House of Commons

Defence, Foreign Affairs, International Development and Trade and Industry Committees

The Government's proposals for secondary legislation under the Export Control Act

First Joint Report of Session 2002–03

HC 620

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First Joint Report of Session 2002–03

Fourth Report from the Defence Committee of Session 2002–03

Sixth Report from the Foreign Affairs Committee of Session 2002–03

Fifth Report from the International Development Committee of Session 2002–03

Seventh Report from the Trade and Industry Committee of Session 2002–03

Report, together with formal minutes, oral and written evidence

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The Committees on Strategic Export Controls (Quadripartite Committee)

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Committee staff

The staff who currently work for the Committees on their joint inquiries into strategic export controls are: Steven Mark (Clerk), Ana Ferreira (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Committees on Strategic Export Controls, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 4300; the Committees' email address is quadcom@parliament.uk

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Summary

This Report comments upon and suggests improvements to the regulatory system to be imposed under the Export Control Act 2002. In January 2003 the Government launched a three-month consultation on its proposals for this system. Early in April, as the consultation period was drawing to a close, we took evidence on these proposals from industry, from NGOs and from the Government.

On the whole, the Government's proposals are welcome if overdue. However, both industry and NGOs have voiced concerns. Industry fears that they will impose an unacceptable burden on British business, and that they could impede the provision of technical assistance to the armed forces. NGOs believe that the proposals need to be more far-reaching if they are to be effective. Not all of the concerns are justified or in proportion, but we identify a number of areas in which the Government's current proposals could be both more visionary and less bureaucratic.

The legislation needs to be targeted effectively towards deterring the irresponsible proliferation of military equipment. British citizens and companies who contribute to this should not be able to escape justice by operating from abroad. At the same time, the competitive position of legitimate British business should not be inhibited by excessive bureaucracy. However, the Government's current proposals for a limited extension of extra-territorial jurisdiction are an inadequate halfway house solution, and its proposals for record keeping have uncertain but potentially burdensome implications for British business. Both these areas—and a number of others—need further thought.

The Government's proposals also extend the traditional model for controlling physical exports to other activities, such as electronic communications and brokering. We suggest that a more flexible template might be appropriate to control activities which are neither physical nor exports. This flexibility may help the new licensing regime to deter proliferators without also deterring more responsible exporters.

1 Introduction

Background to the inquiry

1. The Scott Inquiry report of February 1996 criticised the export control regime at that time for its lack of accountability and transparency, and recommended that "the present legislative structure, under which Government has unfettered power to impose whatever export controls it wishes and to use those controls for any purposes it thinks fit, should … be replaced as soon as practicable".[1] Following a number of non-legislative changes to the export control regime, in March 2001 the Government published a draft Export Control and Non-Proliferation Bill.[2] The aims of the proposed legislation were described by the Government as:

- setting out the purposes of export control in legislation;
- providing for parliamentary scrutiny of secondary legislation made under the Bill;
- requiring the Government to publish annual reports; and
- creating new powers to impose controls on the transfer of military and dual-use technology by intangible means, on the provision of related technical services; and on trafficking and brokering of military and dual use equipment.[3]

The new powers to impose controls, as well as some existing powers, were to be contained not in the bill itself, but in secondary legislation.

2. In May 2001, at the end of the last Parliament, our predecessor Committees published a Report on the draft Bill. They described "intangible transfers of WMD[4] technology, brokering and trafficking, end-use, and licensed production overseas" as "legislative issues of our time",[5] but noted that the draft bill itself was "largely an enabling Bill" with the "meat of the proposals" awaiting secondary legislation.[6] The Defence Manufacturers' Association (DMA), representing industry, and the UK Working Group on Arms (UKWG), representing non-governmental organisations,[7] agreed with this assessment. The DMA told the Committees at the time that the "devil will be in the detail" of the subordinate legislation,[8] while the UKWG noted "the absence of detailed proposals for operationalising the principles set out in the primary legislation".[9]

1 Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecution, HC (1995–96) 115, 15 February 1996, Vol IV, Chapter 2, para K2.1

2 Consultation on Draft Legislation: The Export Control and Non-Proliferation Bill, Cm 5091

3 Cm 5091, p 1

4 Weapons of Mass Destruction

5 Seventh Report from the Defence Committee, Seventh Report from the Foreign Affairs Committee, Sixth Report from the International Development Committee and Eleventh Report from the Trade and Industry Committee, Session 2000–01, Draft Export Control and Non-Proliferation Bill, HC 445, para 118

6 *Ibid*, para 11

7 The UK Working Group consists of Amnesty International UK, BASIC, Oxfam and Saferworld.

8 HC (2000–01) 445, Minutes of Evidence, p 17, Q 61

9 *Ibid*, Evidence, p 1

3. During evidence on the draft Bill, the then Secretary of State for Trade and Industry, Rt Hon Stephen Byers MP, told the Committees:

> I do think we stand a far better chance of having a Bill and secondary legislation which flows from it in a form which is more likely to achieve broad support if there has been a genuine consultation around not just the Bill but any secondary legislation which flow from it. I have been very clear with my own officials that I want the secondary legislation after this consultation period on the primary legislation to be brought together as quickly as possible and then to have an opportunity for there to be a further round of consultation on the secondary legislation.[10]

The Committees concluded that "the assurance that there will be a … consultation on the draft secondary legislation is particularly welcome".[11]

4. The Export Control Bill received its first reading in the House of Commons on 26 June 2001, and received Royal Assent, after considerable debate in both Houses of Parliament, on 24 July 2002.[12]

5. Our predecessor Committees had recommended publication of a consultative version of the secondary legislation before second reading of the bill.[13] In the event, so-called "dummy orders" were not published until mid-way through the bill's committee stage, in October 2001. In Committee, the Minister in charge of the bill, Nigel Griffiths MP, again reiterated the Government's commitment to holding "a full public consultation" on the proposals for secondary legislation,[14] and in a written answer he revealed that he expected this consultation to take place in Spring 2002.[15]

6. The promised consultation did not in fact begin until late January 2003, when the Export Control Organisation (ECO) of the Department of Trade and Industry (DTI) published a consultation document on draft secondary legislation under the Export Control Act 2002. The "draft orders" contained in this document are in substance very similar to the "dummy orders" published eighteen months before during the passage of the Export Control Bill.

7. The consultation period lasted until the end of April 2003. We are producing this Report at some speed so that the Government can consider our views before taking any final decisions on the form of the secondary legislation.

8. We are grateful to the Government for honouring its promise to "give time to the Committees to consider the draft secondary legislation and, if the Committees wish, to

10 *Ibid*, Minutes of Evidence, p 36, Q 198.

11 *Ibid*, para 118.

12 Amendments to the bill during its passage appear to have met concerns within the academic community that the legislation might inadvertently limit the free exchange of ideas. cf. HC (2000–01) 445, paras 74–77, and Minutes of Evidence, pp 25–29.

13 HC (2000–01) 445, para 11

14 Standing Committee B, Export Control Bill, 16 October 2001, Col 84

15 HC Deb, 16 October 2001, Col 1154W

question Ministers on its broad content".[16] On 3 April 2003 we took evidence from the Secretary of State for Trade and Industry, Rt Hon Patricia Hewitt MP, and from the Director of the Export Control Organisation, Mr Glyn Williams. This followed evidence from industry, represented by the Defence Manufacturers Export Licensing Group (DMELG) of the DMA, and from NGOs, represented by the UKWG. We have also received written evidence from both the DMELG and UKWG, as well as from the Society of British Aerospace Companies (SBAC) and the Campaign Against Arms Trade (CAAT). We are publishing this evidence together with our Report.

9. We begin this Report with a brief overview of the Government's proposals. We then examine the principles behind the legislation, before we turn to the scope of the proposals themselves. We look at the arguments of those (mostly NGOs) who claim that the proposals do not go far enough and of those (mostly in industry) who think that they go too far. We make our own suggestions as to how the proposals might better be refined to make them fit for purpose.

10. The test of the law will be how it works in practice. The notable procedural advantage of secondary legislation is that it can be made, amended and, if necessary, revoked, swiftly and decisively. **We recommend that the Government should keep under close review the operation of secondary legislation under the Export Control Act. We hope to have the opportunity to submit our views on any future proposals of substance under the Act.**

16 Cm 5629, p 2

2 The Government's proposals

11. The Government's proposals in the consultation paper are complex and legalistic—often, but not always, necessarily so. Before we come to consider the policy and regulatory impact of these proposals, it is worth setting out briefly what the legal effects would be of the orders as currently drafted.

12. The DTI is proposing to introduce two main Orders under the Act—the *Export of Goods, Transfer of Technology and Provision of Technical Assistance Order* and the *Trade in Controlled Goods (Control) Order*. These would consolidate existing export control legislation and extend controls to several new areas. The Department has also published in draft an example of the type of order it would introduce in order to enforce an arms embargo against a particular destination: the *[Embargoed Destination] (Sanctions) Control Order*.

Export of Goods, Transfer of Technology and Provision of Technical Assistance Order

13. This Order introduces export controls into *new areas*:

- the electronic transfer abroad from the UK of military technology; and
- extraterritorial controls on the transfer by any means of technology related to weapons of mass destruction (WMD); and on the provision of WMD-related technical assistance.

It also seeks to consolidate and rationalise *existing controls* on:

- the export of military goods and technology in physical form; and
- the physical export and electronic transfer of dual-use goods and technology.

14. The new provisions under the Order for the *electronic transfer of technology and software* will extend export controls from physical means to a number of other media, including e-mail, fax, telephone and video-conferencing. Information placed on a company's intranet, or a restricted-access site on the internet, would also be covered by the controls, as would documents stored in the UK which were accessed remotely by an employee overseas. In all these cases, it is the physical location of the recipient of the information that will determine whether a licence is required. The provisions would not cover information in the public domain.

15. The provisions relating to *weapons of mass destruction technology and technical assistance* apply not only to transfers and assistance provided from the UK, but also to transfers and assistance by any UK person or legal entity anywhere in the world. It would be illegal under the Order for a person to communicate technology by any means without first obtaining a licence if he knows, or has been informed by the Government, that it is or may be intended for use outside the EU in connection with the development of WMD or missiles capable of their delivery. There would be no requirement, however, to make active attempts to check that a proposed recipient does not intend to use information in a WMD

programme. Similar provisions would apply to supplying or facilitating WMD-related technical assistance.

