FINAL REGULATORY IMPACT ASSESSMENT

EXPORT CONTROL ORDERS

1. ISSUE

This regulatory impact assessment (RIA) considers the effect of the Orders under the Export Control Act (ECA) 2002, which received Royal Assent on 24 July 2002. The orders, which come into force on 1st May 2004, are:

- Export of Goods, Transfer of Technology And Provision of Technical Assistance (Control) Order
- Trade in Controlled Goods (Control) Order

The RIA assesses the impact only of the new controls contained in the Orders only; it does not assess the existing controls that would be carried forward from the previous orders. A consultation document on the draft orders and the partial RIA was published on 30th January 2003. The consultation period lasted for three months closing on 30th April 2003. Overall 258 responses were received to the consultation. The final RIA takes account of these responses, where relevant. Prior to this were two previous consultations on strategic export control[1]. A White Paper on Strategic Export Controls was published in July 1998 as part of the Government's response to the Scott Report. This was followed by a consultation on the draft Export Control Bill published in March 2001, which sought views on both the draft Bill and the Government's intended use of the powers in the Bill.

2. PURPOSE AND INTENDED EFFECTS

The draft Export Control Orders consolidate existing secondary legislation and introduce new controls under the Export Control Act 2002 on:

- The transfer of technology for military goods by electronic means;
- The transfer, by any means, of technology intended for use in connection with weapons of mass destruction (WMD) or a related missile programme;
- The provision of technical assistance in a WMD or related missile programme;
- Trade (trafficking and brokering) in military and paramilitary goods on the UK's 'Military List' [2], which includes long range missiles (LRM) and goods whose export has been banned because of evidence of its use in torture.

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

(i) 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, whilst supporting a strong domestic defence industry and legitimate transfers of strategic goods and technology.

(ii) Play a leading role in strengthening international regulation of the arms trade.

[1] The previous consultations on strategic export controls are covered in detail at Annex C of the Consultation Document on the Draft Secondary Legislation for the Export Control Act 2002.

[2] Goods listed in Part 1 of Schedule 1of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order

(iii) Prevent the proliferation of weapons of mass destruction.

Consistent with these objectives, the Export Control Act (ECA) 2002 strengthens and modernises the domestic export control regime and implements key recommendations of the Scott Report by providing for greater Government accountability and transparency in the export control regime. The Orders to be made under the ECA will form the major part of the legal framework by which the Government can prevent arms and sensitive technology or information falling into the wrong hands while allowing legitimate defence exports and trade to continue.

2.1 Export of Goods, Transfer of Technology And Provision of Technical Assistance (Control) Order

(i) To update the controls on the export of technology for military goods to ensure their continuing effectiveness.
(ii) To contribute to non-proliferation, national and international security through effective controls on the transfer of technology and the provision of technical assistance related to a WMD programme.
(iii) To consolidate and rationalise existing legislation.

New controls on the electronic transfer of technology for military goods.

The export of technology for military goods in physical form is currently controlled under Export of Goods (Control) Order (EG(C)O) 1994 as amended, and the export of technology for dual-use goods by physical or electronic means is controlled under European legislation (Council Regulations (EC) 1334/2000) and the Dual-Use Items (Export Control) Regulations 2000, as amended, (DUEC). The new Order brings control on the export of technology for military goods into line with the dual-use provisions by introducing a new control on the electronic transfer of technology for the production, development or use of any goods on the UK's 'Military List', to any overseas destination. This would include transfers by e-mail, fax and telephone.

New controls on the transfer of WMD related technology by any means.

The electronic (and physical) transfer of technology which is or may be for use in connection with WMD programme from the UK to outside the EC is already controlled under Council Regulations (EC) 1334/2000 and the Dual-Use Items (Export Control) Regulations 2000, as amended, (DUEC). This Order provides for controls on the transfer, by any means, of technology where the transferor either knows or is informed by Government that the technology is, or may be, intended for use in connection with programmes to develop weapons of mass destruction or missiles capable of their delivery. This includes, but is not limited to, transfer orally or by means of personal demonstration. The new controls apply to transfers within the UK where the technology may be used outside the EC, transfers by a UK person or a person in the UK to another EC Member State where there is reason to believe it may be used outside the EC, and transfers within or to any other country outside the EC. This measure implements (and goes beyond) the EU Joint Action (2000/401/CFSP) on technical assistance.

New controls on the provision of technical assistance.

The Order provides for controls on the provision of technical assistance or services in circumstances where the provider knows or is informed by the Government that it is, or may be, intended for use in connection with programmes to develop weapons of mass destruction (WMD) or missiles capable of their delivery. This measure also implements the EU Joint Action (2000/401/CFSP).

2.2 Consolidation of two existing orders.

This Order consolidates the Export of Goods (Control) Order 1994, as amended, which places controls on the physical export of controlled goods and technology, and the Dual-Use Items (Export Control) Regulations 2000, as amended, (DUEC) which places controls on the physical export and electronic transfer of controlled dual-use goods and technology, including national controls on dual-use goods where the exporter has grounds for suspicion that they may used in connection with WMD or a related missile programme.

2.3 Trade in Controlled Goods (Control) Order.

(i) To prevent the supply of long range missiles (in line with the UK's commitment under the Missile Technology Control Regime) and goods banned from export from the UK because of evidence of its use in torture.

(ii) To control the supply of arms and other military goods overseas by UK persons through trade (trafficking and brokering) activities.

New controls on the trade in long-range missiles and goods used in torture

The Order provides for controls on the supply or delivery, and acts calculated to promote the supply or delivery, to any destination, of long range missiles (defined as any missiles capable of a range over 300km) and specially designed components therefor, and goods whose export has been banned because of evidence of its use in torture. The controls apply where any part of the activity takes place in the UK, and to the activities of UK persons anywhere abroad.

New controls on trade in goods on the UK's 'Military List'.

The Order provides for controls on trading activities that facilitate the transfer of military goods between one overseas country and another (often referred to as trafficking and brokering). The controls apply to trading activities in controlled goods to any destination, which are undertaken (wholly or partly) in the UK. The Order provides for controls on arms traders who deal in controlled goods, through the acquisition, disposal or transfer of goods, or agreeing to acquire, dispose of or transfer goods. It also provides for controls on arms brokers who arrange, negotiate or who agree to arrange or negotiate contracts for the acquisition, disposal or transfer of goods, and for controls on agents who do acts calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or transfer of goods in return for a consideration (financial or material).

A licence will be required for any of the above activities. However, a licence will not be required for arranging, negotiating or agreeing to arrange or negotiate the acquisition, transfer or disposal of controlled goods, or for the promotion, arrangement or negotiation of the acquisition, transfer or disposal of controlled goods where a person's sole involvement is providing, or agreeing to provide, transportation

services, finance or financial services, insurance, advertising or promotional services (except where the activity relates to long range missiles or goods used in torture).

2.4 The [*Embargoed Destination*] (Sanctions) Control Order

To control the supply of arms to embargoed destinations through trade (trafficking and brokering) activities.

The order provided in the consultation document is an example of the type of order that would be introduced in respect of any destination where an EU, Organisation of Security and Co-operation in Europe, non-binding UN or national embargo is imposed[3]. It will control any activities connected with supply of the goods to which the particular embargo applies. The trade controls will apply regardless of whether the terms of the embargo impose an obligation upon the UK to control trade. The controls will apply where any part of the activity takes place in the UK and to activities by UK persons anywhere. The goods controlled will vary from order to order. We believe these orders will have very little affect on industry, and that the impact will be minimal. Any new licence applications arising from [*Embargoed Destination]* (Control) Orders are included in the calculations detailed in section 7.4.

