

**EXPLANATORY MEMORANDUM TO
THE TRADE IN GOODS (CATEGORIES OF CONTROLLED GOODS)
ORDER 2008**

2008 No. 1805

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The Trade in Goods (Categories of Controlled Goods) Order 2008 (“the Order”) amends The Trade in Goods (Control) Order 2003 and The Trade in Controlled Goods (Embargoed Destinations) Order 2004. The principal change introduced by the Order is a three tiered structure to trade controls to respond to recent concerns relating to specific goods and activities. Until now, trade controls followed a two tier approach. Fully extra-territorial controls (i.e. controls applying to UK persons anywhere in the world) of certain trading activities will now apply to small arms and man-portable air defence systems (MANPADs) and cluster munitions will be subject to the strictest controls.

2.2. Other amendments include correcting a current legal anomaly in the current trade controls on the treatment of non-military explosive goods. This will bring a wider range of activities relating to the trading of those goods to embargoed destinations under control.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Background

4.1. In its initial response to a public consultation carried out as part of a 2007 Review of Export Control legislation, the Government committed to change in a number of areas. The Government has already implemented one of these changes, namely controlling the export and trading of hand-held, spiked batons (commonly referred to as “sting sticks”). This Order fulfils another set of those commitments by introducing more stringent trade controls on certain goods and activities. More changes will be announced in the Government’s further response, due to be published shortly. It is expected that legislation to bring into place these further changes will be laid in 2009.

4.2. The changes envisaged in the initial response require amendments to both the Trade in Goods (Control) Order 2003 and the Trade in Controlled Goods (Embargoed Destinations) Order 2004. Both these orders control the trade of military and para-military goods listed in Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance Order 2003 (S.I. 2003/2764). The Trade in Goods (Control) Order 2003 controls the trade of these goods between one overseas

country and another. It sets out prohibitions on certain trading activities without a licence and introduces offences and penalties where these prohibitions are not respected. The Trade in Controlled Goods (Embargoed Destinations) Order 2004 prohibits certain trading activities of these goods between any overseas country and the embargoed destinations listed in its Schedule. Like the Trade in Goods (Control) Order 2003 it makes provision for licence requirements, penalties and offences.

5. Territorial Extent and Application

5.1. This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1. On 18th June 2007, the Government launched a public consultation for the post implementation review of UK export controls. The public consultation document, “2007 Review of Export Control Legislation: A Consultative Document”, sought the views of respondents, both on the impact and effectiveness of the controls that were introduced in 2004, and on a number of options for further change. Prior to the closure of the consultation period on 30 September 2007, the Government received a total of 23 substantive responses from a wide range of groups including industry and Non-Government Organisation (NGOs), and over 5000 brief E-mails and letters. All the current changes were specifically put forward as options in the public consultation document, and received broad consensus across the spectrum of respondents; including both those representing industry interests and individual exporters, and NGOs with an interest in arms control issues.

7.2. The Government published its initial response to a public consultation on 6 February 2008 and in doing so committed to change in a number of areas, including the introduction of a three tiered structure of trade controls. As at present, trading in all controlled goods will be subject to a licence when any part of the act takes place within the UK. This can include transactions where there are overseas activities. However, the new three tier structure will more accurately align extra-territorial trade controls on the activities of UK persons anywhere in the world to risk, by introducing fully extra territorial trade controls (i.e. where there is no UK based activity) in relation to small arms, MANPADS and cluster munitions. The term “UK person” as used in the Order, is defined in s.11 of the Export Control Act 2002 as a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom. A United Kingdom national is an individual who is—
(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
(b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
(c) a British protected person within the meaning of that Act.

7.3. Category A will include goods whose supply is inherently undesirable. Category B will include goods in respect of which there is legitimate trade, but which, on the basis of international consensus, have been identified as being of heightened concern, and Category C will include all goods contained within Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 that do not fall within Categories A or B. The activities controlled for each category vary in line with the differing risks associated with the goods, with Category A goods being subject to the most stringent controls and Category C goods being subject to less stringent controls.

7.4. On the issue of Cluster Munitions the Government committed in the initial response only to controlling under Category A those Cluster Munitions which cause “unacceptable harm to civilians”. Category A controls were thus meant to cover cluster munitions with no target discrimination capability or a fail-safe mechanism. However, following the adoption of a Convention on Cluster Munitions at the diplomatic conference in Dublin on 30 May 2008, it has been decided that all Cluster Munitions will now be controlled under Category A.

7.5. These changes will help the Government’s counter proliferation aims, and will help guard against undermining the Government’s support for international human rights, or allowing UK technology or equipment to be diverted for use by undesirable users.

7.6. The Government’s policy on Export Controls is an area that is subject to high levels of public interest, as demonstrated by the large number of responses to the public consultation.

7.7. Guidance to accompany the Order will be published on the Department for Business, Enterprise and Regulatory Reform’s website at least 12 weeks before these controls come into force on 1 October 2008 to allow industry and traders to prepare adequately for the changes. The new controls principally affect the overseas activities of UK persons or businesses, and so to raise awareness in these quarters an article highlighting these changes will also be published in a UKTI magazine aimed at British Chambers of Commerce overseas.

7.8. There have been numerous amendments to the Trade Order and the Embargoed Destinations Order and it is intended to consolidate these when we legislate in response to the changes announced in the Government’s further response (this is expected to be in late autumn 2008). However, due to the numerous amendments in the Order an informal version of the updated Trade Order will be made available on the BERR website at

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

8. Impact

8.1. An Impact Assessment is attached to this memorandum.

9. Contact

9.1. David Johnson at the Department for Business, Enterprise and Regulatory Reform, Tel: 020 7215 48581, or email: David.Johnson@berr.gsi.gov.uk can answer any queries regarding this instrument.

DEPARTMENT FOR BUSINESS, ENTERPRISE AND REGULATORY REFORM

2nd July 2008

Summary: Intervention & Options

Department /Agency: BERR	Title: Export Control Act 2002 - Review of Export Control Legislation (2007) Impact Assessment July 2008	
Stage: Final/Implementation	Version: 1	Date: 14 July 2008
Related Publications: Public Consultation - http://www.berr.gov.uk/files/file39949.pdf Initial Response to the Public Consultation - http://www.berr.gov.uk/files/file44407.doc		

Available to view or download at:

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

Contact for enquiries: David Johnson

Telephone: 020 7215 8581

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

The 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 use 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.