Trade in Controlled Goods (Control) Order

16. This Order will introduce new controls on trade in military equipment between overseas countries (including 'trafficking' and 'brokering'). The Order covers not only companies or people trading between overseas countries on their own behalf, but also those negotiating contracts and arranging trade and related activities for a fee. The Order does not, however, control transportation, financial services, insurance or advertising—except where *extra-territorial controls* apply.

17. Extra-territorial controls (on the activities of United Kingdom persons anywhere in the world) apply to trade to any destination in:

- long-range missiles (over 300 km) and their component parts; and
- torture equipment the export of which has already been banned by the Government (including, for example, electric shock batons, leg irons and over-sized handcuffs).

18. For trade in other controlled military and paramilitary equipment, a licence will be required only where any part of the controlled activity takes place in the UK—except for trade to embargoed destinations.

[Embargoed Destination] (Sanctions) Control Order

19. This is an example of an Order to control the export of military goods to a destination subject to an arms embargo. The exact content and provisions of the Order will depend upon the circumstances under which it is introduced. It would cover the supply and delivery of specified equipment and acts calculated to promote this, and will apply both to activities by anyone within the UK and to activities by any UK person or company anywhere in the world.

3 General considerations

Fit for purpose?

20. The DTI consultation paper, while forthcoming about the practicalities of the legislative proposals it contains, reserves to an Annex comment on *why* the legislation is necessary and what precisely it is seeking to achieve.[17] Without an understanding of what the legislation is for, it is impossible to judge how well it achieves its aims.

21. In the words of the Government, its strategic export control policy aims are to:

i) Maintain an effective system of export controls to ensure that UK involvement in arms exports does not contribute to regional instability, internal repression or external aggression whilst supporting a strong defence industry and defence exports.

ii) Play a leading role in helping to strengthen international regulation of the arms trade.

iii) Prevent the proliferation of weapons of mass destruction.[18]

22. The first and third of these three aims are central to the legislative proposals under the Export Control Act. In the words of industry, British export controls need to be capable of "restrain[ing] the proliferation of military and dual-use technology to potential undesirable customers around the World". At the same time, the Government wants to avoid undermining "the normal commercial activities of legitimate UK firms".[19]

23. An ideal system of control would make it impossible for *undesirable* customers to obtain military equipment or technology from the United Kingdom, while at the same time it would impose only a minimal burden on those supplying *desirable* customers with the same equipment or technology. At the other end of the scale, the worst possible outcome would be a system which fails to prevent the supply of military equipment to undesirable customers while at the same time imposing a heavy regulatory burden on legitimate British business. **We conclude that the effectiveness of the Government's proposals is to be judged by how well they are able in practice to discourage trade in military goods and technology where it is undesirable without also discouraging trade that the Government wishes to promote. An ability to do this depends in the first instance on having reliable methods of distinguishing between "legitimate" and "illegitimate" trade.**

24. To be able to discourage "illegitimate" trade, it is necessary to be able to bring those conducting such trade to justice. It is pointless regulating those who are ready to play by the rules, if it is possible for less scrupulous individuals to ignore the law with impunity.

17 Consultation document, Annex A: Partial Regulatory Impact Assessment

18 *Ibid*, p A. 2

19 Ev 33

Penalties for breaking the law need to be strong enough to act as a deterrent, and they need to be enforceable. **We conclude that a further test of the proposals will be how effectively they can be enforced against those who have no regard for the letter of the law. Only effective enforcement will dissuade such people from involvement in trade in military equipment and technology.**

Squaring the circle

25. Current legislation controls the export from the United Kingdom of military goods and of dual-use goods with a potential military use, as well as military technology in physical form and dual use technology in physical or electronic form. Any such export is illegal if not covered by a Government licence. The Government's proposals, as outlined above,[20] essentially extend this existing system of control to a variety of other transactions, such as the transfer of military technology in electronic form, and trade between overseas countries. But there are very real difficulties in doing so. Under the new proposals, it is not always straightforward to identify what sorts of transaction require a licence. Even when this is known, it is not always evident that a licensable transaction has taken place. Finally, there may be problems for the Government in establishing whether the law is being complied with.

26. It is relatively straightforward to impose controls on the *export of goods from the United Kingdom*: it is clear both to the Government and to the exporter at what point the export occurs, and therefore at what point a licence is required; and it is relatively easy to police as part of the normal duties of Customs and Excise officers. It is less straightforward for the United Kingdom to impose controls on the *export of goods from another country*: it is still clear at what point an export occurs, but it may not be clear to the exporter that a licence is required from the United Kingdom; and the British Government is only likely to discover that the export has taken place where it has very close inter-governmental links at the right level—or other sources of intelligence.

27. When it comes to the *transfer of military technology in electronic form*, it becomes yet more problematic to apply the same standards as for physical exports: it is not at all obvious when sending an e-mail where in the world the recipient will be when they read it; although, in terms of evidence, tracing an electronic communication may in some instances be easier than tracing the route of a physical object.

28. Finally, it is proposed to impose controls on acts "calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of controlled goods" between two overseas countries.[21] Such an act might be, for example, putting a potential customer in touch with a potential supplier in return for a fee. But this would occur prior to any export taking place—and it might be that no export in fact would take place. In such a situation, it would not be an *export* that was licensable at all, but another thing entirely. At what point would a licence be required, and how would either the potential licensee or the Government know that that point had been reached? And how

20 Paras 11–19

21 Consultation Document, page G. 3, Draft Trade in Controlled Goods (Control) Order, section 4 (3)

would the Government seek to show that a licensable act had been illegally carried out? These are questions that we discuss further below. The basic point is that export itself cannot be used as the test here of whether a licence is required. This sort of situation arguably has more in common with other sorts of licensable activity—the right to practise certain professions, for example—than it has in common with the export of tangible goods.

29. **We conclude that existing controls on exports of military goods from the United Kingdom are not obviously an appropriate template for all of the areas of activity that the Government intends to control through secondary legislation under the Export Control Act. We recommend that the Government should take care to recognise the essential differences between physical exports on the one hand and, on the other, electronic transfers, which are not physical, and brokering activities, which are not exports. Different sorts of activity may require different sorts of control.**

4 Arguments for further control

30. NGOs have argued in their evidence to us that the Government's proposals do not go far enough. They have pressed in particular for:

i) the extension of the controls on trade to UK persons *wherever they are located in the world*, and

ii) *direct* controls on the construction of production facilities for military equipment overseas.

31. The Quadripartite Committee in the last Parliament took a similar view to the NGOs on the first point, recommending that "controls be introduced on the activities of UK citizens and companies wherever they take place".[22] On the second, their view was that "some statutory powers may be necessary", but "only if a non-statutory regime is shown to have failed".[23]

32. We consider in this section whether these additional controls are desirable, and whether it would be appropriate or effective to use national law to impose them.

Trafficking and brokering: extension of extra-territoriality

Introduction

33. The Labour party's general election manifesto in 2001 made the following commitment:

> We will legislate to modernise the regulation of arms exports, with a licensing system to control the activities of arms brokers and traffickers wherever they are located.[24]

34. Under the Government's proposals, however, actions by UK persons abroad will only be regulated where they relate to trade in long-range missiles and torture equipment, or trade to an embargoed destination. This is consistent with the position taken by the Government during the consultation on the draft Export Control Bill, and during the passage of the bill itself.[25] In her evidence to us, the Secretary of State for Trade and Industry denied that the Government's proposals were modest:

> the controls that we are introducing through the Act on trafficking and brokering include controls on trafficking and brokering in small arms and any other kind of military equipment where any part of the transaction, including an e-mail, a fax, a

22 HC (2000–01) 445, para 96

23 *Ibid*, para 106

24 Ambitions for Britain: Labour's manifesto 2001, p 38

25 For example, HL Deb 18 April 2002, Col 1136

> phone call, any part of it takes place within the United Kingdom. So we are catching an enormous range here.[26]

Full extra-territorial control: arguments for and against

35. The UKWG does not believe that this goes far enough. In their view, "only full extra-territorial control over arms brokering has any chance of properly regulating the industry and stopping the kind of deals for which the Government would in the normal course of events refuse a licence".[27] They see the failure to impose extra-territorial control across the board as a loophole in the legislation, which arms brokers will exploit:

> Licence applications from arms brokers based in the UK to destinations of concern will presumably be carefully scrutinised by the Government in view of the risks that arms will be misused by the end-user. However, an arms broker involved in a questionable transaction would be aware of the possibility that his application might be refused, and would choose to conduct his business abroad, thus avoiding any form of control. It is the transactions that the Government needs to control most that would escape the system of regulation."[28]

36. Our predecessor Committees in the last Parliament recognised the "practical difficulties in policing activities outside the United Kingdom".[29] They concluded, however, that "arguments in favour of extending controls on brokering and trafficking to activities outside the country" were "compelling", and they recommended "that controls be introduced on the activities of UK citizens and companies wherever they take place".[30]

37. *Practicality* is at the root of the Government's arguments against extending extra-territorial controls in this way:

- UK persons operating abroad could not be expected to know that they would need to apply for a licence from the United Kingdom.
- It would be wrong to criminalise activity in another state that that state might properly be promoting.
- The controls would be unenforceable, unworkable or prohibitively expensive to administer.