3. RISK ASSESSMENT

The Government is committed to a responsible, effective, open and transparent strategic export control regime, consistent with the recommendations of the Scott Report, and to meeting its EU and international commitments to prevent the proliferation of weapons of mass destruction, and of missiles capable of delivering them. A lack of effective controls on strategic exports or trade, or transfers of technology for military goods abroad could contribute to internal repression, regional instability, external aggression and the serious undermining of the development of poor nations. Ineffective controls on the transfer of technology by any means or on the provision of technical assistance in relation to weapons of mass destruction programmes could contribute to the international proliferation of WMD. The draft Orders implement the Export Control Act 2002, which was approved by Parliament in order to address these risks.

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

Fax, telephone and email are now an established and increasingly common means of business communication. Extending export controls to cover the transfer of technology for military goods by electronic means as well as physical exports is essential to maintaining effective controls on the export of technology for military goods.

The new controls on the transfer, by any means, of technology relating to WMD or related missile programmes, and on the provision of technical assistance in connection with a WMD programme, are intended to reduce the risk of countries of proliferation

[3] Trade controls on countries which are subject to a binding UN embargo on arms exports would generally be exercised under the UN Act 1946.

concern developing their own production capabilities. Not introducing the new controls on WMD would limit the UK's ability to contribute to international peace and security through non-proliferation of WMD, and would mean the UK could not meet its EU commitments in this respect.

Trade in Controlled Goods (Control) Order and [*Embargoed Destination*] (Sanctions) Order

The draft Orders on trade in controlled goods and to embargoed destinations will help to ensure that UK foreign and defence policy and our international commitments are not undermined, by establishing effective controls on the involvement of UK persons in arranging the supply of goods to embargoed destinations or other areas of conflict, or the supply of long range missiles or goods which the UK has banned because of evidence of its use in torture.

4. OPTIONS

Option 1
Continue to rely on the present controls - the Export of Goods (Control) Order 1994 as amended and the Dual-Use Items (Export Control) Regulations 2000, as amended.

Option 2
Continue to rely on the present controls but allow industry to regulate itself or introduce a code of practice in respect of the new controls on intangible transfers and trade.

Option 3
Introduce only those new controls which will have the least effect on business, namely the controls on the transfer of technology and provision of technical assistance which may be used in WMD or related missile programmes; and on trade in long range missiles and torture goods, and trade to embargoed destinations.

Option 4
Exercise the powers under the ECA as proposed in the draft Orders.

5. BENEFITS

Option 1
Option 1 would have no significant benefits. It would not address the risks identified above or enable the Government to meet its commitments on strategic export controls, including its commitment to implement the EU joint Action on controlling technical assistance for WMD. The Export Control Act was passed by Parliament, following extensive consultation, in order to provide for new controls on the electronic transfer of technology for military goods to close the gap in the existing controls; to prevent the proliferation of weapons of mass destruction through new controls on the transfer of WMD technology by any means, and the provision of technical assistance in connection with WMD; and to provide for regulation of trade in military and

paramilitary goods. Not to exercise these powers would therefore be contrary to the will of Parliament.

Option 2
Enabling industry to regulate itself or to operate in accordance with a code of practice rather than imposing legislative control could have the benefit of reducing the compliance costs on industry in terms of licence applications and record keeping. However, self-regulation is not appropriate for implementing vital aspects of the UK's foreign and defence policy. Whilst there is a high level of awareness about export controls in the UK defence industry and a very high level of compliance with the licensing requirements it is unlikely that the electronic transfer of technology for military goods, technical assistance and transfers of technology in connection with WMD and trading activities could be fully controlled without the draft Orders. Furthermore, leaving industry to regulate itself would not give effect to the UK's international commitments and is inconsistent with existing practice, including the EC Dual-Use Regulation. The draft Orders provide for penalties for breach of the controls, including up to ten years imprisonment for the most serious offences. Given the nature of the activities to be controlled and the serious consequences of not having such controls in place, the presence of penalties and the threat of prosecution for unlawful activities are an important deterrent which self- regulation could not provide. A voluntary regime would also be contrary to the will of Parliament, which passed the Act with the purpose of enabling the Government to establish legally binding new controls.

Option 3
This option would involve only a limited use of the powers contained in the ECA. It would mean that we would meet our obligations to the EU under the Joint Action on Technical Assistance of 2000 and it would allow the Government to control the most serious types of trade and technology transfer, whilst limiting the costs to industry of the proposed controls on electronic transfer of technology for military goods and new controls on trade in military goods to all destinations. However, as for option 1 above it would lead to inconsistency with the EC dual-use controls, which came into force in September 2000. The existing controls on the transfer of technology for military goods by physical means would be increasingly undermined as electronic means of communication is used more and more. It would not address the risks set out above in connection with trade in arms from the UK. Finally, as with options 1 and 2, it would not meet the will of Parliament which expressed clear support during the Bill's passage for the introduction of controls on the electronic transfer of technology for military goods and on trade in military goods to all destinations and not just embargoed ones.

Option 4
This is the most effective option that meets the objectives and addresses the risks set out above. It will prevent export controls on technology for military goods from being undermined through the use of electronic transfers and ensure that the controls on technology for military goods are in line with controls on dual-use goods technology. The proposed WMD controls will contribute to the UK's national security interests and enable the UK to continue its international role in helping to control the non-proliferation of WMD by countries of concern. It will enable the UK to implement the EU Joint Action on controls on technical assistance in respect of

WMD. The new trade controls will help the Government to control the supply from overseas of goods that are prohibited for export from the UK and control the supply of controlled goods to regions of conflict. This option is in keeping with the will of Parliament.

6. FACTORS TO CONSIDER

6.1 Consolidation of existing controls on the export of goods.

The consolidation of the existing controls on the physical export of controlled goods and technology and on the physical and electronic transfer of controlled dual-use goods and technology does not result in any new controls: therefore there is no direct impact on business. Currently, applications for licences for the export of technology for military goods equate to 4% of the total SIEL applications received per annum.

6.2 New controls on the electronic transfer of technology for military goods.

- All current licences for the physical export of technology for military goods, will be automatically extended to cover electronic transfers of the technology for military goods. Companies that already hold a licence for the export of technology for military goods will not therefore be required to apply for a new licence to transfer that technology electronically until that licence expires.
- The automatic extension of existing licences will mean that there will be no new costs in terms of additional licence applications for those businesses who already hold licences for the export of controlled technology. It is only companies that have been and will continue to transfer technology for military goods purely by electronic means for whom there will be a new licensing requirement.
- Responses to the consultation document confirmed that the number of new licence applications made directly as a result of the new control on electronic transfers of technology for military goods will be modest, as many companies already hold licences that cover the export of technology for military goods.
- Any new licences for the export of technology for military goods issued after the orders have come into force will apply to both physical exports and electronic transfers, so there will be no need to put in extra licence applications.
- There are currently around 170 registrations for the Open General Export Licence (Technology for Military Goods)[4], from 95 companies[5]. There may be a small rise in the number of companies registered to use this OGEL as a result of the new control. In the responses to the consultation on the partial RIA, 14 companies anticipated registering for this OGEL as a result of the new control on electronic transfers. This would bring the total number of companies registered to around 110. Not all companies who export technology for military goods responded to the consultation and some of these may register

[4] Please see http://www.dti.gov.uk/export.control/pdfs/ogels/tmil.pdf for further details of the goods covered, permitted destinations and conditions of this OGEL.
[5] The number of registrations is higher than the number of companies registered, as OGEL registration is site specific.

for relevant OGELs as a result of raised awareness. There are around 160 companies who are licensed to export technology for military goods (either under the OGEL and/or who currently hold export licences). Some of these who do not use the OGEL (Technology for Military Goods) at present may register for it as a result of the new electronic transfer controls.

