

**EXPLANATORY MEMORANDUM TO  
THE EXPORT CONTROL ORDER 2008**

**2008 No. 3231**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Export Control Order 2008 consolidates the main Orders made under the Export Control Act 2002 so that the domestic legislation on strategic export controls (other than legislation relating to particular sanctions or embargoes) is now in one place. As a consequence, the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, the Trade in Controlled Goods (Embargoed Destinations) Order 2004 and the Technical Assistance Control Regulations 2006 are revoked. At the same time the Order rationalises trade controls (that is controls on activities relating to the movement of goods and technology between third countries) on long range missiles, including UAVs, enhances both trade controls and transit controls (that is controls on goods passing through the UK) on a range of sensitive goods including small arms and light weapons, and makes other minor changes.

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

3.1 In its Third Report of the 2006-07 session the Committee reported the Export of Radioactive Sources (Control) Order 2006 (S.I. 2006/1846) (“the Radioactive Sources Order”) for unexpected use of the enabling power in that it did not provide for a right of appeal from decisions to amend licences (by contrast there was a right to appeal to the Secretary of State in relation to licence refusals, suspensions or revocations). The Department pointed out that the power to amend was only used in very limited circumstances, namely when requested by the exporter, but accepted the Committee’s argument that the Order should either place limits on the power to amend or allow an appeal in the event of amendments instigated by the Department.

3.2 The Orders that this Order consolidates all contain appeal provisions in the same form as the Radioactive Sources Order. Consequently the drafting of article 33 of this Order is influenced by the Committee’s Report. Here, an appeal is allowed from a decision to amend a licence but only where the amendment was not requested by the licence holder. This does not apply to general licences because they are granted to the world at large and a decision

to amend one should simply be subjected to judicial review in the usual way. Moreover, general licences cannot be amended in relation to a particular licence user (this contrasts with the position on suspension and revocation of general licences).

3.3 We intend to make corresponding amendments to the Radioactive Sources Order to take effect at the same time.

#### **4. Legislative Context**

4.1 On 6 February 2008, the Government published its initial response to a public consultation carried out as part of a 2007 Review of Export Control legislation. This committed to make changes in a number of areas. The Government's further government response, published on 21 July 2008, clarified details of some of the changes that had been previously announced and announced a further round of changes.

4.2 Many of the changes announced in the initial response were introduced under the Trade in Goods (Categories of Controlled Goods) Order 2008, which came into effect on 1 October 2008. This Order incorporates the October legislation but extends and supplements it where points of detail have been resolved since its enactment; enacts those new changes that were committed to in the further response; and consolidates this new material, together with other relevant legislation, into a single new Order.

4.3 An additional, important point is that this Order is now where implementing provisions relating to Council Regulation (EC) No 1334/2000 (the "dual-use Regulation") and Council Regulation (EC) No 1236/2005 (the "torture Regulation") are located. These cover, respectively, goods, software and technology that can be used for both civil and military purposes and goods that can be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. This is not a new implementation of Community law but restates, in the new consolidated legislation, provisions that appear in the current orders. These provisions give full effect to and, in some respects, supplement the two directly applicable measures referred to above.

4.4 Of particular interest from this point of view are articles 4 and 5 (which have controls on dual-use items not covered by the dual-use Regulation), article 6 (suspicion of use in WMD programmes to trigger end-use control, as permitted by Article 4(5) of the dual-use Regulation), article 7 (additional control on intra-Community transfers where items destined for outside the customs territory as permitted by Article 21(2) of the dual-use Regulation), article 8 (transit controls in relation to dual-use items, filling a gap left by the dual-use Regulation), article 9 (controls on transit and intra-Community transfers of certain torture items), articles 10 -12 (controls on technology transfers not subject to the dual-use Regulation), article 28 (which includes an obligation to register when using either general licences under the dual-use Regulation or the Community General Export Authorisation contained in the Regulation) articles 29 – 31 (which relate to record-keeping),

articles 32 and 33 (which contain provisions on decisions to amend, suspend and revoke licences and appeals), articles 35 and 36 (offences for breach of the Regulations), articles 37 and 38 (offences to do with licences), and articles 39 – 42 (customs powers and application of customs legislation).