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

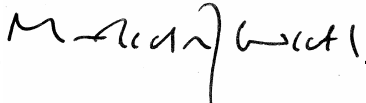
The package of changes includes extraterritorial controls on cluster munitions, SALW and MANPADs and end-use controls on torture equipment, amongst others. Other policy options covered where it was decided that no change should be undertaken include transport services (extra documentary evidence requirements for transport providers), weapons of mass destruction controls and terrorism end use controls.

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

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:

.....  Date: 17 July
2008

Summary: Analysis & Evidence

Policy Option:	Description: Extra territorial controls on Cluster Munition
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Costs entailing business owing to Controls on Cluster munitions are expected to be Negligible
	One-off	Yr	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £
Other key non-monetised costs 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 extra-territorial controls, where prosecution could involve issues relating to extradition treaties with other countries.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The 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.
	One-off	Yr	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Controls are expected to prevent UK involvement in trading of weapons of heightened concern and the shifting of unscrupulous UK traders to other 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
 The annual enforcement costs by HMRC given below pertain to small arms and light weapons, MANPADs and cluster munitions as a whole.

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK citizens globally
On what date will the policy be implemented?	1st October 2008
Which organisation(s) will enforce the policy?	HMRC
What is the total annual cost of enforcement for these	£ 500,000
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	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
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

Impact on Admin Burdens Baseline (2005 Prices)				
			(Increase - Decrease)	
Increase	£	Decreas	£	Net £

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Summary: Analysis & Evidence

Policy Option:	Description: Extra territorial controls on Small Arms and Light Weapons
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Business costs owing to Controls on Small Arms and Light Weapons- £19,000-£32,000 (one off costs) & £74,000 - £139,000 pa (annual costs)	
	One-off (Transition)		
	£ 19,000-£ 32,000		
	Average Annual Cost (excluding one-off)		
	£ 74,000- £139,000	Total Cost (PV)	£ 471,000-£900,000
Other key non-monetised costs 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 extra-territorial controls, where prosecution could involve issues relating to extradition treaties with other countries.			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The 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.	
	One-off Yr		
	£		
	Average Annual Benefit (excluding one-off)		
	£	Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups' Controls are expected to prevent UK involvement in trading of weapons of heightened concern and the shifting of unscrupulous UK traders to other 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 Costs have been estimated for SALW extra-territorial controls based on stakeholder survey responses. It has not been possible to quantify the number of UK citizens outside UK involved in trading SALW.

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK citizens
On what date will the policy be implemented?	1 st October 2008
Which organisation(s) will enforce the policy?	HMRC
What is the total annual cost of enforcement for these	£ See Page 2

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	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
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

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase	£ 48k-£95k	Decreas	£	Net
				£ 48K-95K

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Summary: Analysis & Evidence

Policy Option:	Description: Extra territorial controls on MANPADs
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Costs entailing business owing to Controls on MANPADs are expected to be Negligible			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">One-off</td> <td style="width: 40%; text-align: center;">Yr</td> </tr> <tr> <td style="background-color: #ffffcc;">£</td> <td></td> </tr> </table>			One-off	Yr	£
	One-off	Yr				
	£					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Average Annual Cost (excluding one-off)</td> <td></td> </tr> <tr> <td style="background-color: #ffffcc;">£</td> <td></td> </tr> </table>	Average Annual Cost (excluding one-off)		£		Total Cost (PV)	£
Average Annual Cost (excluding one-off)						
£						
Other key non-monetised costs 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 extra-territorial controls, where prosecution could involve issues relating to extradition treaties with other countries.						

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits 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.			
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	One-off	Yr				
	£					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Average Annual Benefit (excluding one-off)</td> <td></td> </tr> <tr> <td style="background-color: #ffffcc;">£</td> <td></td> </tr> </table>	Average Annual Benefit (excluding one-off)		£		Total Benefit (PV)	£
Average Annual Benefit (excluding one-off)						
£						
Other key non-monetised benefits by 'main affected groups' Controls are expected to prevent UK involvement in trading of weapons of heightened concern and the shifting of unscrupulous UK traders to other 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

Price Base Year	Time Period Years 7	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK citizens
On what date will the policy be implemented?	1st October 2008
Which organisation(s) will enforce the policy?	HMRC

What is the total annual cost of enforcement for these		£ See Page 2		
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		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
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
Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)		
Increase £	Decrease £	Net	£	

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Summary: Analysis & Evidence

Policy Option:	Description: Negotiations for the introduction of a Torture End Use Control at EU level
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Costs entailing business owing to Torture End use Controls £1000-£5000 per annum				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">One-off</td> <td style="width: 40%; text-align: center;">Yr</td> </tr> <tr> <td style="text-align: center;">£</td> <td></td> </tr> </table>		One-off	Yr	£	
	One-off		Yr			
	£					
Average Annual Cost (excluding one-off)						
£ 1000- £5000						
	Total Cost (PV)	£ 6,000-£31,000				
Other key non-monetised costs 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 extra-territorial controls, where prosecution could involve issues relating to extradition treaties with other countries.						

