

BIS | Department for Business
Innovation & Skills

Promoting global security through strategic
export control, facilitating responsible exports

End-use controls,

as administered by

United Kingdom,

Export Control Organisation.

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27 January 2011

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End-use controls – The scope

- Export and Transshipment of **goods** (e.g. equipment, components & materials);
- Transfer of technology (e.g. **technical information & data**), **tangible & intangible** (e.g. paper documents or email);
- Provision of **technical assistance** (e.g. technical support & services).

The challenge is to identify, bring under control and prevent those exports, transfers or assistance that are of WMD concern.

End-use control - Cornerstones for effective controls

Legislation

Awareness

Administration

Enforcement

*These cornerstones are underpinned by
Intelligence, Communication and Co-ordination.*

End-use control - Legislation

- UK National
- Export Control Order 2008:
 - Article 6, 10, 11, 12, 17 and 19.
 - Apply to persons in the UK
 - Apply to UK persons outside of the European Community Customs Territory
 - Apply to items in transit or transshipping through the UK
 - Apply to items for export to destinations outside the EC Customs Territory

End-use control - Legislation

- International
- Council Regulation (EC) No 428/2009:
 - Articles 4.1, 4.4 and 4.5.
 - Apply to exporters within the European Member States
 - Apply to items for export to destinations outside the EC Customs Territory
 - EC Reg 428/2009 also controls brokering of dual-use listed goods from one destination outside the Customs Territory to another, if for WMD.

End-use control - Awareness

The various controls are based on...

...the exporter being **'aware'**, or

...the exporter **'having grounds for suspicion'**, or

...the exporter being **'informed'** (which in UK is in writing from the Export Control Organisation).

The ECO provides a wide range of guidance material and delivers seminars on strategic export controls including end-use controls.

These are available to traders, exporters and the general public – they raise awareness to facilitate responsible exports.

End-use control - Administration

Controls that are based on the exporter being **'informed'** require the informing to be done **in writing** and in the UK this is done via one of the three main types of administrative casework:

1. **Exporter Rating Enquiry** – exporter asks ECO whether or not a licence is required for a particular shipment.
2. **Licence Application** – exporter may apply, even though the goods do not normally require licences.
3. **UK Border Agency or HM Revenue & Customs, 'Snags'** – ECO is asked whether or not a licence is required for goods stopped at Port, in transit or upon inland declaration.

End-use control - Enforcement

- Checks at the border, scrutiny of shipments, shipping paperwork and physical inspections are usually the **last opportunity** to identify and stop a shipment of concern, either because:
 - The **exporter was not aware** of diversionary activities of their end-user customer, consignee or agent, did not have, or did not allay their, suspicions; or
 - The **exporter was aware** and continued to attempt to export.

In either case, the border actions and administrative processes, to 'inform' the exporter, will put the export or transshipment into the licensing process.

This provides government with the opportunity to scrutinise the utility of the goods and refuse the export where there exists unacceptable risks of diversion to WMD programmes.

End-use control

- Underpinning **Legislation, Awareness, Administration and Enforcement** are:
 - **Intelligence** - UK Government export control community and non-proliferation effort includes the **Restricted Enforcement Unit**, whose role was described in the UK '*Review of Intelligence on Weapons of Mass Destruction*' 2004.
 - **Communication** – Including systems to notify international partners of export licence denials
 - **Co-ordination** – Including working level liaison between departments and agencies.

End-use control – Intelligence, Communication and Co-ordination

- **UK Restricted Enforcement Unit:**

“The Restricted Enforcement Unit **regularly considers the latest intelligence** relating to potential breaches of export controls or other exports of concern and **co-ordinates** action by its member departments.

These actions can include **alerting UK exporters** to the activities of proliferators (**Awareness**), seizing goods (**Enforcement**), investigating potential breaches of UK export controls (**Legislation**) and **informing the authorities in other countries** of proliferation activities under **their** jurisdiction and encouraging them to take action against them”.

Closing Summary

- **UNSCR 1540** addresses the threat of proliferation posed by non-state actors.
- The various **End-Use Controls** in UK Legislation and European Community Council Regulations provide a legal framework **binding on persons** within the UK and EU Member States, **on UK persons** outside of the Community, and can be applied **to transshipments** effected by any person, through the UK, to destinations outside the Community, to prevent illicit activity.
- There are **significant roles to play** to make and keep End-Use Controls effective: Underpinning Legislation, Awareness, Administration and Enforcement, with: Intelligence, Communication and Co-ordination, **within countries and across borders**.

Thank you.

Further supporting slides provide the detail of the various Legislative Articles and definitions.

Application of WMD end-use controls

- In order to apply the WMD end-use controls to a proposed export or transfer, three criteria must be satisfied:
 - Goods, software or technology must meet the definition of “WMD Purposes”
 - The goods, software or technology must be for use outside the EC
 - Exporter must know, have been informed, or in some cases suspect, the export or transfer is for a WMD-related end-use

“WMD Purposes”

- “WMD Purposes” means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons.

“...in connection with...”