4.5 We have used the power in the European Communities Act 1972 (as amended by the Legislative and Regulatory Reform Act 2006) to refer to Community legislation as amended from time to time because the relevant provisions contain lists of goods, software and technology and of territories that are or may be amended relatively frequently.

4.6 The other reason for use of the 1972 Act power is that the provision of the EC torture Regulation that was the subject of an offence in the Technical Assistance Control Regulations 2006 (a prohibition on accepting technical assistance in relation to certain torture items) could not be implemented under the Export Control Act 2002. The latter only provides for controls on giving technical assistance. This results in different arrangements for sentencing on summary conviction for breach of the relevant provision of the Regulation and in articles 37 and 38 (because they could relate to licensing under that provision), owing to the sentencing limits in the 1972 Act. The twelve month maximum sentence on summary conviction in Scotland is provided for by section 45 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 The Export Control Act 2002 broadened the Government's powers to control trade in strategic items, at the same time making the export control system more transparent. The Act allows for four different types of controls – export controls (that is controls on goods leaving the United Kingdom), transfer controls (that is controls on transfers of technology, including intangible transfers), technical assistance controls (controls on providing e.g. training and maintenance services in relation to goods and technology) and trade controls (controls on transfers between third countries). The Act was implemented in 2004 and the current legislation arises from the first post-implementation review.

7.2 The coming into effect of the Trade in Goods (Categories of Controlled Goods) Order 2008, on 1 October 2008, also arising from the post-implementation review, established a new three category structure for trade controls. Category A includes goods whose supply is inherently undesirable, and here, the strictest trade controls apply. Category B includes goods in

respect of which there is legitimate trade, but which, on the basis of international consensus, have been identified as being of heightened concern; for these goods, trading by UK persons from anywhere in the world is controlled as for Category A, but the controls do not extend to as full a range of supporting activities. Category C includes all Military List goods that do not fall within Categories A or B; here a lesser degree of control is applied, with trading controlled only where, wholly or in part, it takes place within the UK.

7.3 This Order makes some adjustments to the goods covered by these categories. The initial response committed the government to place small arms and light weapons in Category B, but it was only possible to legislate for small arms in time for 1 October implementation. The new Order therefore defines light weapons and adds them to Category B. It also fulfils another initial response commitment by moving long range missiles from Category A to Category B. The main impact of this will be that licences will no longer be required for the general advertising or promotion of these weapons – for example at trade fairs – although targeted acts of promotion will still be controlled.

7.4 This Order also establishes what activities are controlled where they support trading in Category B goods. Here, the Government sees a clear distinction between the provision of transport and the provision of other supporting services. Transport is more closely connected to trading than other supporting services, in that it is essential in order for the trade to take place. The Government therefore believes that it should be controlled in relation to both Category A and Category B goods; but since Category B goods are legitimately traded, a balance needed to be found so as to control only the more meaningful and significant transport activities. The new legislation does this by controlling the activities of UK persons arranging the transport, but not those moving the goods where they provide their transportation services to a UK person or entity which is itself subject to the controls.

7.5 One further clarification in the trade controls area relates to certain acts that are provided otherwise than for payment. The Trade in Goods (Control) Order 2003 stipulated that “any act calculated to promote the arrangement or negotiation of a contract for the acquisition or disposal of any controlled goods” was controlled only when undertaken “in return for a fee, commission or other consideration”. In the further response, the Government explained that it wished to preserve the intention of this stipulation but to reword the legislation so as to clarify what constitutes “commission or other consideration”. This has been achieved in the new Order by including the activities described above within a new definition of “contract promotion activity”; stating that, for Category B and C goods only, those activities are controlled only when provided “otherwise than for payment”; and then defining “payment” to ensure that it lists, and includes, a wide range of methods by which payment can be made, but falls short of controlling the actions of employees carried out as part of their salaried duties. In this way, the coverage of the earlier legislation is preserved, but in a clearer format which is less open to interpretation.