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits 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.				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">One-off</td> <td style="width: 40%; text-align: center;">Yr</td> </tr> <tr> <td style="text-align: center;">£</td> <td></td> </tr> </table>		One-off	Yr	£	
	One-off		Yr			
	£					
Average Annual Benefit (excluding one-off)						
£						
	Total Benefit (PV)	£				
Other key non-monetised benefits by 'main affected groups' Controls are expected to prevent UK involvement in trading of weapons of heightened concern and the shifting of unscrupulous UK traders to other 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

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	Exports from the
On what date will the policy be implemented?	Not known
Which organisation(s) will enforce the policy?	HMRC -

What is the total annual cost of enforcement for these	£				
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	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
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	
Impact on Admin Burdens Baseline (2005 Prices)			(Increase -		
Increase	£ 900-	Decreases	£	Net	£ 900-£4600

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Summary: Analysis & Evidence

Policy Option:	Description: Rationalise the licensing treatment of Long Range Missiles and Unmanned Air Vehicles
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">One-off</td> <td style="width: 10%; text-align: center;">Yr</td> </tr> <tr> <td style="padding: 5px;">£</td> <td style="padding: 5px;"></td> </tr> </table>		One-off	Yr	£
	One-off	Yr			
	£				
Average Annual Cost (excluding one-off)	Cost reduction for UAVs & LRMVs- £2,400-£4,500 per annum				
£ 2,400-£4500(-ve)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Total Cost (PV)</td> <td style="background-color: #e0ffe0; padding: 5px;">£ 15K-£28K (-ve)</td> </tr> </table>	Total Cost (PV)	£ 15K-£28K (-ve)		
Total Cost (PV)	£ 15K-£28K (-ve)				
<p>Other key non-monetised costs 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 extra-territorial controls, where prosecution could involve issues relating to extradition treaties with other countries.</p>					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits 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.			
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	One-off	Yr			
	£				
Average Annual Benefit (excluding one-off)					
£	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Total Benefit (PV)</td> <td style="background-color: #e0ffe0; padding: 5px;">£</td> </tr> </table>	Total Benefit (PV)	£		
Total Benefit (PV)	£				
<p>Other key non-monetised benefits by 'main affected groups' Controls are expected to prevent UK involvement in trading of weapons of heightened concern and the shifting of unscrupulous UK traders to other countries. Though the benefits for the UK public and overall global security might be significant, it is not possible to monetise them.</p>					

Key Assumptions/Sensitivities/Risks

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK citizens
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	£ Minimal

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		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
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
Impact on Admin Burdens Baseline (2005 Prices)		(Increase -		
Increase £	Decreas £ 2200-	Net	£ 2200-£4100(-	

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Summary: Analysis & Evidence

Policy Option:	Description: Cost to Government overall
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Costs to Government: ECO, MOD, FCO, DFID -£0-£67,000 pa HMRC- £500,000 pa	
	One-off Yr		
	£		
	Average Annual Cost (excluding one-off)		
	£ 500,000 - £567,000	Total Cost (PV)	£ 3.06mn - £3.47mn
Other key non-monetised costs 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 extra-territorial controls, where prosecution could involve issues relating to extradition treaties with other countries.			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits 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.	
	One-off Yr		
	£		
	Average Annual Benefit (excluding one-off)		
	£	Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups' Controls are expected to prevent UK involvement in trading of weapons of heightened concern and the shifting of unscrupulous UK traders to other 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

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
------------	-------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	UK citizens globally
On what date will the policy be implemented?	1 st October 2008
Which organisation(s) will enforce the policy?	HMRC
What is the total annual cost of enforcement for these	£ 500,000

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		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
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

Impact on Admin Burdens Baseline (2005 Prices)				(Increase -
Increase	£	Decrease	£	Net
				£

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

[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 provide routes for 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 use 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 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.

Specifically with respect to the proposed regulations, the Government would like to have a more effective structure for trade controls to clarify that while there remains a need to apply the most rigorous controls to a limited range of equipment whose supply is inherently undesirable, there is another distinct category of goods for which the risks posed justify extra controls, but not to the full extent currently applied to "Restricted Goods". This will be achieved by a 3 tier structure as opposed to a 2 tier structure (discussed in detail below). This will also give the Government a firm legal basis on which to act on activities taking place solely outside the UK and the potential to prosecute wrongdoing. Further, the Government intends to extend the current controls on Torture Equipment to include more items (sting sticks) and for an end-use control for equipment that could be used for torture, or for cruel, inhuman and degrading treatment.

Summary of prospective policy changes

- 1 Extra territorial trade controls- The following is a package of change to more accurately align extra-territorial trade controls to risk.

- 1.1. The current two tier structure¹ is not considered the most effective option, as there is another distinct category of goods for which the risks posed justify extra controls, but not to the full extent currently

¹ Most rigorous controls for trading in "Restricted Goods" including controls on whether trade is taking place from the UK or by a UK person based anywhere in the world. Controls will also apply to general acts of advertising and

applied to “Restricted Goods”. The Government will therefore introduce a three-tiered structure for trade controls, a brief summary of which is follows;

- Category A will include only goods whose supply is inherently undesirable. For Category A goods, the following activities will be controlled:
 - trading activities by any person within the UK;
 - trading activities by UK persons anywhere in the world; and
 - this will include acts calculated to promote the supply or delivery of such goods
- Category B will include goods in respect of which there is legitimate trade, but which, on the basis of international consensus; have been identified as being of heightened concern. For Category B goods, the following activities will be controlled:
 - trading activities within the UK;
 - trading activities by UK persons anywhere in the world;
 - this will include certain activities directly related to dealing in such goods, including direct and targeted acts of promotion

but the following will not be controlled:

- peripheral acts such as general promotion or advertising at trade fairs or in periodicals.
- Category C will include any items on the Military List which do not fall within Categories A or B. For Category C goods, the following will be controlled:
 - trading between two countries overseas only if carried out from within the UK

Under Category C, the following will not be controlled:

- indirectly associated activities, including the provision of transport, financing/financial services, insurance or re-insurance, and general advertising and promotion.

1.2. Coverage

The coverage of each category will be as follows;

- Category A will cover Torture Equipment (as currently controlled in export control legislation), and cluster munitions. As now, the supply of any Controlled Goods to an embargoed destination will be subject to similar controls.
- Category B will cover Small Arms and Light Weapons, Long Range Missiles (including Unmanned Air Vehicles-UAVs) and MANPADs.
- Category C will cover all other goods on the Military List not specified in Categories A or B.