As the Secretary of State told us: "I am not interested in writing a law that looks wonderful on a piece of paper or in a headline, I am interested in a law that will actually have some practical effects".[31]

26 Ev 18, Q 115
27 Ev 36
28 Ev 36–37
29 HC (2000–01) 445, para 96
30 *Ibid*
31 Ev 17, Q 107

38. The Government has also called in aid its policy on the extension of extraterritorial jurisdiction.[32] This policy is to apply extraterritorial control only in exceptional circumstances. Home Office guidance describes six circumstances in which such control may be warranted:

i) Where the offence is serious;

ii) Where, by virtue of the nature of the offence, the witnesses and evidence necessary for the prosecution are likely to be available in UK territory, even though the offence was committed outside the jurisdiction;

iii) Where there is international consensus that certain conduct is reprehensible and that concerted action is needed involving the taking of extra-territorial jurisdiction;

iv) Where the vulnerability of the victim makes it particularly important to be able to tackle instances of the offence;

v) Where it appears to be in the interests of the standing and reputation of the UK in the international community;

vi) Where there is a danger that offences would otherwise not be justiciable.[33]

39. In the view of the UKWG, trade in military equipment fulfils five of these six tests.[34] This would not, according to the guidance, "positively determine the extension of jurisdiction. But it would suggest that action might be justified, particularly if the practical enforcement issues did not appear to be insurmountable".[35]

40. Our attention has also been drawn to the fact that extraterritorial controls on trade in military equipment have been imposed or are about to imposed in a number of countries around the world: "Finland and Poland have introduced controls and they are under consideration in Belgium and France. The UK, once the front-runner on standards for arms exports, is in danger of becoming the back marker."[36]

41. Controls also exist in the USA. The Secretary of State has told us of the US system that her "judgement is that it simply does not work".[37] She appeared to base this judgement largely on a report from a US NGO, the Fund for Peace. She told us that this report expressed concerns "about the general ability of the American authorities to operate and enforce this extraordinarily wide system of controls".[38]

42. The Fund for Peace, however, believes that its views have been misrepresented. In their view, the US system is "the best model" for legislation on brokering. They acknowledge that the law has not been well enforced, but they believe that this is not because it is

32 Ev 19, Q 118

33 Home Office, Review of Extra-Territorial Jurisdiction, Steering Committee Report, July 1996, para 2.21

34 Ev 38 and Ev 56

35 Home Office, Review of Extra-Territorial Jurisdiction, para 2.22

36 Ev 36

37 Ev 17, Q 107

38 *Ibid*

unenforceable (as the Secretary of State claims) but rather because of the "newness of the law" and because of a "lack of political will on the part of the US Government".[39]

43. We acknowledge that there will be practical difficulties in extending national jurisdiction to transactions occurring outside the United Kingdom.[40] There are three reasons for seeking to overcome these practical problems nonetheless:

i) The international nature of the arms trade requires legislation with an international reach. Those whose activities are of most concern could easily evade legislation with a strictly national jurisdiction by going abroad. The Government's proposals risk failing to tackle comprehensively the reason for introducing legislation in the first place.

ii) The Government's proposals already envisage the extension of extraterritorial control in some circumstances. They are therefore already committed to seeking to overcome many of the practical problems that would be raised by a wider extension of extraterritorial jurisdiction.

iii) Other countries have introduced national legislation to control arms brokering activities by their citizens no matter where they are in the world. This shows both that it can be done, and that there is a level of international agreement to enforcing such controls through national legislation.

44. We expand these arguments below, through more detailed consideration of the Government's proposals.

The Government's proposals

45. The Government draws a distinction between trade in long-range missiles and torture equipment, and trade to embargoed destinations, on the one hand—which are "internationally condemned and abhorrent"[41]—and, on the other hand, trade in other military equipment—which in certain circumstances can be desirable. The Government believes that the three categories that it has identified pass the test for extraterritoriality. The Secretary of State has told us, however, that she is keeping an open mind on possible additions to this list: "obviously if people come back and say 'This is an incomplete list and for the following reasons you should have other things included on it' we will look at that very seriously indeed".[42]

46. The Government's categories are not entirely straightforward. As the Secretary of State has admitted, they have some "boundary problems".[43] The restrictions on torture equipment cover, for example, trade in oversized handcuffs, because they can be modified

39 Ev 58

40 There may also be particular difficulties because of the nature of the English and Scottish legal systems, which rely to a great extent on oral rather than written testimony. This may make it harder to gather evidence for the prosecution of an offence committed abroad than would be the case in countries with an inquisitorial justice system. See also Home Office, Review of Extra-Territorial Jurisdiction, para 2.10.

41 Ev 18, Q 110

42 Ev 18, Q 111

43 Ev 18, Q 109

for use as shackles or leg irons, although they also have a legitimate use on prisoners with larger wrists. However, it is not even the case that leg irons are universally recognised as torture equipment: they are in regular use in prisons in the USA. Extraterritorial control will be applied to trade in missiles only where they are "capable of a range of 300km or more".[44] There is no obvious logical reason why missiles capable of a range of 290km should be less stringently regulated than missiles capable of a range of 300km. The Government proposes to make it an extraterritorial offence to breach not only international, but also UK national embargoes, such as those on the supply of military equipment to Iran and Zimbabwe.[45] National embargoes scarcely imply international condemnation. Moreover, the Government has argued against imposing extraterritorial control on trade in all military equipment because people abroad cannot be expected to know the letter of UK national law: but it is unclear why the Government does expect them to know that they should not supply military equipment to a country under a UK national embargo.

47. But we have a more fundamental problem with the way that the Government proposes to apply extraterritorial control: it is piecemeal, and it fails to outlaw some of the most heinous aspects of the arms trade. The fact that these aspects may be difficult to define does not mean that such a definition should not be attempted.

48. We have identified that there is a distinction between trade in torture equipment and trade in, for example, small arms, which will only sometimes be reprehensible. But the reprehensible trade in small arms is as damaging to the lives of millions of people around the world as trade in the types of equipment to which the Government intends to apply extraterritoriality—if not even more damaging. **We conclude that it would be a missed opportunity if the Government failed to regulate all UK citizens and companies who are involved in trafficking and brokering activities abroad which, if conducted in the UK, would not be granted a licence.**

Identifying transactions of concern

49. It would be absurd to criminalise the activities of a British citizen abroad engaged in the sale of sporting weapons to legitimate end users, or in the sale of firearms to a properly regulated police force, or the activities of a British citizen abroad working for a responsible aerospace company, if these people failed to apply for a UK licence to do so. We are in agreement with the Secretary of State on this:

> The idea that one would have extraterritorial controls that would require, for instance, a British citizen who has been resident in Australia for 15 years, also working for a completely legitimate company that is working in full accordance with Australian law, also to be licensed under UK law, I just do not think makes sense and I do not wish to put the overstretched resources of my department into trying to

44 Consultation paper, Annex G, Trade in Controlled Goods (Control) Order, Schedule, p G. 8

45 Ev 20, Q 122

> enforce something that will not make a jot of difference to the evil that we are trying to control here.[46]

50. On the other hand, **it would be thoroughly desirable to criminalise the activities of a British citizen supplying small arms to rebel forces in an area of conflict, or medium-range missiles to a rogue state. Such activities are precisely those that need to be controlled. Under current Government proposals, they will not be. We recommend that the Government should seek to extend extraterritorial control to all trafficking and brokering which, if conducted in the UK, would not be granted a licence.**

51. The identities of the supplier and end user of the equipment are key. There are some end users who will give rise to few or no end use concerns: United Nations peacekeeping forces, or a well disciplined police force, for example. There may be some suppliers and brokers who have an excellent reputation for probity. On the other hand, there are some end users whom the Government would wish to prevent acquiring certain military equipment, and some suppliers and brokers whose reputation for probity may be less than unimpeachable.

52. International consensus on the need to control trade in small arms was demonstrated at the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects, at which all participating states undertook "to develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering".[47] We commend the Government for its efforts to seek international agreement on the regulation of the arms trade, but there will always be countries unable to enforce a robust system of controls on the trade in military equipment. We therefore do not see efforts to reach international agreement as a substitute for national legislation. **We conclude that there are a number of areas, including the illicit trade in small arms and light weapons, in which enough international consensus exists to make extraterritorial jurisdiction in such cases both reasonable and enforceable**—certainly as reasonable and enforceable as for trade in leg irons or trade to Iran. As the UKWG points out, "mechanisms will have to be established to enforce controls on the three categories of equipment on which it is proposed to apply controls. These same systems should be utilised to control brokering conventional arms without a licence".[48] **We conclude that while extending extraterritorial jurisdiction over any aspects of the arms trade will pose practical difficulties, it is not clear that it will be substantially more difficult to enforce this jurisdiction more broadly over undesirable aspects of the arms trade than to enforce it only in those areas to which the Government is already committed.**

Transportation etc.

53. Another of the UKWG's concerns relates to transportation. The Government's proposals on trade between third countries are expressly disapplied from those involved in transportation services, financing and financial services, insurance services, and general

46 Ev 17, Q 108

47 Ev 38–39

48 Ev 38

advertising and promotion services—except for trade in long-range missiles and torture equipment, and to embargoed destinations.[49] The UKWG's case is that:

> There have been a number of cases where UK pilots and transportation agents have been implicated in the supply of arms and related equipment to conflict and human rights crisis zones. Under existing regulations, their actions did not break UK law, and unless the proposals on the trade in controlled goods are strengthened to include some form of licensing for those who actually transport brokered arms, they will remain above the law and potentially continue to add to the misery and suffering caused by unregulated arms proliferation.[50]

54. The Secretary of State explained to us the rationale behind the Government's controls:

> I would draw the distinction between a British company or a UK person engaged in transporting arms to an embargoed destination. That we will catch. If have you a British shipping company that routinely carries perfectly legitimate aerospace components that are being exported under a perfectly legitimate export licence then we are not going to try and control that activity, we do not want every shipping company, every airline, every bank all having to apply for licences under this Act.[51]

The Secretary of State has also reassured us that a United Kingdom citizen working for an overseas company will be caught by the controls if they are involved in the transportation of torture equipment or long-range missiles, or of any military equipment to an embargoed destination.[52]

55. We agree with the Secretary of State that it would not be desirable or practical to subject transportation agents and other service industries to an individual licensing system for all arms transfers. The UKWG has suggested as an alternative the establishment of an official register for British transportation agents wishing to transfer arms.[53]

56. If, however, the Government seeks to impose extraterritorial controls on all undesirable trade in military equipment, as we have recommended above, this would imply extending the controls on transportation agents and other service industries to a wider range of transactions than currently identified by the Government. This seems to us to be eminently sensible: we would expect a British citizen involved, for example, in transporting small arms to a conflict zone to be subject to some sort of control. We reiterate our predecessor Committees' comment that it would "seem perverse that those arranging for arms to be purchased for use in some area of conflict should be under a licensing regime, but not those responsible for arranging or undertaking their actual transfer".[54] We would expect such control normally to be in the form of registration or open licensing in most circumstances. **We recommend that the Government should ensure that transportation**

49 Consultation document, pp 28–32, paras 4.7, 4. 12 and 4.28

50 Ev 42

51 Ev 30, Q 174

52 Ev 62

53 Ev 42

54 HC (2000–01) 445, para 99

agents are brought within the ambit of the secondary legislation in all circumstances in which the undesirable transfer of arms may be involved.