- On balance, it is expected that the increase in registrations for existing OGELs to fall within a range of 20 - 40. The cost of registering for use of an OGEL is very small, and companies wishing to register may send or fax their details to the Export Control Organisation (ECO), though they will be required to demonstrate compliance with the terms of the OGEL.

It must be remembered that a licence issued for the export of goods allows the minimum technology necessary for the installation, operation, maintenance (checking) and repair of the goods to be exported without the need for an additional licence. This will include technology transferred by electronic means.

The maximum use of open licensing (Open Individual Export Licences (OIELs) and OGELs), wherever appropriate, will help to minimise the number of additional Standard Individual Export Licences (SIELs) for which companies need to apply, therefore reducing the immediate and long-term impact of the new control on exporters.

6.3 New controls on the transfer by any means of technology and provision of technical assistance in relation to Weapons of Mass Destruction (WMD).

The licensing requirement for the transfer of technology or technical assistance relating to WMD would only apply where the company or person proposing to provide the technology or technical assistance knew or was informed by Government that it is or may be intended for use in connection with weapons of mass destruction or missiles capable of their delivery. In practice, it is likely that technical assistance would often be accompanied by the transfer of technology and, it is therefore recommended that the licence application specifies all the activities for which a licence is required or that Technical Assistance licence applications are cross referenced to other related applications to assist processing.

Some licences are granted for goods used for the protection of persons working in the medical or military fields, or in civil defence or emergency situations, even though they have are considered to have a WMD related end-use.

We do not expect the new controls on technology or technical assistance to result in any great number of additional licence applications due to the nature of the controls. It is only goods that are normally un-controlled that may be licenced under end-use concerns and the technology and technical assistance provisions will only apply if a licence has not already been granted for the export. The number of rating enquiries will increase as overall awareness of export controls, and of end-use concerns in particular, increases.

Use of OGELs to export goods that have a related WMD use is not permitted as all OGELs have a specific WMD exclusion condition[6]. Some OIELs are issued for goods that have a related WMD use, but all advisors carefully consider these applications, and appropriate conditions will need to be met when using the OIEL.

It is expected that only a very small number of applications in respect of the above controls would be received a year. These controls are therefore expected to have only a limited impact on business.

6.4 New controls on trade activities.

The Trade in Controlled Goods (Control) Order will require persons (in the UK) trading (trafficking and brokering) in goods on the UK's 'Military List' between third countries to apply for a licence in respect of activities.

Additionally, where the following goods are involved, a licence will be required for a wider range of activities, and the controls will extend extraterritorially to UK persons overseas:

- Goods whose export has been banned because of evidence of their use torture and long range missiles, for activities carried out in the UK and overseas. *Note: we do not expect British Industry to be engaged in these activities to any large extent and, as explained at paragraph 4.14 of the consultation document, a licence would be granted for such trade only in exceptional circumstances, so this aspect of the order should have an insignificant impact on industry.*

The main impact of the trade controls will come from the controls on trade in military goods to all destinations. As such, the trade controls are likely to affect larger companies, especially multi-nationals, as they will conduct more activities which will fall under the new trade controls. We do not expect these new controls to have a great impact on small businesses, as their main business interests will be in the supply to other companies within the UK and the export of goods, not in trade activities.

The partial RIA commented on the numbers of trade licences which are issued in Germany (10) and the US (200) but industry representatives have suggested that these figures are not a reliable basis for estimating the number of licences in the UK where the volume of trade is thought to be higher.

An Open General Trade Control Licence (OGTCL) will be introduced covering trade from and trade to selected countries in all goods to which the trade controls apply: all goods on the UK's 'Military List', other than torture goods, landmines, long-range missiles and specially designed components therefor. The OGTCL (see table 1) will permit trade of these goods between any source country (except those shown to be excluded in Group 1) and destinations in Group 2. It would also permit trade from any countries in Group 2 to any destination other than those shown to be excluded

[6] There is a definition in the new Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order for WMD related activities: "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.

from Group 3. This will mean, for example, that multinational defence companies would be able to move goods between their sites around the world or supply customers with goods directly from their factories overseas without the need for an individual licence.

Trade is permitted between countries in Group 2. The following are examples of transactions that would and would not be controlled by the OGTCL:

- Germany to Pakistan +
- Pakistan to Germany +
- Pakistan to Brazil /
- Brazil to Pakistan /
- Cyprus to Germany +
- Germany to Cyprus /

Group 1		**Group 2**		**Group 3**
Any source except Iraq, Zimbabwe or anyone to whom the Taliban/ Al-Qa'ida sanctions apply		Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, USA Π		Any destination to which the UK is not obliged or committed to limit or prevent the supply of military goods **Currently excludes:** Angola, Argentina, Armenia, Azerbaijan, Benin, Bosnia & Herzegovina, Burkina Faso, Burma, Burundi, Cape Verde, China (excluding SARs), Cyprus, DRC, Gambia, Ghana, Guinea, Guinea Bissau, Iran, Iraq, Ivory Coast, Liberia, Libya, Macau SAR, Mali, Namibia, North Korea, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Sudan, Somalia, Taiwan, Tanzania, Togo, Uganda, Zimbabwe

Table 1: OGTCL country groups.

From responses to the consultation document, we believe that approximately 550 companies will register to use the OGTCL, however as respondents to the consultation document did not appear to fully understand the new controls, how they would affected and when the use of open licencing might be appropriate, any estimates given on the anticipated number of Standard Individual Trade Control Licences (SITCL) applications may be misleading.

6.5 Embargoed Destinations Orders.

The embargoed destination Order will control the trade in military goods to the embargoed destination for activities carried out in the UK or by UK companies or nationals overseas. The costs to business arising from the new measure are likely to be very small as export licences issued for embargoed destinations are very limited. In 2001 only 316 SIELs and 71 OIELs were issued in respect of destinations where an arms embargo was in place (these were predominantly for dual-use goods, for

example goods used by the oil and gas industry for geological surveys). No OGELs are applicable. The number of trade licences issued in respect of embargoed destinations is expected to be fewer than the numbers of export licences issued.

6.6 New OGELs.

Several new OGELs will be introduced alongside the new controls. Some of these OGELs have not been drawn up to specifically address the new controls, however they will have an impact on the number of additional standard licences which need to be issued and so will reduce the burden on industry and Government.

Open licensing will be particularly useful to companies with employees, divisions and sites abroad and enable the continuation of much collaborative work overseas between UK and foreign defence industries without the need for SIELs.

Open licencing for electronic transfers of technology for military goods

For the 95 companies who currently use the OGEL (Technology for Military Goods) and other relevant military OGELs, few additional SIEL applications are anticipated for electronic transfers of technology for military goods. This confirms the original view that the impact on industry will be minimal. Respondents to the consultation document were concerned that inadvertent access to e-mails, shared data environments (SDEs) and company intranets by company employees whilst travelling overseas would breach the current controls but the proposed OGEL (Intra Company Transfers) will licence this activity to all destinations except embargoed destinations.

