

EXPORT CONTROL ACT 2002 - Brief

General Background

The Export Control Act 2002 is the result of substantial consultation with all interested parties following the publication in February 1996 of the "Scott Report". These have included the July 1996 Green Paper, the July 1998 White Paper and the March 2001 Draft Export Control Bill. After such extensive consultations and careful consideration of the responses received, the Government published the resulting Export Control Bill on Wednesday 26th June 2001. This Bill finally completed its Parliamentary approval process, and received Royal Assent on 25th July 2002.

The Export Control Act 2002

The Export Control Act 2002 can be viewed and downloaded from the internet at:

<http://www.legislation.hmso.gov.uk/acts/acts2002/20020028.htm>

Contents of the Export Control Act 2002

The Act introduces no new controls on areas of technology, but does attempt to bring under regulation certain commercial activities, which have not previously been controlled.

The contents of the Act include:

- **Export Controls** - outlining the purposes of export controls, what they are and the reasons for which the Government can impose export controls
- **Transfer Controls** - outlining controls on the transfer of technology, both by tangible and intangible means (ie by e-mail, fax and telephone), from the UK
- **Technical Assistance Controls** - outlining potential new controls on the provision of technical assistance (services which are provided for the development, production or use of export controllable goods and technology) overseas
- **Trade Controls** - covering so called "trafficking and brokering" activities, involving the facilitation of deals for the supply of export controllable goods from a non-UK supplier to a non-UK customer which never have to come into or leave the UK itself. The regulations will introduce an export control system for deals involving the acquisition and/or supply of export controllable goods between two overseas nations arranged by UK citizens or foreign nationals from the UK. It also covers deals arranged by UK citizens anywhere in the World for the supply of military equipment to any embargoed destination or for the supply of any specific "restricted" technologies, such as that related to weapons of mass destruction, torture equipment, etc
- **General Restriction on Control Powers** - outlining the restrictions on the Government to impose export controls
- **Exceptions from the General Restriction** - outlines exceptions to the above restrictions
- **Control Powers: Supplementary** - covers record keeping, and other practical issues
- **Protection of Certain Freedoms** - provides safeguards against the Government's power to impose unreasonable restrictions on public domain information
- **Guidance About the Exercise of Functions Under Control Orders** - applies to the licensing powers available to Government (this contains another amendment - at paragraph 4 - covering "sustainable development")
- **Annual Reports** - imposes a statutory obligation on Government to produce an annual report on Strategic Export Controls (as has been practice since 1997)

- **Interpretation** - contains some crucial definitions of key phrases used in the Bill
- **Power to Modify the Schedule** - covers the Government's ability to modify the Bill's Schedule
- **Orders** - covers the orders related to the Bill, and how these can be enacted
- **Financial Provision** - covers the funding to enable the Government to enforce the Bill
- **Consequential Repeals** - provides some amendments to the Bill

The Primary Legislation contained within the Act, itself, is simply enabling in nature, with the real substance contained within the Secondary Legislation. It was frequently stated at earlier stages that "the devil would be in the detail", and that this would be outlined in the Secondary Legislation.

Secondary Legislation

On Thursday 30th January 2003 the Government finally published its draft proposals for the Secondary Legislation associated with the new Act. These outline the detailed information on the scope of the new export control regime which is to be introduced later this year, what the controls will be (and what will be controlled) and how these controls will work in practice. There will now follow a three-month public consultation period (ending 30th April 2003) during which companies, and other interested parties, are encouraged to provide input to the DTI on the proposals. These proposals are available to be viewed and downloaded from the internet at:

General

<http://www.dti.gov.uk/export.control/legislation/exportcontrolconsult.htm>

Executive Summary

<http://www.dti.gov.uk/export.control/legislation/pdfs/summary1.pdf>

Introduction

<http://www.dti.gov.uk/export.control/legislation/pdfs/intro.pdf>

New Statutory Framework

<http://www.dti.gov.uk/export.control/legislation/pdfs/chpt1.pdf>

Issues Common to all New Controls

<http://www.dti.gov.uk/export.control/legislation/pdfs/chpt2.pdf>

Intangible Transfer of Technology and Technical Assistance

<http://www.dti.gov.uk/export.control/legislation/pdfs/chpt3.pdf>

Trade in Military Equipment

<http://www.dti.gov.uk/export.control/legislation/pdfs/chpt4.pdf>

Partial Regulatory Impact Assessment

<http://www.dti.gov.uk/export.control/legislation/pdfs/regimp.pdf>

Existing Export Controls

<http://www.dti.gov.uk/export.control/legislation/pdfs/annexb.pdf>

Previous Consultations

<http://www.dti.gov.uk/export.control/legislation/pdfs/annexc.pdf>

Government Criteria on Consultations



<http://www.dti.gov.uk/export.control/legislation/pdfs/annexd.pdf>

Guide to Draft Orders

<http://www.dti.gov.uk/export.control/legislation/pdfs/annexe.pdf>

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

<http://www.dti.gov.uk/export.control/legislation/pdfs/annexf.pdf>

Draft Trade in Controlled Goods (Control) Order

<http://www.dti.gov.uk/export.control/legislation/pdfs/annexg.pdf>

Draft Trade in Controlled Goods to Embargoed Destinations Order (Example)