1.3 The above changes represent an adjustment of the controls on Long Range Missiles and UAVs, where the Government sees Category B status as more appropriate. This is because this equipment is a legitimate defence requirement for many nations (including the UK) and therefore generates legitimate business transactions. Therefore, controlling general acts of advertising and promotion is difficult to justify – but Category B status will enable us to continue to control any activities directly related to their trade, thus ensuring that the UK’s multilateral commitments under the Missile Technology Control Regime can be fully met. In contrast, controls on Small Arms and Light Weapons and MANPADs have been enhanced to reflect the fact that, whilst not prohibited, these are

promotion. For all other “Controlled Goods”, trading between two countries overseas is controlled only if carried out from within the UK, and controls do not extend to the provision of ancillary services.

categories of equipment that are subject to increased levels of concern as reflected in internationally agreed instruments, and multilateral guidelines to which the UK has chosen to commit itself. The Government believes that this combination of a more nuanced structure to the trade controls and the consequent changes in coverage represents a balanced and logical approach, more accurately reflecting the risks associated with each category of items.

2. Torture equipment

2.1 The most rigorous controls already apply to a range of equipment which has been identified as having been used in torture. These are controlled by a combination of a European Council Regulation, which is directly applicable in all EU Member States, and national controls. The range of goods covered include, electric shock belts, restraint chairs and shackle boards, leg-irons, gang chains, cuffs and shackles bracelets, thumb-cuffs and thumb-screws, portable electric shock devices including electric shock batons, electric shock shields, stun guns and electric shock dart guns. These are all considered to be “Restricted Goods”, which means that in addition to the normal controls on export from the UK, their trading from the UK, or indeed from anywhere in the world when carried out by a UK person, requires a licence as does any other act calculated to support trading, even to the extent of controlling acts of general advertising or promotion. However, the Government has now decided to make two further changes in this area to be in line with the UK’s support for international human rights.

2.2 The first change was to add sting sticks to the UK national list.²

2.3 The second change is that the Government has decided, in principle, to introduce an end use control on torture equipment, thus enabling the UK to licence – and thus refuse – the export of any goods from the UK which were destined for use in torture or similar inhumane or degrading acts. Since this control is more general in nature, the Government would seek to introduce it at EU level, rather than nationally, in order to ensure that the rest of the EU was operating to UK standards and that UK exporters could not circumvent the control simply by temporarily exporting from other nearby EU countries. It would be introduced on the basis that if the Government had information or intelligence, that the export in question was likely to be used for these purposes, then it would inform the exporter, who would then be required to apply for a licence. Exporters would also need to apply for a licence if they knew that the export was intended for such use. Once a licence application had been received, it would then go through the same rigorous assessment process used for licences under the other end use controls, and any decision to refuse it would be subject to appeal by the exporter.

2.4 The Government has considered carefully the case for exporters to be required to apply for a licence if they suspected that their goods would be misused. It has, however, concluded that if we required exporters to apply on the basis of general suspicions, this would run the risk of generating licence applications for large numbers of general purpose goods in circumstances which did not really generate concern. On the other hand, we believe that procurers would be extremely unlikely in practice to provide documentation which made the intended use in torture apparent; therefore any control that applied only where exporters could identify specific grounds for suspicion would be likely to catch few if any additional cases.

2.5 The control would extend to UK exports only: it would not cover trading in torture equipment. No other end use controls apply to trade, and in practice a control of this type would be virtually impossible to enforce.

Other policy options considered for which it was decided that no change should be undertaken

1. Transport services

1.1 The consultation document discussed the case for requiring transporters who transport controlled goods between third countries to obtain documentary evidence that the services they supply are to support an appropriately licensed transaction. The Government received a range of responses on this issue, but has decided that on balance there is not a convincing case for placing these extra burdens on transport providers, when that requirement will often be difficult or impossible to fulfil for valid logistical reasons.

1.2. An example of practical difficulties that could occur would be where a UK transport provider, based in say, Malaysia, was asked to transport goods from Singapore to Taiwan, in support of a non-UK broker operating from

² Sting sticks are not a general purpose item that could be used in acts of torture. They are designed for the purposes of torture or similar inhumane acts and have no other legitimate use. The Export Control (Security and Paramilitary Goods) Order 2008, which came into effect on 6 April 2008, made sting sticks subject to the most stringent trade controls by controlling their export and the trading of these items both from within the UK and by UK persons operating overseas.

Australia. Whilst that transport provider would know the type of goods and the destination, in order to seek documentary evidence that the export of the goods was properly licensed, the transport provider would need to choose between two options:

- The provider could approach the Australian broker, but whilst that broker might be able to provide proof that the brokering was licensed (if the country in question, in this case Australia, has controls on trading), he might well not have a copy of the licence from Singapore authorising the export of the goods. In addition the provision of the documentation would rely on the goodwill of the Australian broker. To fulfil the request of the UK provider, the Australian broker would need to ask for documentary proof from the Singapore exporter, thus asking that exporter to breach their commercial confidentiality on behalf of a third party, namely the UK provider. The Singapore exporter might not be prepared to do this and might instead ask the Australian broker to find an alternative transport provider – in which case, the export (potentially of concern) happens but without UK involvement; and even if the Singapore exporter were prepared, the process would take time and potentially undermine the deal for that reason.
- Alternatively, the provider could approach the Singapore exporter direct (if he knew their identity), but would then face the difficult choice of whether to do so with the consent of the Australian broker or not. If consent was sought, then all the difficulties referred to above come into play. If consent was not sought, then the direct approach might have a better chance of eliciting the documentation sought, but may still lead to the Singapore exporter placing the business with other providers who do not make these stipulations, and could also, if it came to light subsequently, jeopardise the relationship between the UK provider and the Australian broker.

1.3 The end result of both the above situations may well be that UK business lost the opportunity to transport goods in circumstances that did not concern us; or alternatively, that the transport of an export of concern was re-assigned to a non-UK provider – neither of which outcomes deals with the root concern.

1.4 Currently the provision of transport is controlled under the Trade Controls where the goods transported fall within the “Restricted Goods” categorisation for transport between any two third countries, and where any Controlled Goods are being transported to a person or place in an embargoed destination. The Government accepts that it is entirely justified to take its own measures to control the provision of transport where the circumstances and risk justify doing so; but we believe this is best achieved by the UK identifying goods which warrant transport controls and legislating accordingly; not by in effect using the transport industry as a go-between to verify the licensing decisions of other countries.