7.6 In the field of transit and transshipment, the Government's further response committed to adjust the legislation so as to align it to the new three category structure of trade controls. The new Order fulfils this commitment firstly, by legislating so as to always require a transshipment licence for Category A goods that are subject to domestic export controls; and secondly by creating a new part of Schedule 4, which lists 74 destinations that are of specific concern in the context of Category B goods and stating that Category B goods can only transit or tranship via the UK to those destinations under cover of a valid transit or transshipment licence.

7.7 There are two other main areas where we have taken the opportunity to adapt the wording of the legislation so as to spell out its effect more clearly. The first is in the area of the revocation or suspension of general licences. Current legislation gives the Government the power to suspend any user's right to use an open general licence and this power has already been used. However, the wording of the legislation has been adapted to spell out this power more clearly. The second area concerns goods traded to embargoed destinations, where again, we have taken the opportunity to spell out more clearly in the new legislation, the range of the control, which applies only to movements into an embargoed destination, not within it.

7.8 These changes support the Government's counter proliferation aims, and will help guard against undermining the Government's support for international human rights, or allowing UK technology or equipment to be diverted for use by undesirable users. They do so in a proportionate way, by aligning controls closely to risk so as not to generate unnecessary business burdens.

## **8. Consultation outcome**

8.1 On 18 June 2007, the Government issued a public consultation document, "2007 Review of Export Control Legislation: A Consultative Document". This sought the views of respondents, both on the impact and effectiveness of the controls that were introduced in 2004, and on a number of options for further change. Prior to the closure of the public consultation period on 30 September 2007, the Government received a total of 23 substantive responses from a wide range of groups, including industry and Non-Governmental Organisations (NGOs), and over 5,000 brief E-Mails and letters. All the changes that have or are now being enacted were specifically put forward as options in the public consultation document, and received broad consensus across the spectrum of respondents; including both those representing industry interests and individual exporters, and NGOs with an interest in arms control issues.

## **9. Guidance**

9.1 Guidance to accompany the Order will be published on the Department for Business Enterprise and Regulatory Reform's website at least 12 weeks

before these controls come into force on 6 April 2009, to allow industry and traders to prepare adequately for the changes.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is estimated as annual costs of £5,100 to £27,600.

10.2 The impact on the public sector is estimated as annual administration costs of £7,140 to £38,640 and annual enforcement costs of £68,000 to £368,000.

10.3 An Impact Assessment is attached to this memorandum. A previous Impact Assessment covering other changes made by the Order can be found at <http://www.berr.gov.uk/files/file47075.pdf>.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people the approach taken is as set out in the Impact Assessment, namely that we will address any special needs of small businesses as appropriate through guidance and awareness activities.

11.3 The risks the legislation is intended to address apply to businesses of all sizes, and in some respects, smaller companies may be higher risk than larger companies.

## **12. Monitoring and review**

12.1 Within three to five years of the legislation coming into effect, we will review the legislation internally which may lead to further public consultation and, if appropriate, changes to the legislation.

## **13. Contact**

Melvyn Tompkins at the Department for Business, Enterprise and Regulatory Reform, Tel: 020 7215 8669, or email: [Melvyn.Tompkins@berr.gsi.gov.uk](mailto:Melvyn.Tompkins@berr.gsi.gov.uk) can answer any queries regarding the instrument.