- Some of the estimated licensable electronic transfers of technology for military goods will be covered by the proposed OGEL for intra company transfers. Of the 18 respondents who said they would need additional SIELs, 22% said that most electronic transfers were with internal colleagues.
- Responses also indicated that many projects were MoD related and the proposed MoD OGELs (see below) will remove the need for some additional SIEL applications.
- In estimating costs to industry arising from the new licensing requirement we have taken account of the impact of the proposed OGELs.
- Respondents to the consultation were not asked to make an estimate of the number of OIELs they would require because OIELs are discretionary. It is expected that some of the additional SIEL applications anticipated by companies would be suitable for inclusion on an OIEL. However, since OIELs include both goods and technology and extant future OIELs will cover both the electronic and physical transfer of technology, it is not expected that there would be a significant number of new OIELs generated solely by the new electronic transfer control.

It is worth noting that whilst the costs to industry may rise as a result of the Act there are ongoing efforts to reduce unnecessary burdens alongside the introduction of the new controls, which will mitigate the impact of the new controls. The proposed new OGELs were not drawn up specifically to address the new controls, however they are being introduced to coincide with the new legislation.

OGEL (Intra Company Transfers)

One of the key concerns for industry to arise from the consultation on the draft secondary legislation was intra-company transfers of technology. Industry expressed concern that under the new controls, an export licence would be required if, whilst abroad, an employee accesses his e-mail, a company intranet or Shared Data Environment containing controlled technology (e.g., on a laptop). They contend that this would unduly restrict normal business practice. Further, they are concerned that because the sender of an e-mail in the UK cannot know where it will be accessed, inadvertent transfers may occur whereby an employee sends an e-mail to a colleague in the UK which that person then opens whilst on a business trip overseas – for example a person could send an e-mail to a colleague sitting at the next desk who then opens it whilst overseas.

A new OGEL is therefore being introduced which will enable a company employee, *normally based in the UK*, to view his or her e-mails, company intranets or shared data environments (and password protected internet sites) from the overseas destinations permitted by the OGEL, provided that the employee is authorised to access the technology when in the UK and does not transfer the technology to a person outside the company. There will also be conditions stipulating that the technology is not used for the production of goods overseas by the company or to upgrade existing controlled technology in an overseas destination. The OGEL will reduce the number of individual licences required and will also reduce the risk of 'inadvertent transfers'. The restrictions ensure that the technology may not be used in a way which circumvents the transfer of technology controls.

We estimate that there will be in the region of 170 - 200 registrations from 80 - 120 companies for the OGEL (Intra Company Transfers).

OGEL (Exports in Support of UK Government Defence Contracts)

This OGEL will permit the export of most goods on the UK's 'Military List', to a list of destinations, providing the export is in relation to an eligible United Kingdom Government Defence Contract and subject to the conditions set out on the licence. Industry representatives have confirmed that this OGEL would also negate the need for some existing licences and hence some SIEL applications will not need to be made in the future.

OGEL (Military Goods: UK Forces deployed on operation XXXXXXX)

This OGEL will permit the supply of goods and technology to UK armed forces on a specific named operation (Note: an OGEL will be issued for each operation) subject to the conditions set out on the licence. We estimate that the number of companies registering for this OGEL will be limited due to the specific activity that the OGEL is targeting.

6.7 Implementation considerations.

There will be an implementation period of at least 6 months between the laying and coming into effect of both the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order and the Trade in Controlled Goods (Control)

Order so that industry can make adequate preparations for the new controls. The Export Control Organisation (ECO) has been working (and will continue to work) with exporters and others before the coming into force date to ensure that those who may be affected by the new controls are fully aware of the implications of the orders for their organisation.

Industry have consistently expressed concern that the new requirements for licences would lead to a delay in processing times for all licences if insufficient resources were devoted within Government to administering the new controls. However, the Government considers that sufficient resources are being devoted and consequently that there will not be any significant delay in processing times for all licences (*see Section 8*).

7. COSTS TO INDUSTRY

7.1 Summary of costs detailed in this section.

We anticipate the maximum number of new licence applications to be 1000 additional SIEL applications (for electronic transfers and goods/technology with a WMD end use) and 1500 SITCL applications (for trade activities). Initial training costs will vary with company size: a large company requires a budget of approximately £460,000 and a small company will need to allocate up to £100,000 for training of staff. The cost for training each staff member is estimated at £75 per half day.

The main costs to industry will be those associated with initial training rather than large increases in the number of licence applications to be made or in record keeping requirements.

The proposed new OGELs (intra company, MoD contracts and armed forces on operation) will remove the need for approximately 200 licence applications. The OGTCL will cover 50% of trade activities (at the very least) and we expect a small number of OITCLs will be issued.

7.2 Previous estimates in the partial RIA.

- Less than 4% of applications are for exports of technology for military goods.
- Evidence from the introduction of the EC controls on the transfer of technology for dual-use goods in September 2000 implies that the increase in licence applications for technology for military goods would be minimal.
- The number of additional SIEL applications is estimated to be 100-200.
- The average costs per staff member for export control compliance training was estimated to be £700 - £1,000.

7.3 Consultation Responses on the Partial RIA.

Additional SIEL applications required for electronic transfers.

Estimates on the number of additional applications required given in responses to the consultation document varied considerably. Whilst some variation would be expected, the responses indicated some significant differences in the way in which the question was interpreted. In particular, some of the very high estimates (one company gave an estimate of 60,000) had been based on numbers of individual transactions rather than the transfer of technology (subsequent transactions may not include any technology additional to that sent in the first transaction and will therefore not require a licence) and so will not accurately reflect the number of additional SIEL applications that will be required, hence these estimates have been ignored for the purposes of the calculations detailed later.

Trade licence applications.

From the consultation responses it appears that some companies have misunderstood the intended extent of the trade controls and the proposed open licensing mechanisms. It has been difficult for industry to assess with any confidence how many trade licences they will require and many did not provide any estimates. User guidance will help industry to understand these controls and open licencing will be used wherever possible. Industry has suggested that due to the increasingly global and collaborative nature of the industry, the trade controls could impact on a significant proportion of business:

- Many companies have sites and staff located abroad.
- Contracts to supply goods or services such as the delivery of spares.
- Collaborative projects involving overseas partners.
- Offset agreements (whereby additional benefit is provided to a purchaser of equipment in the form, for example, of agreement to overseas production).
- 'Kitting' (whereby a supplier is asked to place parts from various sources, into a kit before supply to the customer).
- Trade fairs.

7.4 Final assessment on the impact on industry.

Assumptions (for additional SIEL applications for electronic transfers):

- There are approx. 160 companies who export technology for military goods from the UK, based on those companies who currently hold individual export licences for the export of technology for military goods or use relevant OGELs. As 50% of respondents to the consultation said they would not require any additional SIELs, we can assume that, at most, 80 companies would require additional licences.
- These 80 companies can be thought of in terms of small (less that 1000 employees), medium (1000 – 5000 employees) and large (5000+ employees) sized businesses, and we can assess the appropriate number of additional SIEL applications required.
- From responses to the consultation, we estimated that the number of additional SIELs would be in the region of 1,400 – 2, 600 new SIELS. However, from subsequent discussions with industry representatives, this figure has been reduced and the estimated number of additional SIELs required per company size is detailed in table 2 below.