2. *Weapons of Mass destructions (WMD) Controls*

2.1 The Government does not intend to make any legislative change in the field of WMD controls. It does however, accept that the guidance provided in this area is in need of review and updating, both in a general sense and also more specifically to deal with issues arising in some specialist areas. The prime example of this is the academic sector, where we accept that there is a need both to produce new guidance and to seek other ways to raise awareness of how existing controls impact.

2.2 The Government are also committed to looking at the coverage of open licences, whether Open General Export Licence or Open Individual Export Licences, where there is a genuine and demonstrable business need.

3. *The case for a terrorism end use control*

3.1 This idea was not specifically mentioned in the consultation document, but was put forward by respondents. However, the Government, having considered the argument, is content that the risk of non-controlled goods being supplied for use in acts of terrorism is adequately covered by other legislation and that further changes to export control legislation are not required.

Analysis and Evidence of Costs **Costs to Business**

1. *New categories identified*

1.1. *Category A*

The Government recognises the concerns that have been raised about the humanitarian impact of cluster munitions and has tightened controls on cluster munitions. The UK government supports the Oslo Declaration, which commits us to seeking by 2008, a legally binding international agreement on cluster munitions.

Costs cannot be fully quantified from the available evidence, but are likely to be negligible, since over the past 10 years, there has been only minimal involvement of UK persons or entities in trading cluster munitions.

1.2. Category B

1.2.1 *Removal of controls **on the general** advertising and promotion of LRM/UAVs (due to a shift from the “Restricted Category” to Category B)*

The Government felt that even though the most rigorous controls should apply to equipment the supply of which is inherently undesirable, the case is less strong for Long Range Missiles and Unmanned Air Vehicles. LRMs are considered a legitimate defence weapon for the UK and many other nations and so there will be many occasions when licences will be granted. Also, there has been no evidence that they have been the subject of trading activity. There has been an added complication with UAVs, which are in effect classified as LRMs, as their range is variable. They often carry no warheads, but have up until now been subject to the most rigorous levels of control.

Businesses who wish to display UAVs and LRMs at trade fairs, place adverts in periodicals, or undertake other similarly generalised acts of advertising or promotion will no longer need to apply for a licence to do so, thus saving both their administrative time and the Government’s time in processing the necessary applications. Also, companies will be able to save some money on training costs which would have been required to adhere to the previous controls.

The no. of licences given out each year ranges from 8-15. Assuming an administration cost of £300 per licence, gives an annual cost saving of around £2,400 - £4,500.

1.2.2 *New Controls on trading in SALW*

For some time, there has been wide concern about the illicit manufacture and trade of SALW- the “grey arms” market. Despite existing controls in the UK and elsewhere, SALW still find their way to conflict zones, particularly in the developing world. Being relatively low cost and readily transportable, they lend themselves to trading activity and hence have been referred as the ‘new weapons of mass destruction’. These concerns have been reflected at the international stage as well (UN, EU etc). The demand for more stringent controls on SALWs, specifically on trading on UK persons operating anywhere in the world came from a number of quarters.

To obtain responses from the industry on the effects of SALW controls, an initial full public consultation was undertaken, to which any interested party could respond. None of the major UK defence manufacturers who responded advised that they were involved in extraterritorial trading of SALW. Following that, a further targeted survey was conducted to encompass the smaller concerns who were expected to be trading in SALW.

This SALW questionnaire was emailed to 31 companies³ identified as being potentially affected by the SALW controls, out of which 24 responses were received. 14 companies did not expect any effects from proposed changes. However, 10 companies estimated costs from future changes in SALW controls. The results have to be seen in light of the fact that 7 companies did not respond. Adding costs of non-respondents could push the figures towards the higher end of the spectrum. The assumptions in the following analysis are:

- i. The 31 companies to which the questionnaire was sent comprise all/bulk of the companies to be affected by the SALW controls.
- ii. The cost-structures of the 7 non-respondents are similar to the respondents and hence overall cost estimates will be done on that basis.

³ These companies were identified by the Government as being the major SALW players in the market and hence the responses are being taken as comprehensive and representative.

A. Extraterritorial Controls⁴

Application Costs: On the basis of information provided by the SALW questionnaire responses, an additional 28 (low estimate – based on ECO analysis) to 46 (high estimate – based on company responses to questionnaire) applications may need to be made annually by these companies, when involved in supply of SALW from a country outside the UK to other third countries (extraterritorial controls). Assuming a cost per licence of £300 (used in the Export Control Act 2002 RIA), the additional application cost burden would lie between £8,400 to £13,800. These estimates must be viewed with caution, in the sense that most of the companies reported negligible or a small number of additional applications per annum – and open licensing arrangements can also be considered for transactions that are clearly not of concern. Only 2 of the 10 companies reporting to be affected, estimated number of applications above 10. Also, adding the 7 non-respondents, the cost range could approximate **£8,000 - £23,000**.

Start up Costs: 10 companies identified start-up cost ranging from zero to £10,000 (one company stated start up costs of £100,000. However, this company cannot be considered representative and will be considered an outlier in our analysis), leading to an aggregate total start up costs from stricter extraterritorial controls on SALWs of £16,800. This is for the 10 firms that reported to be affected by the controls. Again the results must be viewed with caution, with most firms reporting negligible start-up costs, and only 1 firm reporting as high as £10,000. If the 7 non-respondents have similar cost structures as the outlier, the start-up cost could be higher. However, if they have cost structures similar to the other 9 respondents, the total costs are expected to be in the region of **£17,000-£29,000**.

Start up costs will vary according to the complexity of the business. For UK-based businesses without significant overseas operations, it should be relatively easy to find out about the new legislation, understand it and identify the situations in which it needed to be applied. However, for more globally-integrated companies, or for UK citizens not resident in the UK and therefore less aware of new legislation, the costs involved in learning about the new licensing regulations, and in identifying the extraterritorial transactions where it would need to be applied, could in principle be much higher, if they are involved in trading SALW. However, in response to our initial public consultation, none of the major UK defence manufacturers who responded advised that they were involved in this activity (though the smaller SALW companies surveyed did suggest some costs as outlined above) and it is not possible to quantify the number of UK citizens outside of the UK who may be engaged in trade in SALW. Hence we have not attempted to estimate an upper bound for these costs, but have merely used the non-outlier responses to the survey.