## Summary: Intervention & Options

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

**Available to view or download at:**

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

**Contact for enquiries:** David Johnson

**Telephone:** 020 7215 8581

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

Legislation introduced in 2004 represented a major strengthening of export controls. Even though a “perfect” export control system is almost impossible to achieve, there has been a case put for further change to guard against undermining the Government’s counter proliferation aims, undermining the Government’s support for international human rights, or allowing UK technology or equipment to be diverted for undesirable end use, eg by terrorists. Government intervention is necessary to find an effective and proportionate way to guard against the risk of undesirable exports and related activities

What are the policy objectives and the intended effects?

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

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

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

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

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

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

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

Signed by the responsible Minister:

Ian Pearson

..... Date: 15  
December 2008



## Summary: Analysis & Evidence

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

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

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

Price Base	Time Period	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	6th April 2009
Which organisation(s) will enforce the policy?	HMRC
What is the total annual cost of enforcement for these	£ 68k - £368k
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	Yes

What is the value of the proposed offsetting measure per				£
What is the value of changes in greenhouse gas emissions?				£ Nil
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase -
Increase	£ 5k-£28k	Decrease	£	<b>Net</b> £ 5k-£28k

Key:

**Annual costs and benefits: Constant Prices**

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

### **Issue**

The legislation introduced in 2004 represented a major strengthening of export controls. The 2004 changes were aimed at ensuring that recent business developments did not enable unscrupulous exporters or traders to put controlled goods or technology into the hands of undesirable end users. There has been a case put for further change to guard against undermining the Government's counter proliferation aims, undermining the Government's support for international human rights, or allowing UK technology or equipment to be diverted for undesirable end use, e.g. by terrorists.

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

### **Purpose and intended Effects**

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

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

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

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

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

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

The current UK legislation, in the form of an exception for transit and transshipment, allows goods on the Military and Dual Use lists to pass through the UK en route to another pre-determined destination without the need for a UK licence, provided that the exporter has complied with the laws of the originating country.

There are however, limitations to the exception. It does not apply to a range of sensitive goods (landmines, torture and paramilitary equipment, and any goods destined for use in a WMD programme) or for any Military List goods to certain sensitive destinations (including all currently embargoed destinations) as listed in the legislation. In particular this means that transit/transshipment licences are required for any listed goods en route to Iran or North Korea; and for any goods on the Military list en route to any other embargoed destination. The legislation also places an upper limit of 30 days on the time that the goods can stay in the UK, and stipulates that they must remain on board a vessel or aircraft, or be on a through bill of lading or through air waybill for the duration of that period.

The transit/transshipment legislation is therefore designed to facilitate legitimate trade by allowing goods to pass through the UK when they are not the subject of controls or have been appropriately approved in the originating country, whilst enabling the UK to intervene, and potentially halt, the onward movement in the case of goods or destinations of concern.

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

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

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

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

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

## **Costs to business**

### *Application Costs:*

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

We consider this a lower estimate as there may be an 'awareness boost'. By this we mean that the very act of publicising that the rules have changed, and issuing new guidance makes businesses critically examine their affairs and some find that they need licences for their activities even for acts that were licensable before those changes were introduced. To an extent, this was the case when a new electronic licensing processing system (SPIRE) was introduced. Consultation with businesses in the transshipment sector gave us a higher estimate of between 75 and 100 transshipment licence applications with the new regulations in place - i.e. between 67 and 92 extra licences as a result of regulation. This wider use of

the regulation would come about not only through a large list of countries but also as a result of greater clarity in the regulations.

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

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

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

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

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

### **Cost to government**

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

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

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

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

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

been only minimal involvement of UK persons or entities in trading Cluster Munitions. This leads us to believe that costs related to the transshipment of Cluster Munitions will be even lower than for Category B goods, but the cost burden of finding out this information (if it even existed) would be disproportionate to the costs of the regulation on business.

### **Other areas of change**

Other changes introduced on 6 April 2009 will:

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

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

### **Conclusion**

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

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

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

## Specific Impact Tests: Checklist

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

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

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

## Annexes



## **Specific Impact Tests**

### **1. Competition Assessment**

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

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

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

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

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

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

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

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

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

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

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

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