- We anticipate that OGEL usage should remove the need for at least 200 new SIELs.

Size of company	Large	Medium	Small	TOTAL
No of companies of this size	10	20	50	80
No of additional SIELs per company	10 - 20	< 10	< 10	30 - 40
Total no of SIELs required	**100 - 200**	**< 200**	**< 500**	**800 - 900**
Cost (@£300 per application)	£3000-£6000	£3000	£3000	£9000 - £12000

Table 2: Distribution of company size based on data from consultation.

Therefore 800 – 900 additional SIELs required.

Number of new SITCLs arising for the trade controls.

We believe that the majority of trade activities will be covered by the proposed OGTCL *(see section 6)* – approx. 50 – 75%, and many companies are likely to be granted OITCLs for sites and projects that do not sit completely within the scope of the OGTCL (e.g. production sites located in South Africa or spares for repair centres).

It is possible to make use of the limited data from responses to the consultation to provide an approximate estimate of SITCL applications. Currently 1026 companies are licensed to export military goods; of all the companies who responded to the consultation document, 20% said that they would require SITCLs so if we assume[7] that this is the proportion of companies who will also be involved in trade activities, 20% will need to apply for a SITCL (therefore 205 companies). From the consultation responses, we estimate that 12 to 16 SITCL applications will be made per company:
12 to 16 applications from 205 companies results in 2500 - 3300 SITCL applications.

Following the consultation, India and Pakistan have been added to the list of destinations permitted on the OGTCL, therefore, we estimate that the number of anticipated SITCL applications will be reduced by approx. 25%. This gives us an estimated range of 1900 – 2500 SITCLs as the total anticipated individual licensing requirement. If 12 OITCLs are issued and assuming that 1 OITCL ≅ 80 SITCLs (based on current experience), we expect a more realistic range of:

900 – 1500 anticipated SITCL applications.

Staff training and awareness.

To date, the training requirement within a company has been largely limited to a small number of employees based in the export control department. The new controls will affect a higher proportion of the workforce because more employees can transfer technology electronically (than would be involved in the export of physical goods), therefore basic awareness training will be required for most employees. Most companies will need to conduct staff training and awareness programmes for some or

[7] It should be noted that the assumptions made in this section are not proven.

all of the new controls, which will be the largest burden on companies in terms of resource (providing the training) and time (to complete the training of staff and associated down-time). One large company has estimated that they will need 200 ½-day training sessions (approx. 30 staff per session), if it were to train all its employees, which at two training sessions per day would take over 4 months to complete (assuming 25 working days per month).

While most staff could be affected by the new controls, we consider that a strategic approach to training would be for export managers to take the lead in implementing appropriate export control regimes or procedures once they have understood the new controls and the associated business needs. The export managers would then train key staff, such as department heads, project managers or team leaders, who in turn, would be responsible for ensuring that their teams understand and operate the new procedures. Export managers can review operation of the new controls with project leaders to assess the need for any future training. While it is true that a wide-range of employees may potentially be in a position to send e-mails containing controlled technology, they will normally be operating under the guidance of a team leader, who in turn will be aware of the technology which the company has agreed to transfer in fulfilment of a contract or project.

Staff training is now a part of any business plan and the training required to raise awareness of export controls is not going to be any more cumbersome than training staff to use a new IT system. It is also a useful skill for employees to have as export control may well have an impact on future business considerations. Export control managers will have the opportunity when a contract or project is agreed to assess what technology will be transferred electronically, what licences might be required and to advise employees accordingly.

The detailed industry comments from the consultation document are set out in Annex I, but in summary most respondents gave the cost of training to be less than £100 per employee, but some gave the cost from £1000 to £2500; most employees would need less than ½ day each. Some companies with US operations have experience in the implementation of the US International Traffic in Arms Regulations (ITAR) so there will be experience from that training exercise which can be used to target training for the new UK export controls more effectively.

Cost of staff training.

Consultation responses gave the cost for the training of employees from £500 - £800,000; giving an average cost per company who responded of £300,000. Industry estimates state that ½ day's basic training would cost £50 - £75 per person. We can look at training in terms of individual employees with different levels of training required by different staff (basic awareness, intermediate and more specialised training). If all staff have to be trained (see table 3), most will require basic training to ensure that they understand all relevant procedures. This will be the main cost, even at the estimated ½ day training time. Intermediate training (1 day max.) would be required by department heads or project/team leaders that will be dealing with electronic transfers for technology for military goods or trade activities on a regular basis. Advanced training (2 days max.) would be restricted to export control

managers, we do not anticipate that this should affect more than approx. 2% of employees.

	Size of company					
Training level (days) applying to x% of employees	Large (5000+)		Medium (1000 – 5000)		Small (<1000)	
	No of employees	Cost (minimum)	No of employees	Cost	No of employees	Cost (maximum)
Basic (1/2) 80%	4000+	£300,000	800 - 4000	£60,000 - £300,000	800	£60,000
Intermediate (1) 18%	900+	£135,000	180 - 900	£27,000 - £135,000	180	£27,000
Advanced (2) 2%	100+	£22,500	20-100	£4,500 - £22,500	20	£4,500
Total cost per company		**£457,500**		**£91,500 - £457,500**		**£91,500**

Table 3: Maximum cost for training all employees.

When presented with the above figures, industry representatives stated that these estimates were realistic and in keeping with the budgets and resources they have been estimating. The costs of increasing the number of employees receiving intermediate training to 30% and advanced training to 10% only increases the training costs by 7%, therefore the main cost comes from basic training of all employees. If an individual company chooses less prescriptive training options, the associated cost will vary significantly. It is also worth noting that these costs relate to training in all the new controls, however some companies will not be affected by all the controls.

However, we consider that training key staff initially who would be able to ensure that the new controls are operated within their teams would be appropriate and would keep the training costs incurred to a minimum.

8. STATUTORY RECORD KEEPING REQUIREMENTS AND COMPLIANCE

Open licences (OGELs and OIELs) require that records be kept for the purposes of ensuring compliance and to enable the Government to meet its international reporting commitments, including to the UN Arms Register and the Wassenaar Arrangement.

At present, SIELs do not have specific record keeping requirements because the application itself provides the necessary information. This will also apply to SITCLs. The record keeping requirements for OIELs are set out in the licence itself, and the record keeping requirements for OGELs are set out in the control orders.

Open licences that cover the export of technology for military goods will be automatically extended (through the commencement order) to cover electronic transfers, and compliance with the conditions of the licences will need to be demonstrated. It should be noted that while companies make heavy use of e-mail systems in the normal course of business, the record keeping requirements relate only to technology that is controlled and therefore licensable, and to the actual transfer of the technology not to extraneous matters such as associated e-mails which may relate to the transfer but do not add to it. We will not require records to be kept of *each* transaction (by whatever means) to a particular end-user if transfers take place over a prolonged period. It is sufficient to identify the technology transferred, the dates between which it was transferred, and the identity of the end-user. However, if the subsequent electronic exchanges result in additional technology or software being transferred, the company must ensure licence coverage. Following the consultation and subsequent discussions with industry, we have concluded that new or modified IT systems do not need to be implemented to demonstrate compliance, and that the emphasis for compliance will be on training, policy and procedure. However, there will be ongoing costs associated with the internal auditing of any systems, procedures and processes, which are put in place to demonstrate compliance with the new controls.