Administrative Costs: The total ongoing administrative costs for licence application and record keeping for 10 respondents were £29,350 (except the one outlier respondent, which stated administrative costs of £60,000 per annum) per annum. The costs per company range from negligible to £10,000. Estimating the costs for the non-respondents as well, could lead to admin costs of around **£29,000- £50,000**. Administrative costs along with start-up costs are areas of probable high cost incidence.

Staff Training Costs: Estimated ongoing staff training and awareness costs for the newly introduced extraterritorial controls would range from negligible (and impossible to quantify for some) to £7,000 per annum, giving a total of £17,700 for the 10 respondents annually (except one outlier respondent which stated staff training costs of £8,000 pa). Adding the 7 non-respondents could increase the total industry costs to **£18,000- £30,000**. Even though an annual estimate is given here, training costs are likely to be concentrated in the first year.

On the basis of the above analysis, and the information that business has been able to provide, the overall costs generated by these SALW changes 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. Further, due to the nature of the extraterritorial controls, which encompass UK citizens anywhere in the world, the survey might not be covering all international transactions. The cost burden of finding this information would be disproportionate to the costs of the regulation on business.

B. Controls relating to provision of transport services in support of the supply of SALW between two overseas destinations

⁴ Existing legislation controls the trading of small arms between two overseas countries where any part of that trading takes place from within the UK or where the trading is carried out by a UK person overseas and the country of destination is embargoed. The new controls will cover the trading of small arms by UK persons overseas to all destinations.

Whilst our SALW questionnaire asked respondents about their involvement in the full range of ancillary services (ie transport, finance, insurance/re-insurance, and general advertising and promotion), only 2 of the 10 respondents indicated that they were involved in providing transportation services in support of their SALW supply and hence costs related to these are not expected to be very high even when the 7 non respondents are considered. A breakdown is as follows (although open licensing arrangements will be considered and might reduce these figures further to take account of transactions that are clearly of no concern):

Application costs: only 5-10 transactions were reported by one company, giving application costs of £1,500- £3,000 per annum (using a cost of £300 per licence). Including the 7 non-respondents would on a similar scale lead to a rise in transactions by a further 4-7, leading to a total overall cost of £1,500-£5,100 per annum.

Start up Costs: One company reported start up costs of £1,800 if the government controlled the supply of ancillary support services, with most reporting it as either negligible or impossible to quantify. Taking account of the 7 non-respondents could lead start-up costs in the range of £1,800 - £3,000.

Admin costs: Most companies did not envisage any additional admin costs. 2 companies stated admin costs of £3,350 and £10,000 per annum, leading to a total cost of £13,350 per annum for the 10 respondents. Including the 7 non-respondents would at the most lead to admin costs of around £13,350- £23,000 (if costs are mapped on a similar scale to the 10 respondents).

Staff training Costs: Only one company reported staff training costs of £4,700 per annum, with other companies stating these costs as negligible or not applicable. Including the 7 non-respondents would at most lead to staff training costs to around £4,700 - £8,000.

Total costs from controls on transport services for SALWs: £19000- £36,000 pa (ongoing costs), £2000 - £3000 (start up costs)

Adding all the costs for controls on SALWs (extra-territorial and supply of transport services) could lead to total cost estimates of around £74,000- £139,000 for the industry per annum and startup costs of £19,000- £32,000. While this represents the high end of the ranges indicated in the questionnaire, it should also be borne in mind that for some companies there may be additional costs related to the implementation of extraterritorial controls, since as with the implementation of all new legislation, respondents to questionnaires can only make a best judgement as to what their future costs may be, other elements may possibly only become apparent when the controls become operational.

1.2.3 New controls on extra-territorial trading in MANPADs:

Costs cannot be fully quantified from the available evidence, but are likely to be negligible, since over the past 10 years, there has been only minimal involvement of UK persons or entities in trading MANPADs

1.2.4 Extending Category B controls to other items on the military list

It has also been proposed that other items on the military list be subject to controls on extraterritorial trading. Extending these restrictions to a wider range of military goods could increase the potential for high costs to global businesses of identifying UK citizens in their operations and determining whether they were engaged in controlled activities. These costs are too uncertain to be quantified, but business have advised us that the burden on them of collecting the information to supply us with estimations of these costs would be very high. In the decision to make additional Military List items subject to extraterritorial controls, therefore, the choice of options must be based largely on general business information about cost rather than quantified data.

2. Torture Equipment

2.1. New controls on the export and trading of sting sticks: We are unable to quantify costs (which are likely to be negligible), as we are not aware of any UK companies engaging in this trade.

2.2. Torture end use Control

2.2.1 These measures are primarily a safety net. Our understanding, based on research carried out before the EU Torture Regulation was introduced, and on the number of reports received since of UK involvement in torture equipment (which are few are far between and relate primarily to the display or torture equipment at trade fairs rather than its export from the UK) is that there is little if any UK activity in this area. We anticipate that the control will primarily be invoked by the Government on the basis of specific information, after it had been verified, and, to a lesser extent, on intelligence.

2.2.2 In practice, this power is likely to be used rarely and so we are likely to require licence applications to be made, or refuse them, only on an occasional basis. It does however, have significant benefit as an important extra tool to control the export of equipment that can cause great suffering, even if that tool is used infrequently in practice.

2.2.3 The option of introducing a torture end use control was specifically put forward in the public consultation document and views were sought both on its desirability and any business burdens that would be generated. There was broad consensus that further action on torture equipment was needed, and that a targeted and focussed end use control would be the most efficient and effective way of taking that action.

2.2.4 Understandably, respondents found it difficult to give costing estimates for a control like this, because it operates on a case by case basis: it is triggered not by specified categories of goods or destinations, but by the end use of individual proposed exports. As such, its precise effect is difficult to predict. Industry respondents did however advise that the cost of implementing the control in this targeted and focussed way, as proposed, would be minimal.