Licensed production overseas (LPO)

57. The UKWG has concerns about the Government's failure to control directly the issue of licensed production overseas (LPO). The Quadripartite Committee in the last Parliament was less concerned about whether the Government controlled LPO directly or indirectly, but was convinced of the need for a system "which ensures that the Government knows when a licensed production facility is being set up, and which ensures that the goods produced are not exported to countries or end-users where the UK would not licence them".[55] In evidence to our predecessor Committees on the draft bill, the then Secretary of State for Trade and Industry, Stephen Byers, said that Licensed Production Overseas (LPO) is "one of those areas where I think experience shows us that we could be in a potentially embarrassing position for the United Kingdom, as a country that cares about these issues, not to have an effective regime on licensed production in place."[56]

58. LPO is not straightforward to define. According to the UKWG, LPO traditionally involved "a defence company in one country granting a distinct company in another country a licence to manufacture a complete piece of defence equipment, for example armoured personnel carriers or submachine guns", but it now "covers a much wider ambit of structures and activities". Examples of such activities are:

> …the setting up of a joint venture … the UK company taking an equity stake in a company in the recipient country or establishing a subsidiary … the production of a complete system or platform, or … for a sub-assembly or a component for incorporation into a platform back in the UK or in a third country.[57]

59. The Government does not propose to introduce direct controls on LPO. It will continue to rely on current controls on the export of equipment and technology (which would usually be required to set up an LPO facility). New controls on the export of technology by electronic means, and on the provision of technical assistance will also affect LPO. The Secretary of State has told us that in her view these indirect controls are "very powerful controls on the supply chain on which licensed production almost always depends".[58]

60. The UKWG's concerns relate to the implications of LPO for weapons proliferation, and it points to the risks that:

> …the arms produced as a result of the LPO agreement will be exported to states to which the Government would refuse to license exports directly; and the 'know-how'

55 HC (2000–01) 445, para 106

56 HC (2000–01) 445, Minutes of Evidence, Q 243

57 Ev 43

58 Ev 25, Q 149

> which has been exported will itself be more widely circulated, with implications for the development of further, uncontrolled generations of military equipment.[59]

61. The UKWG wants the Government to control LPO directly and claims that "without licensing the deal itself you can miss the bigger picture".[60] LPO risks allowing not only weapons but also the ability to produce them to fall into the wrong hands:

> There have been examples of licensed production facilities in Egypt exporting technologies which we are now facing in Iraq coming at us rather than in our arsenal. Therefore, there is a real interest here in actually seeing the bigger picture, estimating the risk and putting some conditions on that production facility going ahead and also using the diplomatic clout … in being the UK Government if you see those conditions being violated.[61]

62. Industry has different concerns. The DMELG has claimed that increasingly, "a customer demands manufacturing or design work in their own country in return for buying the product" and that LPO "is an integral aspect of the modern global defence industry".[62] For industry, therefore, restrictions on LPO will affect the British defence industry's competitive position.

63. It would be possible for a company to evade British controls on the export of equipment and technology by exporting these from a third country, as the Secretary of State admitted in oral evidence.[63] Although such a transfer might be subject to new controls on trade between third countries, it might be possible for British controls to be avoided through the use of overseas subsidiaries.

64. When we put this point to the Secretary of State, she replied:

> Rather than trying to design a more and more complicated set of regulations and administrative procedures to capture every possible theoretical combination of problems, we should actually implement the very large extension of current controls that we are already proposing and then see whether either we have got some companies simply circumventing them or we have some other evil that we could possibly have an effect on and stop which we have not yet caught.[64]

There is a great deal of sense in this approach.

65. The increasing use of licensed production facilities risks causing a far greater proliferation of military equipment abroad than the direct export of finished equipment. We are not certain that the Government's indirect controls on licensed production facilities will be sufficient to curb this proliferation. However, we welcome the Secretary of State's undertaking to assess the effectiveness of these controls on licensed production

59 Ev 43
60 Ev 14, Q 94
61 Ev 15, Q 101
62 Ev 34
63 Ev 25, Q 146
64 Ev 25, Q 148

facilities. We also welcome British support for the inclusion of licensed production facilities as a consideration in the EU Code of Conduct on Arms Exports.[65] **We recommend that, within two years of its introduction, the Government should assess the effectiveness of the secondary legislation in regulating licensed production facilities, and that it should take steps to introduce direct controls on such facilities if these prove to be warranted in the light of this assessment.**

66. The UKWG has also pointed to the lack of information available about LPO deals, both to the public and to the Government. One concern has been that too little knowledge is available about LPO agreements to assess what effect they have in terms of regional and global proliferation. We were pleased to hear from the Secretary of State that the Government has begun to seek information from suppliers about whether licensable goods and technology are intended for a licensed production facility.[66] We are surprised that the Government has not sought this information until now. It is difficult to see how the Government can take properly informed decisions on licence applications without knowing if the equipment or technology in question is intended for a production facility overseas. **We conclude that the Government may not have enough information about licensed production facilities abroad to assess the likely impact of these facilities on the proliferation of military equipment. We therefore recommend that the Government should consider requiring further information from British exporters about the licensed production facilities that they intend to establish abroad, and that this information should be used in the assessment of relevant licence applications.**

65 *Ibid*

66 Ev 25, Q 145

5 Minimising the burden on business

67. Industry's initial reaction to the Government's consultation document has been strongly stated. The Defence Manufacturers' Export Licensing Group (DMELG), representing exporters within the Defence Manufacturers' Association (DMA), has written of its "grave concerns" about the proposals and claims that they "could be disastrous".[67] These concerns focus on the resource implications of the proposals, rather than the principle behind them.

68. We are sympathetic towards the needs of industry and have no desire that it should be swamped by unnecessary bureaucracy. We also agree that there are areas of the Government's proposals that are unclear and that could be usefully refined. It is in everyone's interests to devise a system of control which targets as effectively as possible irresponsible proliferators, without imposing an intolerable burden on industry more generally. But industry cannot reasonably expect an extension of the Government's export licensing system to impose no burden at all.

69. We investigate in this section the extent to which industry's concerns are justified. We look first at the question of *clarity*: what do the proposals actually mean for business, and is clearer definition desirable on the face of the legislation? We then turn to the Government's proposals for *open licensing*, which are intended to reduce some of the burden on business of applying for individual licences. *Record-keeping* will be a requirement under open licences, however: how can this be carried out in a way that meets the information needs of the Government without leaving industry having to log every e-mail? There are particular problems with *electronic communications* in knowing when an export is taking place: how can these be resolved? How will the controls work in practice at events such as *trade fairs*? What will be the *training* implications of the new controls for industry? Are the proposed *timetables* for the implementation of the legislation appropriate? Finally, is *Government* resourced and ready for the increased administrative burden?

Clarity

70. Lack of clarity is one of industry's principal concerns about the Government's proposals.[68] The DMELG claims that the proposals are "phrased far too vaguely and loosely", and that industry would be unhappy about "relying on a pragmatic and common-sense approach by Government".[69]

71. Industry and the public rely on a pragmatic and common-sense approach by Government in many areas of life. We fail to see why such an approach should be undesirable here: it is, after all, hardly in the Government's interests to be overburdened with bureaucracy or to make life impossible for legitimate British business. Our strong

67 Ev 33
68 Q 45; Ev 33–34
69 Ev 33

impression from the oral evidence that we have heard from the DMELG is that industry is being unnecessarily worried by its lawyers about the nature and number of transactions that will be licensable under the proposals.[70] But we agree that there are a number of grey areas in the consultation document. Industry is entitled to have a clear answer to its main practical question: "when do I need an export licence and how do I go about trying to obtain and use one?".[71] Further guidance to industry would be not only reassuring but useful.

72. Industry's concerns about lack of clarity centre on the proposals for new trade controls. The Government estimates that it will receive 100–250 individual trade licence applications annually.[72] The DMELG, however, believes that this "greatly underestimates the number of licences which will have to be sought, not only by UK Industry, but also by overseas business visitors to the UK".[73]

73. The controls that the Government will apply to brokering activities are at the heart of this disagreement.[74] Under these controls, a licence would be required:

- for transfers of controlled goods between two overseas countries,
- for arranging or negotiating a contract for a transfer (or even agreeing to arrange or negotiate a contract), and
- for doing or agreeing to do "any act … calculated to promote the arrangement or negotiation of a contract".[75]

74. The net of control is cast so widely in order to catch those involved in undesirable brokering activities—such as putting a supplier of small arms in touch with the representative of a rebel group. But an enormous range of legitimate activity could also potentially be caught. As one of our witnesses from the DMELG told us by way of example: "If you agree in principle to a percentage, or even a fixed number, in terms of values of an offset agreement, what I do not believe is clear from the consultation document is whether that has moved us from marketing to trading and whether therefore a licence is required".[76] It would certainly seem unnecessarily restrictive to require a company to obtain a licence to conduct preliminary negotiations, on offset for example, where the outcome of those negotiations was contingent on a final agreement involving the export by the same company of military equipment from the UK, which would itself require a licence.

75. The Government needs to ensure that the new controls are broad enough to catch undesirable brokering activity. But it is also essential to minimise the burden on legitimate industry. It is probably impossible to make the controls on trade any more specific without also opening loopholes to those the law is targeted to catch. Open licensing can be used to

70 Ev 3–4, Qq 13, 16, 20

71 Ev 34

72 Consultation document, Partial Regulatory Impact Assessment, para 8.1, p A. 19

73 Ev 53

74 Ev 1, Q 3

75 Consultation document, Trade in Controlled Goods (Control) Order, section 4 (3), p G. 3

76 Ev 1, Q 3

exempt transactions of little concern, as we discuss below.[77] But while industry is entitled, indeed needs, to know the "trigger point" at which a licence will be required in a variety of circumstances, this will often best be achieved through discussion and guidance. Some meetings have already taken place between Government and industry on the consultation document.[78] These would be an ideal forum to inform such guidance. **We recommend that the Government, in cooperation with industry, should draw up clear guidelines on what transactions will and will not require a licence under the new controls. We further recommend that the Government should seek to ensure through these guidelines, and legislative refinement if necessary, that the number of additional individual licence applications received under the new controls remains within reasonable limits.**

Open licensing

The Government's proposals

76. The Government has indicated its intention to use open licensing to ensure that individual licence applications are kept to a minimum.[79] The existing Open General Export Licence (OGEL) for military technology will be extended to electronic transfers of technology.[80] We can see no possible objection to this. In addition, the Government proposes to introduce an Open General Trade Licence (OGTL),[81] covering trade to and from a number of countries selected on the basis that they have "robust and long developed export control systems" and that they basically follow the same core principles as the UK and the EU.[82] Trade in torture equipment, land mines and long range missiles, and to embargoed destinations, would not be covered by the OGTL. But there would be no need to apply for a British licence to export machine guns from the USA to India, or to put a supplier of ammunition in South Africa in touch with a potential client in Japan.