It is recognised that electronic transfers do not usually pass through the company's export department, which in many companies would arrange for the necessary paperwork, including export licences, for physical exports. Electronic transfers of technology will often be done as part of a commercial deal or research programme, the contents of which will have been agreed in advance. Thus export control managers will have the opportunity when a contract or project is agreed to assess what technology will be transferred electronically, what licences might be required and to advise employees accordingly.

For trade activities, a record of the date on which the controlled goods were supplied is not required, as the controls relate to the activity of trade, not on the actual transfer as the person carrying out the trading activity may not control the date of shipment. We appreciate that there is an additional difficulty for companies in obtaining and keeping records where movement of goods takes place between the partners in a project.

All record keeping requirements and Compliance issues for the new controls will be set out in the User Guidance which has been developed in consultation with industry and will be published on the Export Control Organisation (ECO) website (www.dti.gov.uk/export.control) before the implementation period starts. The 'Export Control Compliance Code of Practice' will also be updated to reflect the changes.

8.1 Statutory record keeping requirements.

In order to fulfil the record-keeping provisions of the Orders, but at the same time without placing undue burden on companies and individuals. For general licences, companies/Individuals need to keep the following information (as a minimum) for 3 years:

For electronic transfers of technology:

- A description of the technology sent (type, what it is to be used for)
- To whom it is sent (end user information as well as consignees, including countries involved where possible)
- The period of time the transaction takes place over (start and end dates of the whole transfer)
- Any other records which the licence may specifically state

For trade:

- A description of the goods being traded (type, what it is to be used for, quantity)
- The countries it is being moved to and from and the companies or individuals involved
- The date(s) that the part of the controlled activity within the UK took place (i.e., either a precise in the case of a single transaction or over a period of time) in so far as it is known
- Any other records which the licence may specifically state

In addition: -

- for open individual licences, the company or individual must obtain from the end-user of the goods, appropriate end-user documentation. This must be obtained within 28 days of any transfer taking place and made available to the Compliance Officer.
- for standard individual licences, the licence must be returned to the ECO after exhaustion or on expiry date (whichever comes first).

For all licences, the Compliance Officer will ask to see evidence that the company or individual is complying with any other specific conditions of the licence that may have been imposed at time of issue.

8.2 Compliance Visits.

Auditing and compliance procedures are carried out by Compliance Officers from the ECO. In practical terms it will mean that companies/individuals holding any licences[8] issued under the new controls must demonstrate the following to Compliance Officers (as is currently the case):

- An understanding of export control legislation as it relates to their company or situation
- How the company or individual complies with these controls (for example any training or awareness activity arranged for engineers and other staff to explain what they need to do before making an electronic transfer or engaging in any activities relating to trade)
- That there are systems in place to make sure all the appropriate people are 'trained' within the company (for example, what happens when a new employee arrives, what about refresher 'training', etc.)

[8] Historically Compliance Unit have only audited OIELs and OGELs, this will now include auditing of SIELs for electronic transfers of technology since there will be no direct HMCE involvement in exhausting a licence

- Knowledge of the ratings of licensable goods, technology or software and of any related goods that are being exported, transferred or traded (ideally written down)
- That procedures (ideally in writing) are in place to ensure goods, technology or software which need a licence, have one; and the person who is transferring, exporting or trading goods, technology or software knows which licence covers the export or transfer.

In addition, Compliance Officers may wish to approach and question employees who have been made aware of the controls to check their knowledge is up to date. We envisage that compliance costs for companies will be minimal using the above 'functional approach' to compliance as the emphasis is on training and not on record keeping (we anticipate that a companies own existing records will be enough to demonstrate compliance), especially when demonstrating compliance for joint projects involving both UK and overseas companies. As we are anticipating a small increase in the number of companies registering for OGELs, there will be a small increase in the number of visits by compliance officers, but we do not anticipate that this will increase the burden on compliance officers or industry. *(See Section 7.)*

Record keeping requirements for sensitive goods relating to WMD will be specified in any open licences that are issued.

9. COSTS TO OTHERS

Impact on those engaged in research and education.

As explained in the Consultation Document, anyone in the UK who knew or was informed by the Government that the transfer of communication of technology was or might be intended for use in connection with a weapons of mass destruction programme or for missiles capable of their delivery, would need to apply for a licence. This requirement could apply to a university or to an individual member of the academic community, as well as to those engaged in commercial activities. In practice the impact is not expected to be significant since the controls only apply to information which is not in the public domain.[9] The university or academic would need either to have been specifically informed by Government that a licence was required or to know that the person to whom the information was to be communicated was connected in some way with the development of weapons of mass destruction or related missiles, e.g., through having being sponsored by an organisation involved in this activity. The obligation to obtain a licence in such cases will be on the potential provider of information, not on the potential recipient.

10. COSTS TO GOVERNMENT

Costs will be incurred to the as the licensing authority and other Government Departments consulted as part of the licensing process, principally the Foreign and Commonwealth Office (FCO) and the Ministry of Defence (MoD). The Department

[9] Information will only be regarded as not in the public domain if restrictions have been placed on its further dissemination.

for International Development (DfID) considers export licence applications relevant to developing countries where sustainable development may be an issue. HM Customs and Excise (HMC&E) will bear the costs of enforcement of the new controls on trade and the new electronic transfer of technology for military goods controls. As explained above, it was initially estimated that there would be an increase in the number of SIEL applications of 100-200 for technology for military goods and 100 - 250 Standard Individual Trade Control Licence (SITCL) applications. The Government Departments' estimates are based on these initial estimates. However, it is now estimated that there will be a maximum of 1000 additional SIEL applications (which is an increase of 9% of standard applications) and 1500 SITCL applications (which is an increase of 14% of standard applications). ECO currently receives approx. 11,000 applications and with the introduction of the new controls anticipates receiving approx. 13,500 standard applications per year.

10.1 Department of Trade and Industry.

The Export Control Organisation estimates that an additional member of licensing staff will be required to handle every additional 500 Standard Individual Licence applications that will be received annually and/or every additional 100 Open Individual Licence applications received (whether they are generated as a result of the new ITT or trade controls). Based on the Government's estimates of additional licence applications for the new controls, 5 extra licensing staff would be required. The ECO estimates additional staff costs of between £100,000 and £300,000 (per annum) depending on the precise number of new licence applications. Costs associated with providing additional ratings advice could be absorbed within existing resources.

10.2 HM Customs and Excise.

HMC&E will enforce the new controls (i.e., investigate and prosecute offences). They estimate that the additional cost to them would be approximately £200,000 to £300,000 per annum, broken down into £150,000 to £250, 000 for trade enforcement activities and £50,000 on transfers for technology for military goods. This estimate includes legal costs, equipment and running costs. No additional IT or training costs are envisaged.

10.3 The Ministry of Defence.

MoD estimates that the additional costs to them would be in the region of £400,000 in the first year consisting of annual staff and IT costs of £100,000 on trade and £70, 000 on technology transfers and a one-off IT investment of £230,000. The recurring costs are estimated to be £170,000 per annum. This estimate for MoD costs takes into account the involvement of a number of technical and specialist advisers in the assessment of licence applications.

10.4 Foreign and Commonwealth Office.

FCO estimate their additional costs to be in the region of £50,000 (per annum) based on the addition of two staff to deal with the processing of licences for trade and electronic transfers applications (in the Non-Proliferation Department). The impact on the wider FCO would be spread across, and mainly absorbed by, a range of country desks that are consulted about individual licences. The training and IT costs for the new controls would be absorbed into the costs of ongoing training and IT development programmes.