2.2.5 We assume that this control will be invoked in the same manner and at the same frequency as the Military End Use Control. On that basis we estimate that the control will only be invoked roughly 1 – 5 times each year. There should not therefore be a requirement for company-wide training as training would only be needed for the subset of staff which needed to know about the control. Even assuming a relatively high administration cost per application (£1000) on the basis that the company in question would not be a regular exporter of strategic goods, and thus not familiar with the system, gives a total overall annual cost range, across the industry, of £1000-£5000 pa.

Costs to Government

Key costs to the government would relate to enforcement and extra licence processing. Apart from these, there could be some additional costs for awareness raising, which are discussed briefly.

1. Increased administrative and business case load: Extra-territorial controls will be extended into areas, where unlike for example, torture equipment, trading is not inherently undesirable. There could be an increased burden on the government's licence processing system. The following analysis has been undertaken using domestic licensing data from 2006 and 2007 and is scaled up to make it representative for extra-territorial trading.

99 *Standard Individual Trade Control Licence (SITCLs)* were processed in 2006, 30 of these relating to SALWs (and none relating to MANPADs and DCMs); and 56 SITCLs were processed in 2007, 25 of these relating to SALWs (and none relating to MANPADs and DCMs). Total cost per SITCL for the government has been estimated as £420. This includes costs to Export Control Organisation, Ministry of Defence, Foreign and Commonwealth office, Department for International Development and costs of other advisors (Defence Intelligence Staff etc). Presuming that extra-territorial trading in SALWs is at the same level as domestic trading, we could use the figures above to calculate the costs to government from the prospective trade controls to be £10,500- £12,600 per annum. These are expected to be concentrated for SALW licences. There are no estimates for the amount of extra-territorial trading in small arms, MANPADs and Cluster Munitions that goes on. However, the responses we received to the public consultation indicated that no one was involved in extra-territorial trading of these goods so by assuming that it will be at the same levels as domestic trading gives the upper limit to the costs and in many ways will be an overestimate.

46 *Open Individual Trade Control Licence (OITCLs)* were processed in 2006, 9 of these relating to SALW, 4 relating to MANPADs⁵ and none relating to DCMs; and 16 OITCLs were processed in 2007, none relating to SALWs, MANPADs and DCMs. Total cost per OITCL for the government has been estimated as £6067. Presuming that extra-territorial trading in SALWs is at the same level as domestic trading, we could use the figures above to calculate the costs to government from the prospective trade controls to be £0- £54,600 per annum (assuming, 0 as a lower limit in case no licences for extra-territorial trading are processed). These are again expected to be concentrated for SALW licences and in actuality could be even lower, given that not much extra-territorial trading occurs.

⁵ These were exhibition licences and cannot be said with certainty to be for MANPADs.

Overall, the approximate costs to government of processing extra SITCL and OITCL licences could range between £0- £67,000 per annum. The additional cost to the government, if it occurs, would primarily be concentrated in SALW.

2.Enforcement: Extra-territorial controls are by nature very difficult to enforce. Obtaining evidence for prosecutions from the destination in which activities take place and specifically if they take place legally in that destination can be problematic. Prosecution would then depend on extradition treaties with that destination. International relations may also be adversely affected by a potential clash of jurisdictions. There is hence a risk that the government might be able to bring few successful prosecutions against suspected offenders.

In relation to extra-territorial trading of small arms and light weapons, MANPADs and Cluster Munitions, the total annual costs spent by HMRC on enforcement of these specific trade controls is therefore likely to be significant. A full investigation will take a minimum of 1 staff year and based on our current knowledge of UK dealers operating overseas we anticipate 3-5 additional investigations per year. Additional resource costs including overseas travel will therefore be £500,000.

3.Awareness: The costs to Government of raising awareness are quite minimal. These will mainly comprise of time spent by the ECO in writing guidance for the new controls and writing an article to appear in a UKTI magazine that is sent to British Chambers of Commerce overseas; plus some adjustments to the material used in existing awareness seminar programmes for UK exporters and traders.

Conclusion

Overall, the business costs from the new categorisation (leading to extraterritorial controls on cluster munitions, SALW, MANPADs; reduced controls on UAVs & LRMVs) and controls on torture equipment are estimated in the region £73,000- £140,000 annually and £19,000- £32,000 start-up costs. These costs primarily pertain to SALW traders, as there are at most a handful of MANPAD and cluster munition traders in the UK. The estimates can only be taken as indicative given the difficulty in estimating additional number of licences that will be generated as a result of the controls and the variable cost structures of various companies. Also, businesses would find it very burdensome to collect information to provide cost estimates. However, based on the analysis, the costs do not seem to be exorbitant for the companies, either because not many companies engage in trading of that equipment (such as cluster munitions, MANPADs, sting sticks etc), or there are only a limited number of additional licences are expected to be generated (such as in SALW) or because the measures are primarily a safety net (torture end use control). Further, according to the UK Defence Statistics 2007, the total UK exports of defence equipment in 2006 were around £1300mn (and the UK defence industry generates GDP for the UK of around £4.5bn annually). While the estimated additional costs from the controls are relatively very small compared to the total defence industry statistics; we do not have data separately on SALWs, but they can be assumed to be very small.

Adding the costs to government, the total costs of these controls to businesses and government could range between £573,000- £707,000 pa as average annual costs and £19,000 - £32,000 as initial start-up costs.

Government licensing costs are expected to be mainly arising from processing additional SALW licences, as only a limited no. of licences relating to MANPADs and cluster munitions have been processed in the past. However, primary government costs will pertain to enforcement of extraterritorial controls on SALWs, MANPADs and cluster munitions.

Business costs may though, become a more significant issue if the coverage of Category B were to be extended, at a later stage, beyond the current definitions of Small Arms and Light Weapons and into a broader range of Military List equipment, or even to the whole of the Military List. Radical expansions would start to catch legitimate transactions by mainstream defence companies who were moving equipment, including components, between overseas linked companies as part of the production process.

The present values of all costs are estimated at approx. £3.5mn - £4.4mn. The number of years over which the 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).