77. The UKWG has taken issue with the list of countries included in the OGTL. It is concerned at "the prospect that an open general licence will apply for traded goods in cases where a direct export of the same goods would require a standard individual or open individual licence". It and the CAAT also believe that the OGTL should not cover trade to countries which, although not under embargo, give rise to human rights or diversion concerns.[83]

78. It is true that the United States, for example, allows the export of main equipment, such as tanks and fighter aircraft, to Israel, where the British Government would not. But we do not believe that it would be reasonable to subject British citizens to the stringent, if slightly different, export control requirements of two countries. It would also risk being impractical, given the extent of trade between the USA and the United Kingdom. The

77 paras 76–81
78 Ev 7, Qq 31, 33
79 Consultation document, para 3.7–3.8, p 16, and para 4.33, p 34
80 Consultation document, para 3.7, p 16
81 Consultation document, para 4.33, p 34
82 Ev 22, Q 131
83 Ev 40; Ev 48

legislative proposals should aim to ensure that the trade in arms cannot escape regulation, not to impose British principles on the rest of the world. **We conclude that where trade is already subject to robust and principled regulation abroad, it would be superfluous, bureaucratic and potentially anti-competitive to subject UK citizens and companies to the requirements of a second regulatory system. The basis on which the Government proposes to introduce an Open General Trade Licence seems to us to be sound.**

79. We raised in evidence the question of why Switzerland was included as a permitted destination on the OGEL for technology, but was not included in the OGTL.[84] There may be sound reasons for this distinction, but **we recommend that the Government explain in its response to this Report why it might be appropriate to include a country as a permitted destination on the Open General Export Licence for technology, but not on the Open General Trade Licence, or vice versa.**

80. The OGTL is to include trade to and from all EU member states. While we have no objection to current EU member states falling within the scope of the OGTL, we are less certain of the robustness of the export control systems of a number of the countries due to join the Union in 2004. **We recommend that new EU member states should only be included in the Open General Trade Licence when their export control systems reach a state of robustness comparable to that of existing member states.**

Blue skies

81. An inventive use of open licensing will be desirable where this can ensure that legitimate business is not unfairly hampered by the strict controls designed to deter irresponsible proliferation. While companies will presumably have little trouble in acquiring open licences for the exchange of technology and equipment with partners, regular collaborators, and established clients, the danger is that the requirements of an extended licensing system may place British industry in an uncompetitive position when seeking to acquire *new* clients. If a British company is unable to make any commitment to a potential client without going through the process of acquiring a licence, the likelihood is that the client will go elsewhere. **We recommend that the Government should consider how open licensing might best be extended to minimise the regulatory burden on legitimate business, and in particular to ensure that new business is not lost.**

Record-keeping

82. The Government will require those conducting activities under open licences to keep records of those activities. The Government used the consultation period to invite views on how record-keeping should be approached for each of the new controls. It suggested two options:

a) a *prescriptive* approach—this would extend the current requirements for the physical export of goods, which set out exactly what records companies are required to keep and the form in which they are to keep them; or

84 Ev 22, Q 131

b) a *'functional'* approach—this would allow firms to use their internal records to demonstrate compliance with the new legislation. It would specify what information would need to be kept, but not the format in which it was kept.

83. The Government, recognising that there is a "trade off between flexibility and lightness of touch on the one hand and certainty for industry on the other",[85] favours the 'functional' approach, which it believes would "minimise the compliance costs for industry by allowing it to utilise records kept for business/operational purposes to demonstrate compliance with licence conditions".[86] We are inclined to agree that a prescriptive approach to record-keeping would be an unnecessary burden on business.

84. The question, however, is whether a 'functional' approach can be made to work to the advantage of both Government and business. Industry is by no means certain that this system will be as cost-free as the Government hopes:

> If functional record keeping gets what I would christen a harsh interpretation and requires specific records to be kept of every intangible transfer, major companies, whose scale will obviously vary according to the size of the company, are going to be talking hundreds of thousands, if not millions, of pounds of data storage space and then retrieval systems to get those records out every time we have to demonstrate compliance. If functional record keeping means something less than that, clearly it will be a less onerous burden, if that is the right word, for industry, but the first issue for industry is to understand what functional record keeping means.[87]

85. The Government sets out in its legislative proposals the detail that will need to be identifiable from records held under a 'functional' system.[88] We were told by the DMELG that the detail specified is "fairly prescriptive and, if these were to be the requirements, then I think the cost burden on industry would be considerable".[89]

86. The Government's basic premise is that the records companies keep for their own purposes will also fit the Government's requirements. The Secretary of State is no doubt right that companies "are going to have pretty tough internal controls in order to protect their intellectual property, and for security reasons generally".[90] There can be little doubt that companies keep records: the question is whether these fulfil all of the Government's requirements.

87. We welcome, and we are sure that industry also welcomes, the Secretary of State's assurance that there is no question of the Government requiring industry to log e-mails or keep physical copies of them.[91] We also welcome the ongoing talks between the Government and industry on the question of record-keeping.[92] **We trust that industry and**

85 Consultation document, para 2.8, p 11
86 Consultation paper, para 2.8, p 10
87 Ev 7, Q 31
88 Consultation document, Annex F, section 13 (2), p F. 11
89 Ev 7, Q 32
90 Ev 27, Q 156
91 Ev 25–26, Qq 150–151; Ev 27, Q 156
92 Ev 7, Q 31; Ev 25–26, Qq 150–151

Government between them can devise a pragmatic system for record-keeping which is both sufficient to show compliance and avoids imposing an unreasonable burden on industry.

88. The requirements for 'functional' record-keeping do not appear to have been adapted to the new sorts of activity that are being recorded. As one witness put it to us, "the record keeping requirements from the world of tangible exports have been read across into the intangible world where they have a lot less relevance".[93] Under the Government's 'functional' approach, the records held would need to show "the quantity of the goods"[94]—but this is a meaningless requirement for intangible technology, and, even in the case of a physical transfer, not necessarily something that a broker could be expected to know. **We recommend that the Government should look again at the record-keeping requirements for intangible transfers and brokering, to ensure that they are relevant to the activities being recorded.**

Intangible exports

89. While there is no room for mistake about when physical goods leave the United Kingdom, the situation is less straightforward for information held or sent electronically. E-mail can be accessed around the world. As the DMELG suggests, under the new controls a businessman logging onto his e-mails overseas could be committing a criminal offence.[95] Companies in the UK may share electronic data environments with operations or partners in other countries.[96] Industry is concerned that "inadvertent non-compliance is inevitable without procedural controls which would severely impact on the efficiency of the business as a whole".[97]

90. The moment of export of technology is not necessarily a sensible trigger point at which a licence should be required; it is rather the moment at which the technology is passed on to a third party. It would be absurd if a company employee at a trade fair in India could not communicate freely with colleagues in the UK; but it would be equally absurd if there were no sanction on an employee located abroad who passed on licensable technology to other people in the same country.

91. The problem with licensing technology in the same way as physical exports is that technology is a matter of knowledge, rather than of material substance. Does it constitute an export if a person travels abroad with technical knowledge in their head, which they then divulge to others? While the reading out of the contents of a document over an international telephone line would be a licensable activity, reciting overseas the memorised contents of the same document would appear not to be. This is illogical, and could in certain circumstances be a potential loophole.

93 Ev 7, Q 32

94 Consultation document, Annex F, section 13 (2) (c), p F. 11

95 Ev 34

96 Ev 9, Q 50

97 Ev 34

92. A possible solution would be that technology should become licensable not at the moment of export, but at the moment that it is provided to a third party—although we are not certain whether it would be possible to implement this solution within the terms of the Export Control Act. **We recommend that the Government should consider licensing transfers of technology by reference to the *status* of the recipient of the technology rather than merely by reference to their *location*.**

Trade fairs

93. The Government recognises that its proposals need to take special account of trade fairs in the United Kingdom, which, as the Society of British Aerospace Companies (SBAC) notes, are of importance both to industry and to the national economy more generally.[98] Trade fairs are likely to put the Government's new system of controls to the test, both because of the quantity of business contact that occurs at such events and because many of the participants will come from, and be about to return to, a wide variety of third countries.

94. The DMELG notes that recent trade fairs in the UK have involved a large number of exhibitors from countries outside the proposed scope of the OGTL,[99] and argues that:

> it is inaccurate to believe that all that takes place at such exhibitions is merely 'general advertising or promotion', as exempted from licensability under the DTI's proposals. We believe that much commercial activity which takes place at such events (eg carrying forward negotiations or the signing of contracts) will be caught by the intended provisions … In addition, we understand from the DTI, that exhibition organisers for the above events could require trade licences.[100]

95. Trade fairs are the most obvious situation in which foreign nationals will be brought within the jurisdiction of the Government's new controls. But, as the SBAC points out, it may not be practicable for the Government to enforce these controls over foreign nationals who are only fleetingly present in the United Kingdom:

> a foreign national visiting the UK from an overseas company, even one with no UK presence, who e-mailed or telephoned his company from his hotel and authorized the shipment of military goods from his home country to a third country, would be taking part in a licensable activity. Is it really expected by HMG that all such visitors will register for the use of the relevant licences? If not, doesn't the very real unenforceability of the provision render it liable to ridicule?[101]

96. Under the Government's proposals for trade fairs, three options are presented, two of which would *not* require foreign visitors to trade fairs to fulfil the same record-keeping requirements as British exhibitors.[102] Both industry and NGOs seem agreed that treating foreign visitors differently from British residents would be a bad idea. The SBAC believes