10.5 Department for International Development.

The additional costs to DfID would depend upon the number of licence applications being scrutinised by the department as a result of wider changes following the review of procedures for assessing licence applications against Criterion 8 of the Consolidated EU and National Arms Export Licensing Criteria.

10.6 The Government is working on a number of initiatives to improve the speed and efficiency of the licensing process. In May 2002 a new OGEL was introduced (Military Goods: Government End-Use) allowing the export of a range of military goods for Government end-use in certain countries which has significantly reduced the number of SIELs required each year, and hence has reduced the burden on the defence industry. It also allows the Government to focus resources on applications that require more detailed consideration. Similarly, the Government is working to improve the cross-Departmental exchange of information and decision-making process, improve the use of IT to support the in-house processing of applications and to enable exporters to submit licence applications over the Internet. Taken together with plans to extend current export licences for technology for military goods to cover electronic transfers, the maximum use of open general licences, where appropriate, and the intention to enable businesses to apply for trade licences and for export licences to cover electronic transfers of technology for military goods in advance of the legislation coming into effect, it is not anticipated that the introduction of new licensing requirements should lead to significant delays in the processing of licences.

10.7 Overall, it is not envisaged that the impact on public expenditure would exceed an increase of around £750,000 to £1,050,000 in the first year and £520,000 to £820,000 per annum thereafter. The Government will reallocate resource of this order, and will reorganise as necessary to manage the increased requirement.

11. COMPETITION ASSESMENT

The new controls will affect every UK business and so we do not consider that internal competition will be affected, a view that industry representatives have confirmed. The competitiveness of UK business in the international market place may be affected but we consider that measures to minimise the burden on industry (introduction of relevant OGELs, reasonable compliance and record keeping requirements and increased efficiency in processing licence applications) will mean that competitiveness is not compromised. It is worth noting that other main competitor countries have or are introducing similar controls.

11.1 Assessment from the Partial RIA.

The competition assessment was carried out as part of the partial RIA on which industry commented, and the following conclusions were reached:

- There is a range of different markets in the defence industry, this initial assessment relates to military aerospace, which is the biggest sector. It considers the effect on competition in the United Kingdom only.

- The military aerospace sector is a complex market characterised by global projects and partnerships, prime contractors at the top of the supply chain and networks of supply chains. Whilst there are a small number of large firms with a considerable market share, there are a large number of smaller companies in the supply chain and a significant SME sector (Small and Medium Enterprise). The main cost to industry are staff training.
- The new WMD controls would give rise to very few licence applications; therefore, the potential impact of these controls on competition is negligible.
- The new control on the electronic transfer of technology for military goods will give rise to some new SIELs and there will be training requirements for staff.
- Evidence from the Society of British Aerospace Companies (SBAC) report, *UK Aerospace Facts and Figures 2001*, indicates that exports account for only 13% of the turnover of SMEs in the military aerospace sector, which reflects the fact that smaller companies tend to supply the prime contractors in the UK. The training impact is likely to be proportionate to the size of the company. Larger companies for example, are likely to have more complex issues (such as joint international projects) and to be involved in a higher volume of international trade. Therefore the new controls may be simpler to implement for SMEs.
- The trade controls are likely to impact more widely because both the larger prime contractors and the supply-chain companies may be involved in moving goods around overseas. The main impact of the trade controls on companies would be on licence applications, training and record keeping. The Consultation Document proposes a 'functional record keeping' option, which aims to minimise costs by enabling businesses to adapt their record keeping systems for compliance purposes under the new controls, and places the emphasis on the training of staff to demonstrate compliance. This approach provides flexibility to suit the needs of all sizes of company. As with electronic transfers, the costs of training would be proportionate to the volume of trade and size of company.
- There are already very high barriers to entry in the aerospace market and the SBAC predicts that the market will move increasingly towards larger companies. However, the new controls should not present an additional barrier to entry into the market, nor is there any evidence to suggest that the cost of the new controls to industry will be so high or disproportionate as to affect the internal structure of the market or accelerate trends.

12. SECURING COMPLIANCE

The Export Control Organisation (ECO) is responsible for securing compliance with export controls, but not enforcement (enforcement is the responsibility of HMC&E). A well-established advisory rating enquiry service and a helpline is available to companies. ECO carries out a range of awareness raising activities through its website, publications and seminars. Business organisations also run their own awareness activities, which together means that there is generally a high level of awareness about the rules governing the issue of licences for controlled goods. This is complimented by a strong business ethic of compliance with strategic export controls. The ECO will be working closely with exporters on the introduction of the new controls.

13. ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW

The draft Orders provide for a maximum penalty of 10 years imprisonment for the most serious offences of deliberately flouting controls on exports, technology transfer, technical assistance and trade (an increase from the current 7 years maximum penalty provided by the Customs and Excise Management Act 1979 for deliberately flouting controls on exports of strategic goods) and a maximum penalty of 2 years imprisonment for strict liability offences that involve the supply, or attempted supply, of goods or technology that the provider is aware may be intended for use in a weapons of mass destruction or related missile programme.

Enforcement would be by HM Customs and Excise. (The police would also have some responsibilities for enforcement of offences related to the transfer of WMD related technology by any means, within the UK.) The impact of the regulations will be kept under review generally, as is presently the case with the current strategic export controls.

13.1 Systematic post-implementation review of the Export Control Act.

The Government is committed to monitoring how the new controls are operating, recognising that the Act has been the most comprehensive review of the UK's strategic export controls for over 60 years, that the new controls are extensive, affecting every aspect of modern defence business, and that operating them will be a very significant challenge for both industry and Government. The review must provide an evidence-based assessment of whether the controls are working as anticipated and achieving the Government's objective of controlling UK involvement in arms proliferation (objective 2.9(ii)). The review will include an assessment of whether the scope of the present controls is too narrow or too wide.

The Cabinet Office guide, 'Better Policy Making: A Guide to Regulatory Impact Assessment,' outlines the Government's commitment to "systematic post-implementation reviews of major pieces of legislation", and this review will be carried out 3 years after the new controls come into force. We would expect the review to include:

- whether the costs and benefits in the original RIA were correct;
- the effectiveness of the proposed enforcement regime, and;
- the extent to which the "solution" did actually solve the problem.

The following criteria will enable such an assessment to be made and would provide the evidence base to inform any future policy.

- Licensing data and feedback from exporters will enable the Government to assess whether the costs and benefits in the partial RIA were accurate.
- Experience of operating the new controls on the transfer of technology and the proposed trade controls, together with compliance data would provide a direct assessment of their practicality and effectiveness.
- Experience of operating the proposed extra-territorial trade controls on "restricted goods" and to embargoed destinations, together with compliance data (including available comparative data on the level of illicit trading by UK nationals overseas) would provide a direct assessment of how practical and effective extra-territorial controls are.

- Evidence of the comparative levels of the supply of arms and other military goods overseas by UK persons through trade (trafficking and brokering) activities without a licence would provide a direct assessment of how effective the new trade controls are in their current form.

14. PUBLIC CONSULTATION

There has been an extensive consultation process that has informed these proposals. In 1998 a public consultation was held on proposed changes to export control legislation set out in the White Paper on Strategic Export Controls (Cm 3089). This was followed by a further public consultation in March 2001 on the Draft Export Control and Non Proliferation Bill (Cm 5091), which invited comments not only on the draft Bill but also on the proposals for secondary legislation to be made under it.