Analysis and Evidence of Benefits

Where controls will be tightened – i.e. in respect of Small Arms and Light Weapons, MANPADs, and Cluster Munitions – the clear benefit will be to enable the Government to control, and where necessary refuse, UK involvement in the trading of these weapons of heightened concern, and thus ensure that unscrupulous traders cannot pursue deals that concern the UK simply by carrying out the business from another country. There will of course, be some extra business burdens for those traders operating extra-territorially in these goods who will now need to apply for licences, but the Government's view is that this is appropriate to the risk concerned. Open licensing could be considered for transactions that are clearly not of concern.

It is not possible to quantify the benefits to the UK public of tightening export 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

1. Competition Assessment

The assessment has been undertaken using various criteria such as proportion of licence applications processed on controlled goods, proportion of companies expected to be affected by the controls, the size of the defence export industry as a comparator and controls being imposed in other competitor countries.

- 1.1. Over 10,000 licence applications (SIELs, OIELs, SITCLs & OITCLs) were processed over each of the last two years (2006 & 2007). Over the same period of time, 64 trade licences relating to SALW, MANPADs and CMs were processed. Therefore trading in SALW, MANPADs and CMs accounted for around 0.32% of licensing activity. If we assume the volume of extra-territorial trading is the same as that of UK based trading, we can assume that the size of the niche areas affected is very small.
- 1.2. Another indicator we could use is registration for the OGTCL (Open General trade Control Licence). Between 2004 and 2006 around 453 companies registered to use the OGTCL. Of these, 33 companies were identified that would probably be engaged in trading SALW. As the figures are approximate (companies registered under all their various titles) ECO estimated that around 10% of companies who engaged in trading activities traded in SALW.
- 1.3. With regards to MANPADs or Cluster munitions, we believe that there will be no significant impact on trading as over the past 10 years there have been 10 UK persons/entities involved in trading MANPADs and 2 UK persons/entities involved in trading cluster munitions. It is important to note that the Government would not have granted licences for some of these extra-territorial trade activities and we are therefore not worried about the "competitiveness" impact on these persons/entities.
- 1.4. The new controls will affect every UK business and so we do not consider that internal competition will be affected (more on small firms competitiveness in the next section). The competitiveness of UK business in the international market place may be affected. For instance if the UK were to act unilaterally on controls, then the UK traders would be at a competitive disadvantage to some overseas counterparts.

With regard to Small Arms two sets of data can be drawn upon:

- a) COARM survey compiled by ECO:
Of the 12 countries who responded:
 - 3 have no trade controls (domestic or extra-territorial)
 - 3 have domestic trade controls
 - 1 has domestic trade controls but also covers trading extra-territorially when going only to a few countries (as well as embargoed countries).
 - 5 have extra-territorial trade controls on all Military list goods and therefore do more than the UK does at the moment, or plans to do.
- b) OSCE (Organisation for Security and Co-operation in Europe) Survey.

Of the 56 countries who responded:

- 12 reported they have laws on extraterritorial brokering.
- 21 reported that do not have laws on extraterritorial brokering, did not cover the issue, or noted that it is not applicable.
- 6 were unclear answers.
- 17 did not report.

Therefore on the issue of competitiveness there are some countries that have fewer controls than the UK, but others that do more than the UK will do. However, in general the UK is moving towards the 'front of the pack'. Since, the government's policy objective in this area is to be a global leader, so inevitably regulation will be stricter than for some other countries.

- 1.5. In terms of end use controls on torture Equipment, the Government seeks to introduce them on an EU level to ensure they are not circumvented by traders, hence competitiveness in this area is not expected to be affected.
- 1.6. The new controls are unlikely to restrict the price or quality of products, as sourcing decisions are unlikely to change since controls apply to trading activities by UK persons anywhere in the world and are not restricted to certain countries.
- 1.7. In practice, the new extraterritorial⁶ and end use controls are expected to lead to a limited additional number of applications and the costs estimated are negligible compared to total UK exports of defence equipment (according to the UK Defence Statistics 2007, the total UK exports of defence equipment in 2006 was around £1300m and the UK defence industry generates GDP for the UK of around £4.5bn annually; we do not have data separately on SALW, but on the basis that major defence companies responding to the consultation advised that they were not involved in extra-territorial trading of SALW, related costs can be assumed to be very small.). To that extent, the controls might not inhibit the competitiveness of UK businesses significantly. A small number of niche or specialist, businesses may face a competitive disadvantage internationally as many other countries have not implemented them. However, the priority for UK government is to lead and set an example in the implementation of these controls to ensure an effective system of controls against undesirable end-users.

2. Small Firms Impact Test

The trade controls are being extended to trading taking place overseas only in relation to certain identified high risk goods (SALW, MANPADS and cluster munitions). Whilst major defence manufacturers do routinely move general military components and equipment between overseas linked companies or subsidiaries to support their production process, their responses to our consultation show that they do not do so specifically for SALW, MANPADs, or cluster munitions. To more accurately gauge the impact of these specific extensions, we therefore conducted a limited survey, issuing questionnaires to a total of 31 companies who had registered to use trade control licences, and who we knew, from previous experience, were likely to be involved in trading these goods. We identified 31 such companies. 24 responded to our questionnaire; 14 of those advised that the changes would have no impact upon them, and 10 said the changes would impact.

The costs which those 10 companies identified formed the basis of the costings work which features earlier in this impact assessment. We have in addition confirmed that at least 7 of the 10 would fall within the definition of SME (3 appear to be micro businesses, 3 are small businesses, and 1 is a medium sized enterprise). The conclusion is that whilst within the defence sector as a whole, there is not a preponderance of SMEs, there is within the specific niche sector which is involved in trading SALW in particular between two third countries.

However, the fact remains that only 10 companies seem to be affected, so there does not appear to be an issue here for small businesses in general. Even if the non-respondents are taken into account the total no. of companies affected is very small.

⁶ Existing legislation controls the trading of small arms between two overseas countries where any part of that trading takes place from within the UK or where the trading is carried out by a UK person overseas and the country of destination is embargoed. The new controls will cover the trading of small arms by UK persons overseas to all destinations.

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 or disproportionate so as to affect the internal structure of the market or bias it against 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. We will though, as we move forward to implementation, seek to develop and deliver guidance in the most appropriate and user-friendly way to meet small business needs.

3. Equalities Duties Assessment

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

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.

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

Annexes

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