98 Ev 51
99 Ev 53
100 Ev 53–54
101 Ev 51
102 Consultation document, para 4.43, pp 36–37

that this could lead to a British company arranging for an overseas entity to book and staff its stand in order to avoid the Government's record-keeping requirements—which would certainly be an absurd outcome.[103] The CAAT, meanwhile, is concerned that a lack of regulation of overseas visitors "seems to foreshadow national boundary and arms fair hopping by arms companies and dealers".[104] We are not convinced that the Government has fully considered the implications of these proposals for British citizens working abroad: why should the record-keeping requirements be different for visitors to the United Kingdom with British nationality than for foreign visitors? **We recommend that the Government should ensure that foreign visitors to the United Kingdom are brought effectively within the scope of the new controls in respect of record keeping in as much as this is possible.**

97. There is a danger, in the SBAC's view, that the new regulatory environment will mean that business is simply taken abroad.[105] The ECO proposes to work with the organisers of trade fairs to ensure that participants are fully aware of the new licensing requirements—which we welcome. But while exhibitors will almost invariably know in advance what physical equipment they will be bringing to such fairs, they will surely not always know what business opportunities may arise in conversation, or what deals they may wish to strike while at a fair. **We recognise the great importance of trade fairs to the British defence industry. We conclude that there is a danger that the new regulatory framework will make it difficult for participants at trade fairs in the UK to take advantage of spontaneous business opportunities, and therefore that the Government needs to ensure that its licensing system does not prevent such events from flourishing. We recommend the broadest appropriate use of open licensing for trade fairs, and we further recommend that the Government should consider having a procedure in place at major trade fairs to expedite licence applications made at short notice.**

Training

98. The burden of training is another point on which industry has been vociferous.[106] While physical exports can easily be controlled through a "choke point", controls on the transfer of intangible technology mean that "anyone within the company with access to a fax machine, telephone, computer, shared data environment or telephone conferencing facilities, can be an exporter". As a result, many more people within British companies, both based in the UK and overseas, will "have to have at least an awareness of what constitutes an export and what does not; what is control and what is not", so that they do not inadvertently break the law.[107]

99. Once again, the extent of the actual burden will depend on the Government scoping its controls pragmatically. We would expect exports within a group of companies, or among collaborators, to be covered by open licences. In other cases, we would expect that the

103 Ev 51
104 Ev 48
105 Ev 51
106 Ev 5–6, Qq 23–27; Ev 8, Qq 41–45; Ev 34; Ev 50
107 Ev 5, Q 23

export only of sensitive technology would be controlled, and that companies would already be training their staff to ensure that they did not allow such sensitive information to get into the wrong hands. We do not believe that, properly handled, the extension of this training would be either particularly complex or particularly expensive.

100. In view of the continuing uncertainty in respect of record-keeping and training, **we expect to see prior to implementation of the controls a revised Regulatory Impact Assessment, agreed with industry if possible, which more accurately reflects the costs of compliance.**

Timetable for implementation

101. The Government currently proposes to allow a 12-week implementation period between publishing the proposals relating to exports of goods and technology in their final form and the law coming into force. It believes that this period of time should allow industry to make "adequate preparations" for the new controls.[108] However, owing to "practicalities of processing licence applications" for trade in military goods under the Trade in Controlled Goods (Control) Order, the Government is proposing that there should be a 6 month implementation period for this Order.[109] Companies will be encouraged to submit applications as early as possible to prevent the disruption of their business. The ECO will aim to promote awareness and understanding of the new orders.

102. The DMELG does not believe that the proposed three-month implementation period is sufficient for the introduction of controls on intangible transfers of technology, because of the need within industry for training, new IT hardware, and possible reaccreditation with the Defence Security Standards Organisation (DSSO) of the MoD.[110] It has been suggested to us that a transitional period of a year would be more appropriate.[111]

103. We would not wish the implementation of new controls to be delayed for any longer than is necessary. But it would equally be foolish to introduce the secondary legislation before industry is ready to comply with it. **We recommend that the Government should ensure that transitional periods for implementing secondary legislation under the Export Control Act are not unduly protracted, but that it should also consider representations from industry for a modest delay in implementation.**

Government readiness

104. It might also be in the Government's own interests to countenance a slightly longer lead-in time for the new legislation. The Government does not have a good record in dealing swiftly with export licence applications.[112] Industry has frequently had cause to complain about the length of time that it takes to acquire a licence. An ability to respond at speed to licence applications will be even more important under the new controls.

108 Consultation document, Partial Regulatory Impact Assessment, para 6.29, p A. 18

109 Consultation document, para 4.15, p 30

110 Ev 35; Ev 8, Q 41

111 Ev 8, Q 43

112 Ev 29, Q 166

Conventional export licences are often sought once a commitment of some sort has already been made. New trade and technology licences may be required at a much earlier stage, when even slight delay is more likely to lose a potential client. The Government claims in the consultation document that "it is not anticipated that the introduction of new licensing requirements should lead to significant delays in the processing of licences".[113] If this proves to be true, it will be a welcome departure from past experience.

105. The Government's preparations for the new controls are based on its own assessments of how many new licence applications and queries these controls will bring.[114] If these assessments prove to have underestimated the volume of increased bureaucracy, it follows that the Government's preparations in terms of extra staff and resources are likely to be inadequate—as the Government is aware.[115]

106. The Government has recently been conducting a review of the licensing process, and, according to the Secretary of State, this is already producing improvements in efficiency on the ground.[116] **We conclude that the efficient administration of the new controls will be crucial to their success. We recommend that the Government should ensure that it has sufficient surge capacity to deal with unexpected demand for licence applications and information, especially when the new controls are initially introduced.**

113 Consultation document, Partial Regulatory Impact Assessment, para 8.7, p A. 20

114 Consultation document, Partial Regulatory Impact Assessment, section 8, pp A. 19–20

115 Ev 29, Q 166

116 Ev 29, Qq 166–167

6 Other concerns

Support for the armed forces

107. The armed forces frequently export military equipment from the UK, normally for their own use abroad. As an arm of Government, the armed forces do not need to apply for licences for these exports. Nor would the new controls bind the Crown, although there is provision in the Export Control Act for the Government to make orders doing so, in line with its international obligations.[117]

108. Industry has expressed concern that the proposals in the consultation document may, however, prevent them from providing expeditious support to the armed forces when these are based overseas. A very topical example from the Iraq war was given to us by one of our witnesses: "If this consultation document were already in being, we would not be able to take phone calls from Basra, which one of us did this morning, on technology questions and answer with a technical response".[118]

109. Support for the armed forces may not always be direct. Military equipment operated in the service of the armed forces may not always be owned by the Crown, and technology and technical assistance related to this equipment may not be provided direct to the Crown. Furthermore, as it was pointed out to us: "In the context of coalition warfare …, whilst an export may be in support of forces operating in the theatre and indeed in forces directly supporting and working with British forces, it may not actually be for the British forces themselves".[119]

110. Once again, open licensing may well be the answer. We would expect that in support of the British armed forces, open licences would be appropriate even for the most sensitive technology—such as detection of and protection against nuclear, chemical and biological attack. It seems highly unlikely that the Government would knowingly allow a situation to arise in which military operations overseas were compromised by domestic export control legislation. We welcome the Secretary of State's recognition that it is "vital to ensure that the operational efficiency of our Armed Forces is maintained once the Export Control Act is implemented", and her undertaking to work closely with the Ministry of Defence and industry to ensure that this is the case.[120] **We recommend that the Government should ensure that the secondary legislation does not in any way impede the expeditious provision of support to the British armed forces, those equipping them and servicing that equipment, and their allies in combat and training operations.**

117 Export Control Act, section 7 (2)
118 Ev 4, Q 17
119 Ev 4, Q 21
120 Ev 62

Use of information

111. The Government's proposals include provisions setting out the purposes for which the Government is permitted to disclose information in relation to the controls.[121] These include the provision of information to meet the Government's international reporting requirements, to exchange information with international bodies and other states and within Government, and to compile the Annual Report on Strategic Export Controls. The Government claims that "the aim of the disclosure provisions is to set out in legislation existing practice and to apply that to the extended scope of the Act".[122]

112. Our work has depended on the Government providing us with information on export licences—much if it in confidence, but some of it in public. The Government's provisions on disclosure of information make no mention of either the House of Commons or its Committees as permitted recipients of information on the export and trade in strategic goods and technology. In the view of the Campaign Against Arms Trade, "it is unclear how these Articles would affect" our ability to scrutinise the Government.[123] **We recommend that the Government should explain in its response to this Report whether the provisions as currently drafted on the use and disclosure of information would in any way legally inhibit the Government from providing information to Parliament or its Committees, in confidence or in public. If there is any doubt, the relevant provisions should be extended to include Parliament and its Committees.**

Penalties

113. The Government's proposals make provision for penalties. Generally these are stiffer than those set out under previous legislation. The Government proposes, for example, to increase the maximum penalty for "deliberately flouting controls on exports, technology transfer, technical assistance and trade" from 7 to 10 years.[124] **We conclude that the Government's decision to increase the maximum penalties for the most serious offences under the Export Control Act is welcome. This is fully warranted given the profound impact that the irresponsible proliferation of military equipment has on the lives of countless people.**

114. It is unclear to us from the text of the proposals to what extent the Government will be able to hold organisations to account for offences under the secondary legislation. According to the CAAT, "the penalties described for violation of the Orders apply only to individuals". We agree that it is important to send out a strong "message of corporate responsibility for adherence to export control rules".[125] **We recommend that the Government should ensure that it will be able to call companies and organisations to account, as well as individuals, where there is corporate responsibility for an offence.**

121 Consultation paper: Annex F, Export of Goods etc. Order, article 21, p F. 16; Annex G, Trade in Controlled Goods (Control) Order, article 14, pp G. 6–7; Annex H, [Embargoed Destination] (Sanctions) Order, article 11, pp H. 4–5

122 Consultation document, para 2.12, p 11

123 Ev 49

124 Consultation document, para 2.13, p 12

125 Ev 49

115. Secondary legislation under the Export Control Act must comply with the Human Rights Act. The burden of proof specified for a number of offences appears to be in danger of breaching Article 6 of the European Convention on Human Rights under which "everyone charged with a criminal offence shall be presumed innocent until proved guilty". Under one set of provisions, an offence will have been committed by a person "unless he provides evidence that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person or place in" an embargoed destination.[126] Under another, a person "shall be guilty of an offence" if he fails to provide evidence that goods, software or technology have reached an authorised destination.[127]

116. These appear to be a drafting errors, doubtless with straightforward solutions.[128] **We recommend that the Government should ensure that all secondary legislation under the Export Control Act is compliant with the European Convention on Human Rights.**