The responses to the draft bill generally accepted the need for the new controls proposed on the electronic transfer of technology for military goods in order to bring them into line with existing legislation on technology for dual-use goods. A number of practical concerns were raised by the defence industry about how businesses could monitor electronic transactions in order to comply with the new controls and about how the new controls would impact on international collaborative projects or companies with offices abroad. There were further concerns about the initial costs of adjusting to the new legislation such as training and new IT systems. In general the responses from industry to the previous consultation accepted the need for controls on trade activities, although there was concern about what activities would require a licence. There has also been some concern from the academic community about the way in which the new controls on transfer of technology by any means would impact on them. Further details on how the new controls will work in practice were set out in the Consultation Document on which views have been invited.

14.1 Industry responses to the consultation.

In addition to the significant training burden which will be placed on industry, the main concerns to come out of the consultation were:

New controls on the transfer of technology by electronic means.

a) Access to emails, shared data environments (SDEs) and company intranets by company employees whilst travelling overseas that could result in an unintended and unlicensed transfer of technology;
b) The potential bureaucracy associated with record keeping for e-mail and telephone transfers of controlled technology.

New trade (trafficking and brokering) controls.

c) The controls will impact on “legitimate” business practice such as international collaboration, regional repair centres and kitting (whereby a supplier is asked to place parts, which could be from various overseas sources, into a kit before supplying to the customer) rather than on 'arms dealing';
d) The definitions of the activities that will require a trade licence are too vague and risk leaving people unclear as to whether and when a licence is required.

Support for UK armed forces.

e) The new controls will impede industry's ability to fulfil contracts with MoD and to provide operational support.

14.2 The main concerns from NGO responses to the consultation were:

Extra-territorial control.

a) New trade controls should be applied fully extra-territorially.
b) Concerns that the exemption of general marketing activity from the scope of the controls (except for restricted goods) will allow illicit traders to evade UK controls by promoting their services from the UK but conducting any licensable activities from abroad, and that UK companies will route business through their subsidiaries to avoid UK controls.

Register of brokers.

c) All arms brokers should be registered before they can apply for any licences.

In addition, facilities for Licensed Production Overseas (LPO) should themselves be licensed to avoid them being used to by-pass our strategic export controls.

Careful consideration has been given to industry's concerns and the proposed administration of the new controls has been designed to exercise control in the least burdensome way possible for legitimate business. The new OGELs will address the concerns in 14.1.a. and 14.1.e., and the OGTCL should cover most activities detailed in 14.1.c. *(see Section 6).* The record keeping requirements *(see section 8)* state that *each* transaction does not need to be recorded, therefore we do not believe that the concern in 14.1.b. above will be an issue once the User Guidance has been received by industry. The point raised in 14.1.d. should also be addressed in the User Guidance. Ongoing seminars provided by the ECO will be available to all exporters and these will help to address exporter concerns and allow them to see how the controls will affect them now that the user guidance has been finalised. The user guidance will support the message being disseminated at these seminars and other meetings or conferences and will be available for all exporters to use (www.dti.gov.uk/export.control). The ECO helpline will continue to be available to answer any questions that exporters may have about the new controls and any other related issues.

The concerns about the scope of the proposed trade controls have been carefully considered but are not considered appropriate as the great majority of trade in conventional arms will be part of the global defence industry, and cannot be equated with trade in restricted goods; for example, torture goods, the export of which is banned in the UK. As such, extra-territorial controls will apply to all the trade that could be reasonably identified in advance as that which would not generally be granted a licence in the UK. However:

- The Government is committed to extra-territorial controls on trade in all military goods (including torture goods and long range missiles) to embargoed destinations.
- The trade controls (and the exemptions therein) have been carefully scrutinised and are considered to strike the right balance between licencing trade activities without regulating legitimate promotional activity.

- We prefer to licence the activity of a company or individual *not* the company or individual, so that we can properly assess the licence applications on a case-by-case basis. Registering brokers as well as licensing individual trade activities would introduce an additional level of bureaucracy but without any clear benefits. The Government will build up a database of brokers as they apply for licences. Licensing the end activity is the most effective way of controlling trade activities.
- We believe that the new controls on the electronic transfer of technology for military goods will strengthen our existing control over licenced production facilities.

15. RECOMMENDATION

The proposed draft Orders under the Export Control Act will enable the UK to pursue a responsible strategic export control policy, in support of its wider foreign and defence policies, including meeting its international and EU obligations. The estimated costs to both business and Government as a result of the new controls are moderate. It is proposed to keep the administrative requirements for business as simple as possible, consistent with the need to ensure compliance, to minimise the costs of the new controls for business. It is recommended that the moderate costs of the new controls are worthwhile in view of the benefits of reducing the risks posed by the proliferation of weapons of mass destruction, preventing the trade in arms from overseas countries undermining embargoes and export controls, and bringing control of conventional technology for military goods up to date, consistent with the controls on technology for dual-use goods.

16. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

Date

Patricia Hewitt, Secretary of State for Trade and Industry

Export Control Organisation
Department of Trade & Industry
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ANNEX I

Consultation document: detailed responses relating to training costs.

- One company engaged in an education and training programme on the US International Traffic in Arms Regulations spent about 9, 000 hours training 6,000 employees (about one and a half hours per employee).
- A smaller company (3,500 employees) estimated that if the record keeping requirements were relatively simple then in-house top level awareness training could initially be around one hour per twenty people with ongoing annual training, based on similar training requirements for US export licences.
- One company (with around 800 staff) made an initial estimate of between £37,000 - £45,000 for staff training for electronic transfers.
- Another company estimated the costs of training around 8,000 staff would be approx. £400,000.
- A larger company (around 50,000 employees) found that in its experience of implementing US Technical Assistance Agreements around 15,000 hours of initial training and a further 12-24,000 hours ongoing training were required for its 3,000 key team members[10]. They estimated that it sent in the region of 10 million e-mails a month, only a small proportion of which would be licensable, with an initial estimate of £1.5 million per annum for training costs on the new electronic controls if individuals were responsible for determining the licensablity of every instance in order to avoid inadvertent breaches of the regulations and to avoid the retention of large numbers of records of non-licensable communications. These costs might fall to around £250,000 per annum where existing internal security systems could be utilized to demonstrate licence compliance to the ECO.
- Similarly, another large company estimated its training costs to be around £1.5 million if extensive training was required.
- At the other end of the scale, based on recent experience of providing staff training for export controls one company estimated that the costs of training on the trade controls could be £10,000 to train 15 staff initially and a further £4,000 recurring costs.
- Based on recent experience, it had cost one company £1,000 per person to train 15 employees.
- Another company considered that because of the nature of the new trade controls all the members of the company (25,000) would have to receive some training.
- One defence industry organisation suggested that effective export compliance training normally costs in the region of £700 - £1,000 per person, and believes that most staff members would need to receive some training as they might be involved in transfer of information or activities captured by the trade controls.
- Based on recent experience of US trade controls, one company estimated that if it had to train half of its workforce for half a day this would equate to 9,000 people at 4 hours. At a total of 36,000 man-hours on an average salary of £28 per hour the training could cost over £1 million for the trainees' salaries.
- Another company estimated that its training costs on the trade controls might be in the region of £144,000 for 64 employees, including the provision of training for 3 days, loss of salary and travel.

[10] However, a direct comparison with the US Technical Assistance Agreements may not be appropriate because they are more complex and comprehensive than the new UK controls on the electronic transfer of technology for military goods.