008 impact assessment for costing which is £300 per licence. Taking this figure gives us an annual cost to business range of £5,100 (17\*£300) to £27,600 (92\*£300).

Combining this with annual cost to government (see below) gives annual costs of £12,240 to £66,240 shown on the summary sheet.

Initial costs to business: There will inevitably be start up, administration and staff training costs to businesses that are becoming involved for the first time with the transshipment of goods. However these are likely to be low in relation to businesses' wider costs and difficult to estimate given the size of the industry and so have not been included in this impact assessment.

On the basis of the above analysis, and the information that business has been able to provide, the *overall* costs are not expected to be unduly burdensome, although since – as with the implementation of all new legislation - respondents to questionnaires can only make a best judgement as to what their future costs might be, other elements may possibly only become apparent when the controls become operational. We also need to bear in mind that – in contrast to earlier changes - these changes do not necessarily affect UK business, because the goods in question would only be passing through the UK on its way to the final customer, and could originate from any number of destinations. Most of the costs can therefore be expected to be borne by overseas entities who apply for the relevant licences and the extent of the UK business burden will be limited. We cannot however, fully quantify the extent to which this will limit UK business costs, since the cost burden of finding this information would be disproportionate to the costs of the regulation on business.

## **Cost to government**

Administration annual costs: These come about as a result of an increased administrative and business case load. The cost to the government for processing a transshipment licence is similar to the cost of processing applications for Standard Individual Export Licences (SIELs) and Standard Individual Trade Control Licences (SITCLs), which was estimated in the previous impact assessment to be approximately £420 per licence. Taking this figure gives us an annual cost to government range of £7,140 (17\*£420) to £38,640 (92\*£420). Combining this with annual cost to business (see above) gives annual costs of £12,240 to £66,240 shown on the summary sheet.

Enforcement - The annual costs of enforcement will be borne by HMRC, who estimate that these additional transit/transshipment controls would encompass risk-assessing cargo manifests, accepting and processing licences and associated investigation/prosecution activity. As such they estimate an additional 0.8 staff year split between UKBA resources at the ports and investigation, plus additional processing costs at the National Clearance Hub for the additional licences. On the basis of 75-100 licences they gave an estimate of approximately £400,000 per annum, which approximates £4000 per licence. Given that we estimate an extra 17-92 licences per year this gives us a cost range of £68,000 (17\*£4,000) to £368,000 (92\*£4,000).

Awareness - The costs to Government of raising awareness are quite minimal. These will mainly comprise time spent by the ECO in writing guidance for the new controls plus some adjustments to the material used in existing awareness seminar programmes for UK exporters and traders.

## **2. Extending transshipment controls for category A goods**

The changes mean that there is no transit/transshipment exemption for Category A goods (ie they will always require a licence to transit or tranship the UK except in limited circumstances where the EC Regulation that controls exports of these items does not permit transit licensing. In reality the change only relates to Cluster Munitions as all other category A goods already need a transshipment licences for all destinations. Currently Cluster Munitions only require a transshipment licence when going to 22 countries. We do not have any data from which to estimate business or government costs. However, no export licences for Cluster Munitions have been issued since 1999, and over the past 10 years there has been only minimal involvement of UK persons or entities in trading Cluster Munitions. This leads us to believe that costs related to the transshipment of Cluster Munitions will be even lower than for Category B

goods, but the cost burden of finding out this information (if it even existed) would be disproportionate to the costs of the regulation on business.

### **Other areas of change**

Other changes introduced on 6 April 2009 will:

- Move light weapons into Category B of the new trade controls. This will bring under control the trading activities of UK persons anywhere in the world in relation to those weapons. Long Range Missiles (including Unmanned Aerial Vehicles) will be moved from Category A into Category B.
- Introduce controls on the sole provision of transport for Category B goods.

The likely costs of the changes to these controls were assessed as part of the first impact assessment completed in July 2008. Although the details of these changes have now been more firmly established, we do not feel that those cost estimates need to be revised as a result.