Appeals

117. For the first time, each of the new orders will set out in legislation the administrative appeals procedures already in place. An applicant has 28 days to appeal against a decision not to grant an export licence and may not proceed with the export unless the appeal is successful. The appeal will be heard by senior officials within the appropriate Departments. A refusal to grant an export licence made at ministerial level is subject to review at that level.[129]

118. We welcome the decision to place the appeals procedures on a legislative footing. By doing so, the Government may, however, be widening the scope for a legal challenge of its appeals system. It could be questioned, for example, whether the involvement of ministers in appeals relating to decisions also taken at ministerial level breaches the right of the applicant under the Article 6 of the European Convention on Human Rights to a hearing before "an independent and impartial tribunal". We doubt that the export of military equipment could be considered a right. Nonetheless, **we recommend that the Government should describe in its response to this Report the steps that it has taken to limit the vulnerability to judicial challenge of the administrative appeals system against licence application refusals.**

Parliamentary debate

119. When the Government comes forward with the secondary legislation in final form, this legislation will be subject to a relatively weak form of parliamentary procedure. There is no requirement for either House of Parliament to vote on the Orders or even to debate them before they become law. Although either House has the power to annul any of the

126 Consultation document, Annex H, [Embargoed Destination] (Sanctions) Order, article 3, p H. 2

127 Consultation document, Annex F, Export of Goods etc. Order, article 18 (1) and (3), pp F. 14–15

128 It would be acceptable in the first case, for example, for the supply of goods to be an offence, but for it to be a defence for a person to show that he did not know and had no reason to suppose that the goods were destined for an embargoed destination.

129 Consultation document, para 2.11, p 11

Orders if it votes accordingly within 40 days of the Orders being laid, such a power has only extremely rarely been used.

120. Our predecessors in the last Parliament recommended that "the Government should undertake to use their best endeavours to find time for a debate" on Orders under the Export Control Act, where the Committee thought it appropriate.[130] In its response, the Government refused to give a guarantee that it would find time for a debate, but that it would be "sympathetic … if there were a particularly controversial measure".[131]

121. The Orders likely to emanate from the consultation will in many ways be as far-reaching as the Act itself. Their exact form will presumably depend on the outcome of the consultation process. While we do not anticipate opposition to the thrust of the Government's proposals, a debate on their detail and the practicalities of their implementation would be valuable. A debate in a Standing Committee would enable *any* Member of the House to take part,[132] on the basis of a motion to take note of the legislation.[133] **We recommend that the Government should find time for a debate in a Standing Committee of the House of Commons on secondary legislation stemming from the consultation. We also reserve the right to look at the secondary legislation ourselves.**

130 HC (2000–01) 445, para 31

131 Cm 5218, p 1

132 Standing Order of the House of Commons No. 118 (2)

133 Standing Order of the House of Commons No. 118 (4)

7 Conclusion

122. **The Government's proposals for secondary legislation under the Export Control Act are a welcome if overdue series of measures to set the existing licensing regime on a permanent statutory footing and to extend and modernise the strategic export control system.**

123. **But there is a loophole in the proposals as they stand. Their central purpose should be to ensure that those who are involved in the trade in arms can only do so legally where their activities are sanctioned by the state. The Government has chosen to regulate British arms traders and brokers located abroad, but only in an incomplete set of limited circumstances. The arm of the law should reach out to British subjects based overseas who are involved in all those aspects of the arms trade which any civilised nation would regard as reprehensible—including the proliferation of small arms. We acknowledge that there are real practical problems in attempting to extend national jurisdiction over actions carried out abroad. In our view they are worth attempting to solve. But it makes no sense to try to solve these problems, as the Government proposes, for oversized handcuffs, but not for small arms.**

124. **At the same time, the proposals risk enmeshing legitimate business in a web of unnecessary bureaucracy. To avoid this, open licensing should be widely applied, and record-keeping requirements should rely as much as possible on information that industry would hold regardless of the Government's regulations. The Government should ensure that open licences can easily be suspended or revoked if they are used as cover for reprehensible activities—and ensure that this fact is widely known.**

125. **If the Government is serious about making its legislation as effective as possible in preventing undesirable proliferation without putting a brake on legitimate industry, it may have to think outside the box of conventional export controls. The Government should think again about whether intangible technology is best controlled at the moment of export, or at the moment of transfer; and about whether brokering activities, which may not involve an export at all, might not be best controlled as in the USA, by licensing the people who carry out the activities, rather than the activities themselves. The new regime proposed by the Government looks much like the existing regime on physical exports, but it will regulate activities which are not exports and are not like exports. While the consultation document is a brave attempt to square this circle, perhaps what is needed is another shape altogether.**

Conclusions and recommendations

Introduction

1. We recommend that the Government should keep under close review the operation of secondary legislation under the Export Control Act. We hope to have the opportunity to submit our views on any future proposals of substance under the Act. (Paragraph 10)

General considerations

2. We conclude that the effectiveness of the Government's proposals is to be judged by how well they are able in practice to discourage trade in military goods and technology where it is undesirable without also discouraging trade that the Government wishes to promote. An ability to do this depends in the first instance on having reliable methods of distinguishing between "legitimate" and "illegitimate" trade. (Paragraph 23)

3. We conclude that a further test of the proposals will be how effectively they can be enforced against those who have no regard for the letter of the law. Only effective enforcement will dissuade such people from involvement in trade in military equipment and technology. (Paragraph 24)

4. We conclude that existing controls on exports of military goods from the United Kingdom are not obviously an appropriate template for all of the areas of activity that the Government intends to control through secondary legislation under the Export Control Act. We recommend that the Government should take care to recognise the essential differences between physical exports on the one hand and, on the other, electronic transfers, which are not physical, and brokering activities, which are not exports. Different sorts of activity may require different sorts of control. (Paragraph 29)

Arguments for further control: trafficking and brokering

5. We conclude that it would be a missed opportunity if the Government failed to regulate all UK citizens and companies who are involved in trafficking and brokering activities abroad which, if conducted in the UK, would not be granted a licence. (Paragraph 48)

6. It would be thoroughly desirable to criminalise the activities of a British citizen supplying small arms to rebel forces in an area of conflict, or medium-range missiles to a rogue state. Such activities are precisely those that need to be controlled. Under current Government proposals, they will not be. We recommend that the Government should seek to extend extraterritorial control to all trafficking and brokering which, if conducted in the UK, would not be granted a licence. (Paragraph 50)

7. We conclude that there are a number of areas, including the illicit trade in small arms and light weapons, in which enough international consensus exists to make extraterritorial jurisdiction in such cases both reasonable and enforceable (Paragraph 52)

8. We conclude that while extending extraterritorial jurisdiction over any aspects of the arms trade will pose practical difficulties, it is not clear that it will be substantially more difficult to enforce this jurisdiction more broadly over undesirable aspects of the arms trade than to enforce it only in those areas to which the Government is already committed. (Paragraph 52)

9. We recommend that the Government should ensure that transportation agents are brought within the ambit of the secondary legislation in all circumstances in which the undesirable transfer of arms may be involved. (Paragraph 56)

Arguments for further control: Licensed production overseas

10. We recommend that, within two years of its introduction, the Government should assess the effectiveness of the secondary legislation in regulating licensed production facilities, and that it should take steps to introduce direct controls on such facilities if these prove to be warranted in the light of this assessment. (Paragraph 65)

11. We conclude that the Government may not have enough information about licensed production facilities abroad to assess the likely impact of these facilities on the proliferation of military equipment. We therefore recommend that the Government should consider requiring further information from British exporters about the licensed production facilities that they intend to establish abroad, and that this information should be used in the assessment of relevant licence applications. (Paragraph 66)

Minimising the burden on business

12. We recommend that the Government, in cooperation with industry, should draw up clear guidelines on what transactions will and will not require a licence under the new controls. We further recommend that the Government should seek to ensure through these guidelines, and legislative refinement if necessary, that the number of additional individual licence applications received under the new controls remains within reasonable limits. (Paragraph 75)

13. We conclude that where trade is already subject to robust and principled regulation abroad, it would be superfluous, bureaucratic and potentially anti-competitive to subject UK citizens and companies to the requirements of a second regulatory system. The basis on which the Government proposes to introduce an Open General Trade Licence seems to us to be sound. (Paragraph 78)

14. We recommend that the Government explain in its response to this Report why it might be appropriate to include a country as a permitted destination on the Open General Export Licence for technology, but not on the Open General Trade Licence, or vice versa. (Paragraph 79)

15. We recommend that new EU member states should only be included in the Open General Trade Licence when their export control systems reach a state of robustness comparable to that of existing member states. (Paragraph 80)

16. We recommend that the Government should consider how open licensing might best be extended to minimise the regulatory burden on legitimate business, and in particular to ensure that new business is not lost. (Paragraph 81)

17. We trust that industry and Government between them can devise a pragmatic system for record-keeping which is both sufficient to show compliance and avoids imposing an unreasonable burden on industry. (Paragraph 87)

18. We recommend that the Government should look again at the record-keeping requirements for intangible transfers and brokering, to ensure that they are relevant to the activities being recorded. (Paragraph 88)

19. We recommend that the Government should consider licensing transfers of technology by reference to the status of the recipient of the technology rather than merely by reference to their location. (Paragraph 92)

20. We recommend that the Government should ensure that foreign visitors to the United Kingdom are brought effectively within the scope of the new controls in respect of record keeping in as much as this is possible. (Paragraph 96)

21. We recognise the great importance of trade fairs to the British defence industry. We conclude that there is a danger that the new regulatory framework will make it difficult for participants at trade fairs in the UK to take advantage of spontaneous business opportunities, and therefore that the Government needs to ensure that its licensing system does not prevent such events from flourishing. We recommend the broadest appropriate use of open licensing for trade fairs, and we further recommend that the Government should consider having a procedure in place at major trade fairs to expedite licence applications made at short notice. (Paragraph 97)

22. We expect to see prior to implementation of the controls a revised Regulatory Impact Assessment, agreed with industry if possible, which more accurately reflects the costs of compliance. (Paragraph 100)

23. We recommend that the Government should ensure that transitional periods for implementing secondary legislation under the Export Control Act are not unduly protracted, but that it should also consider representations from industry for a modest delay in implementation. (Paragraph 103)