<http://www.dti.gov.uk/export.control/legislation/pdfs/annexh.pdf>

Consultative Response Questionnaire

<http://www.dti.gov.uk/export.control/legislation/questionnaire.doc>

Hard copies of the draft Secondary Legislation are also available, and can be obtained by contacting:

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DTI

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E-Mail: heather.thomas@dti.gsi.gov.uk

We would strongly encourage all Members to peruse and assess the above documents as carefully as possible. The Export Control Act 2002 is by far the most important and far-reaching piece of single legislation, in terms of its potential impact on the commercial activities of the UK Defence and Aerospace Industries, to arise for well over a generation.

Consultations

Companies are strongly advised to obtain, peruse and consider the Government's proposals very carefully and to assess how these proposals would affect their normal commercial activities. This should include the likely impact of additional licence application work and record keeping which will need to be undertaken, and in-house export control compliance awareness training which will be needed. Companies should then provide detailed, constructive input to the DTI on the proposals and their potential impact, either directly or via a trade body such as Intellect, DMA or the SBAC. Intellect welcomes views from Members on how the proposals might affect them, so that these comments, concerns and observations can be raised with the DTI. Any Members with such observations should send them to:

Dr. Graham Attrill

Director, Defence

Intellect

Graham.attrill@intellectuk.org

Members who have previously not been affected by the UK's export control system should also take note of the Act's proposals to ensure that their commercial activities will still not be subject to UK export controls.

In general Companies should use the response questionnaire that the DTI has drafted, and which is available at:

<http://www.dti.gov.uk/export.control/legislation/questionnaire.doc>

Companies should not just seek to be critical of any proposals with which they have problems, but also provide constructive input on any aspects with which they agree (eg the granting to Industry of an implementation period within which to introduce the necessary compliance mechanisms and internal awareness training). Companies should also feel free to expand on any inputs above and beyond what is called for in the questionnaire.

The DTI needs as much information and hard evidence as it can get to help it in this consultation process. Estimates of how many new additional licence applications will be needed by companies would be invaluable, as will estimates on likely cost to companies. Cost should be measured not just in terms of additional work and man hours required to complete export licence applications, but also the awareness training which will be needed of relevant staff.

Previously companies have been able to limit awareness of export control issues to a small, select number of staff. However, the new provisions on intangible transfer of technology (and trafficking and brokering) will mean that all relevant staff with access to e-mail, fax or telephone facilities will be potential "exporters". As such, they must be made fully aware of their responsibilities under the new regulations and be able to make informed judgement decisions on when their activities are export licensable. Estimates on what the required training to achieve this awareness (which will not be a one-off effort but must be continuing on a rolling basis) will cost companies will be invaluable for the DTI.

Companies should consider not simply submitting one input to catch the 30th April deadline, but are also encouraged to submit initial thoughts, views and concerns to the DTI in the meantime.

In summary, companies should comment on positive aspects of the Government's proposals and also state where what is proposed is problematic and give informed evidence to support these concerns. What is and is not workable, and why? Quality input, supported by hard evidence, will be much more valuable and helpful than mere comment.

Any companies with any comments or queries can contact:

Dr. Graham Attrill
Director, Defence
Intellect
Graham.attrill@intellectuk.org

Timescale

The DTI's deadline for the receipt of responses to the Secondary Legislation proposals is Wednesday 30th April 2003.

Following this, the DTI will consider carefully all responses received and formulate the final version of the Secondary Legislation. The final Orders will then be laid before Parliament. There will then be a Parliamentary debate on these Orders, following a recent announcement by the Bishops in the House of Lords that they are going "to pray for the Secondary Legislation".

The DTI is proposing to give Industry a 12-week implementation period between the laying of the final versions of the Orders before Parliament and the actual enforcement of the new controls for the intangible transfer of technology and technical assistance controls, and a 6-month implementation period for the trade controls. Thus, the DTI has sought to give UK firms a short "period of grace" during which to introduce the necessary export control compliance mechanisms into place.



Thus, it is likely that the new controls will come into force in Autumn 2003 and Spring 2004, **if the DTI's proposals are accepted.**