### **Conclusion**

**The present values of all costs to this 3<sup>rd</sup> tranche are estimated at approx. £571,000 - £3,089,000. The number of years over which the impact analysis takes place depends on the time period over which the major direct costs of the policy are expected to accrue. For most government policy it is likely to be around 7 years and we are assuming it as such for this analysis. The discount rate used to convert costs to present values is 3.5% (based on the Green Book - the Treasury's guidance on economic assessments of regulatory changes).**

**The clear benefit will be to enable the Government to control, and where necessary refuse, the movement of these goods through the UK. There will of course, be some extra business burdens as more goods will now need a transshipment licence for more destinations of concern, but the Government's view is that this is appropriate to the risk concerned. Open licensing will be considered for transactions that are clearly not of concern, in order to minimise the burden for businesses.**

**It is not possible to quantify the benefits to the UK public of tightening transshipment controls. The benefit will be to overall global security, without precise benefits for particular individuals or groups of UK society. Therefore the overall choice of policies will be primarily determined by weighing the proliferation risk against the need to avoid generating unnecessary burdens on legitimate business.**

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	No	No

## **Specific Impact Tests**

### **1. Competition Assessment**

A competition assessment was conducted for the July 2008 impact assessment. This impact-assessed everything except the changes to transit and transshipment controls.

Transit and transshipment is a specialist area, involving only businesses such as freight forwarders, and affecting only goods passing through the UK, originating from and going to destinations outside the UK. The changes have no impact on UK producers or exporters. We have tried to get authoritative data on the numbers of transshipments via the UK, but have been unable to get any accurate data. Whilst the global transshipment industry as a whole is large, the amount of transshipment that is routed through the UK, and, within that, is licensable, is very small in comparison, and will remain very small despite these changes. The fact that only 8 transshipment licences were processed in 2007 is testament to this. This compares to 9647 Standard Individual Export Licences processed in the same year.

The public consultation, launched in June 2007, had a specific section on transshipment and sought business views. Very few responses were received to this section. None of these demonstrated concerns about UK competitiveness and no one from the sector has made further representations to us since we announced our proposals. There is of course a risk that some trade that previously would have transhipped the UK may be redirected through other routes if industry feels that in doing so they will relieve themselves of licensing burdens. That said, the cost of £300 per transaction is probably insignificant in relation to the whole shipping cost and many of the biggest destinations will continue to remain unlicensed for most goods (by way of example, the total number of SIELs applications submitted in 2007 was 9647, but only 190 of these related to countries and goods that could require a transshipment licence (less than 2% of the total). This demonstrates that licensable transshipments are likely to be a very small proportion of total transshipments. It is also worth noting that some nearby competitor nations, such as Germany and the Netherlands also have transshipment controls so we feel that the risk of distortion of trade within the EU is also small.

### **2. Small Firms Impact Test**

As with the previous review changes, it would not be appropriate to exempt small firms from these changes in the controls. The risk the changes are intended to address apply to businesses of all sizes, and in some respects, smaller companies may be higher risk than larger companies.

Costs arising from initial implementation and ongoing costs from staff-training are likely to be proportionate to the size of the firm and are not expected to effect smaller companies competitiveness. Overall, there is no evidence to suggest that the cost of the new controls to industry will be so high as to affect the internal structure of the market or that it will have a disproportionate impact on small firms. The UK government's priority is controlling unscrupulous transactions/activities regardless of whether it is a large company or an SME carrying them out and so legislation must include small businesses. However, any special needs of small businesses will be addressed as appropriate through guidance and awareness activities.

### **3. Equalities Duties Assessment**

The text below appeared in the July 2008 Impact Assessment. That assessment still applies.

After initial screening as to the potential impact of this policy on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

### **4. Human Rights Impact Assessment**

The text below appeared in the July 2008 Impact Assessment. That assessment still applies.

After initial screening as to the potential impact of this policy on human rights of the companies on which the controls will apply, it has been decided that there will not be any major impact.