24. We conclude that the efficient administration of the new controls will be crucial to their success. We recommend that the Government should ensure that it has sufficient surge capacity to deal with unexpected demand for licence applications and information, especially when the new controls are initially introduced. (Paragraph 106)

Other concerns

25. We recommend that the Government should ensure that the secondary legislation does not in any way impede the expeditious provision of support to the British armed forces, those equipping them and servicing that equipment, and their allies in combat and training operations. (Paragraph 110)

26. We recommend that the Government should explain in its response to this Report whether the provisions as currently drafted on the use and disclosure of information would in any way legally inhibit the Government from providing information to Parliament or its Committees, in confidence or in public. If there is any doubt, the relevant provisions should be extended to include Parliament and its Committees. (Paragraph 112)

27. We conclude that the Government's decision to increase the maximum penalties for the most serious offences under the Export Control Act is welcome. This is fully warranted given the profound impact that the irresponsible proliferation of military equipment has on the lives of countless people. (Paragraph 113)

28. We recommend that the Government should ensure that it will be able to call companies and organisations to account, as well as individuals, where there is corporate responsibility for an offence. (Paragraph 114)

29. We recommend that the Government should ensure that all secondary legislation under the Export Control Act is compliant with the European Convention on Human Rights. (Paragraph 116)

30. We recommend that the Government should describe in its response to this Report the steps that it has taken to limit the vulnerability to judicial challenge of the administrative appeals system against licence application refusals. (Paragraph 118)

31. We recommend that the Government should find time for a debate in a Standing Committee of the House of Commons on secondary legislation stemming from the consultation. We also reserve the right to look at the secondary legislation ourselves. (Paragraph 121)

Conclusion

32. The Government's proposals for secondary legislation under the Export Control Act are a welcome if overdue series of measures to set the existing licensing regime on a permanent statutory footing and to extend and modernise the strategic export control system.

But there is a loophole in the proposals as they stand. Their central purpose should be to ensure that those who are involved in the trade in arms can only do so legally where their activities are sanctioned by the state. The Government has chosen to regulate British arms traders and brokers located abroad, but only in an incomplete set of limited circumstances. The arm of the law should reach out to British subjects based overseas who are involved in all those aspects of the arms trade which any civilised nation would regard as reprehensible—including the proliferation of small

arms. We acknowledge that there are real practical problems in attempting to extend national jurisdiction over actions carried out abroad. In our view they are worth attempting to solve. But it makes no sense to try to solve these problems, as the Government proposes, for oversized handcuffs, but not for small arms.

At the same time, the proposals risk enmeshing legitimate business in a web of unnecessary bureaucracy. To avoid this, open licensing should be widely applied, and record-keeping requirements should rely as much as possible on information that industry would hold regardless of the Government's regulations. The Government should ensure that open licences can easily be suspended or revoked if they are used as cover for reprehensible activities—and ensure that this fact is widely known.

If the Government is serious about making its legislation as effective as possible in preventing undesirable proliferation without putting a brake on legitimate industry, it may have to think outside the box of conventional export controls. The Government should think again about whether intangible technology is best controlled at the moment of export, or at the moment of transfer; and about whether brokering activities, which may not involve an export at all, might not be best controlled as in the USA, by licensing the people who carry out the activities, rather than the activities themselves. The new regime proposed by the Government looks much like the existing regime on physical exports, but it will regulate activities which are not exports and are not like exports. While the consultation document is a brave attempt to square this circle, perhaps what is needed is another shape altogether. (Paragraphs 122–125)

Formal minutes

Thursday 3 April 2003

Morning sitting

The Defence, Foreign Affairs, International Development and Trade and Industry Committees met concurrently, pursuant to Standing Order No. 137A.

Members present:

Defence Committee:	*Foreign Affairs Committee:*	*International Development Committee:*	*Trade and Industry Committee:*
Mr Bruce George Mr Gerald Howarth Rachel Squire	Mr Bill Olner Sir John Stanley	Tony Baldry Ann Clwyd Mr Tony Colman	Mr Roger Berry Mr Martin O'Neill

Mr Roger Berry was called to the Chair, pursuant to Standing Order No. 137A (1) (d).

The Committees deliberated, pursuant to Standing Order No. 137A (1) (b).

The Government's proposals for secondary legislation under the Export Control Act: Mr Mike McLaughlin, Head of Government Relations, Rolls Royce Plc, Mr David Hayes, Export Control Manager, Goodrich Corporation, Mr Tim Otter, Vice-President, Business Development Smiths Detection, and Mr Brinley Salzmann, Exports Director, Defence Manufacturers' Association, British Defence Manufacturers' Export Licensing Group; and Mr Andy McLean, Head of Communications, Saferworld, and Ms Julia Saunders, Policy Adviser on Conflict and Arms, Oxfam, UK Working Group on Arms, were examined.

Thursday 3 April 2003

Afternoon sitting

The Defence, Foreign Affairs, International Development and Trade and Industry Committees met concurrently, pursuant to Standing Order No. 137A.

Members present:

Defence Committee:	*Foreign Affairs Committee:*	*International Development Committee:*	*Trade and Industry Committee:*
Mr Bruce George	Mr Fabian Hamilton	Ann Clwyd	Mr Roger Berry
Mr Kevan Jones	Sir John Stanley	Mr Tony Colman	Mr Andrew Lansley
Rachel Squire		Mr Piara S Khabra	Mr Martin O'Neill

Mr Roger Berry was called to the Chair, pursuant to Standing Order No. 137A (1) (d).

The Committees deliberated, pursuant to Standing Order No. 137A (1) (b).

The Government's proposals for secondary legislation under the Export Control Act: Rt Hon Patricia Hewitt, a Member of the House, Secretary of State for Trade and Industry, and Mr Glyn Williams, Director, Export Control Organisation, Department of Trade and Industry, were examined.

Tuesday 6 May 2003

The Defence, Foreign Affairs, International Development and Trade and Industry Committees met concurrently, pursuant to Standing Order No. 137A.

Members present:

Defence Committee:	*Foreign Affairs Committee:*	*International Development Committee:*	*Trade and Industry Committee:*
Mr Bruce George	Donald Anderson	John Barrett	Mr Roger Berry
Mr Gerald Howarth	Sir Patrick Cormack	Alistair Burt	Dr Ashok Kumar
Mr Kevan Jones	Mr John Maples	Ann Clwyd	Mr Andrew Lansley
Rachel Squire	Sir John Stanley	Mr Piara S Khabra	Mr Martin O'Neill

Mr Roger Berry was called to the Chair, pursuant to Standing Order No. 137A (1)(d).

The Committees deliberated, pursuant to Standing Order No. 137A (1)(b).

Draft Report (The Government's proposals for secondary legislation under the Export Control Act), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be considered concurrently, pursuant to Standing Order No. 137A (1)(c).

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 125 read and agreed to.

Summary agreed to.

DEFENCE COMMITTEE

The Foreign Affairs, International Development and Trade and Industry Committees withdrew.

Mr Bruce George, in the Chair

Mr Gerald Howarth Rachel Squire

Resolved, That the draft Report (The Government's proposals for secondary legislation under the Export Control Act), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Fourth Report of the Committee to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Ordered, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

Ordered, That the provisions of Standing Order No. 134 be applied to the Report.

Ordered, That Mr Roger Berry do make the Joint Report to the House.

FOREIGN AFFAIRS COMMITTEE

The Defence, International Development and Trade and Industry Committees withdrew.

Donald Anderson, in the Chair

Mr John Maples Sir John Stanley

Resolved, That the draft Report (The Government's proposals for secondary legislation under the Export Control Act), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Sixth Report of the Committee to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Ordered, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

Ordered, That the provisions of Standing Order No. 134 be applied to the Report.

Ordered, That Mr Roger Berry do make the Joint Report to the House.

INTERNATIONAL DEVELOPMENT COMMITTEE

The Defence, Foreign Affairs and Trade and Industry Committees withdrew.

In the absence of the Chairman, Ann Clwyd was called to the Chair

John Barrett Mr Piara S Khabra

Resolved, That the draft Report (The Government's proposals for secondary legislation under the Export Control Act), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Fifth Report of the Committee to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Ordered, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

Ordered, That the provisions of Standing Order No. 134 be applied to the Report.

Ordered, That Mr Roger Berry do make the Joint Report to the House.

TRADE AND INDUSTRY COMMITTEE

The Defence, Foreign Affairs and International Development Committees withdrew.

Mr Martin O'Neill, in the Chair

Mr Roger Berry Mr Andrew Lansley

Resolved, That the draft Report (The Government's proposals for secondary legislation under the Export Control Act), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Seventh Report of the Committee to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Ordered, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

Ordered, That the provisions of Standing Order No. 134 be applied to the Report.

Ordered, That Mr Roger Berry do make the Joint Report to the House.

Witnesses

Thursday 3 May 2003 (am)

Page

Mr Mike McLaughlin, Head of Government Relations, Rolls Royce Plc, **Mr David Hayes**, Export Control Manager, Goodrich Corporation, **Mr Tim Otter**, Vice President, Business Development Smiths Detection, and **Mr Brinley Salzmann**, Exports Director, Defence Manufacturers' Association, British Defence Manufacturers' Export Licensing Group. Ev 1

Mr Andy McLean, Head of Communications, Saferworld, and **Ms Julia Saunders**, Policy Adviser on Conflict and Arms, Oxfam, UK Working Group on Arms. Ev 9

Thursday 3 May 2003 (pm)

Rt Hon Patricia Hewitt, a Member of the House, Secretary of State for Trade and Industry, and **Mr Glyn Williams**, Director, Export Control Organisation, Department of Trade and Industry. Ev 17

List of written evidence

1	British Defence Manufacturers Export Licensing Group	Ev 33, 52
2	Campaign Against Arms Trade	Ev 47
3	Fund for Peace	Ev 58
4	Saferworld	Ev 56
5	Secretary of State for Trade and Industry	Ev 33, 61
6	Society of British Aerospace Companies (SBAC)	Ev 49
7	UK Working Group on Arms	Ev 36, 58

Reports from the Defence, Foreign Affairs, International Development and Trade and Industry Committees since 2001

The following reports have been produced.

Session 2002–03

Second Joint Report	Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny	HC 474

Session 2001–02

First Joint Report	Strategic Export Controls: Annual Report for 2000, Licensing Policy and Prior Parliamentary Scrutiny	HC 718 *(CM 5629)*

Where a response to a Report has been received from the Government, reference to it appears in parentheses.