- includes exports which may be used both **directly** in a weapon or missile and **indirectly** in WMD development
- **Indirect** uses include:
 - Infrastructure projects
 - research programmes at universities or government laboratories
 - Un-safeguarded nuclear activities
 - Civil space programmes

Transfer of Software and Technology By Any Means - WMD End-Use Controls

- Transfer ‘by any means’ includes face-to-face conversations, lectures, seminars and the passing over of documents as well as electronic transfers (e-mail, fax, telephone), etc.
- Applies to transfers within the UK and by UK persons outside the EC (extra-territorial)

“Technical Assistance” related to WMD

- Means: any technical support related to repairs, development, manufacture, assembly, testing, “use”, maintenance or any other related technical service
- relating to supply, delivery, manufacture, maintenance or use of anything where
- exporter is aware or informed, intended entirely or in part for “WMD purposes”
 - Technical assistance may be direct or indirect
 - Technical assistance covers technical helplines, training courses and servicing of goods
- Applies to activities of persons within the UK and UK persons outside the EC (extra-territorial)

End-use control legislation text:

- Export Control Order 2008:
 - Article 6, 10, 11, 12, 17 and 19.
- Council Regulation (EC) No 428/2009:
 - Articles 4.1, 4.4 and 4.5

UK Export Control Order 2008

WMD purposes end-use control supplementing the dual-use Regulation

6. —(1) This article applies where—

- (a) a person (“the enquirer”) has grounds for suspecting that dual-use goods, software or technology are or may be intended, in their entirety or in part, for WMD purposes; and
- (b) the goods, software or technology in question are not specified in Annex I to the dual-use Regulation.

(2) Subject to article 26, the enquirer shall not—

- (a) export the goods in question; or
- (b) transfer the software or technology in question by electronic means

to a destination outside the customs territory **unless, having made all reasonable enquiries** as to the proposed use of the goods, software or technology in question, **the enquirer is satisfied** that they will not be used for WMD purposes.

UK Export Control Order 2008

Transfers within the United Kingdom for WMD purposes

10. —(1) This article applies where a person (“the transferor”)—

- (a) has been **informed** by the Secretary of State that software or technology is or may be intended, in its entirety or in part, for WMD purposes; or
- (b) **is aware** that software or technology is intended, in its entirety or in part, for WMD purposes

and **knows that** it may be or is intended to be used outside the customs territory or has been **informed** by the Secretary of State that it may be or is intended to be so used.

- (2) Subject to articles 18 and 26, the transferor shall not transfer the software or technology in question to a person or place within the United Kingdom.

UK Export Control Order 2008

Transfers from outside the customs territory for WMD purposes

11. —(1) This article applies where a **United Kingdom person** (“the transferor”)—

(a) has been **informed** by a competent authority that software or technology is or may be intended, in its entirety or in part, for WMD purposes; or

(b) **is aware** that software or technology is intended, in its entirety or in part, for WMD purposes.

(2) Subject to articles 18 and 26, the transferor shall not transfer the software or technology in question from a place outside the customs territory to—

(a) a destination outside the customs territory; or

(b) a destination within the customs territory if the transferor—

(i) knows that the final destination of the software or technology is outside the customs territory; and

(ii) knows that no processing or working is to be performed on the software or technology within the customs territory,

or, if the destination is the United Kingdom, **knows that** the software or technology **may be or is intended to be used outside** the customs territory or has been informed by the Secretary of State that it may be or is intended to be so used.

UK Export Control Order 2008

Transfers by non-electronic means from the United Kingdom for WMD purposes

12. —(1) This article applies where a person (“the transferor”)—

(a) has been **informed** by the Secretary of State that software or technology is or may be intended, in its entirety or part, for WMD purposes; or

(b) **is aware** that software or technology is intended, in its entirety or in part, for WMD purposes.

(2) Subject to articles 18 and 26, the transferor shall not transfer the software or technology in question by non-electronic means to—

(a) a destination outside the customs territory; or

(b) a destination within the customs territory if the transferor—

(i) knows that the final destination of the software or technology is outside the customs territory; and

(ii) knows that no processing or working is to be performed on the software or technology within the customs territory.

UK Export Control Order 2008

Transit or transshipment exception

17. —(1) Subject to paragraphs (2) and (3), nothing in articles 3, 4, 5, 7 or 8(1) shall be taken to prohibit the exportation of any goods which are **goods in transit** provided that the conditions in paragraph (4) are met.
- (2) Paragraph (1) does not [...]
- (3) Paragraph (1) **does not apply to** the extent that—
- (a) the exporter (or, if the exporter is not within the United Kingdom, any agent of the exporter within the United Kingdom concerned in the exportation or intended exportation) **has been informed** by a competent authority that the goods are or may be intended, in their entirety or in part, for WMD purposes;
- (b) the exporter **is aware** that the goods are intended, in their entirety or in part, for WMD purposes; or
- (c) the exporter **has grounds for suspecting** that the goods are or may be intended, in their entirety or in part, for WMD purposes, unless the exporter has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used.

UK Export Control Order 2008

End-use control on technical assistance

19. —(1) Subject to article 26, **no person** shall **directly or indirectly** provide to a person or place outside the customs territory any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which—
- (a) that person has been **informed** by the Secretary of State is or may be intended, in its entirety or in part, for WMD purposes; or
- (b) that person **is aware** is intended, in its entirety or in part, for WMD purposes.
- (2) Subject to article 26, **no United Kingdom person** shall directly or indirectly provide from a place outside the customs territory to any person or place outside the customs territory any technical assistance related to the supply, delivery, manufacture, maintenance or use of anything which—
- (a) that person has been **informed** by the Secretary of State is or may be intended, in its entirety or in part, for WMD purposes; or
- (b) that person **is aware** is intended, in its entirety or in part, for WMD purposes.
- (3) For the purposes of paragraphs (1) and (2)—
- (a) **directly** providing technical assistance includes providing technical assistance or agreeing to do so; and
- (b) **indirectly** providing technical assistance includes making arrangements under which another person provides technical assistance or agrees to do so.

Council Regulation (EC) No 428/2009

Article 4

1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.

Council Regulation (EC) No 428/2009

Article 4

4. If an exporter is aware that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraphs 1,2 and 3, he must notify the authorities referred to in paragraph 1, which will decide whether or not it is expedient to make the export concerned subject to authorisation.

Council Regulation (EC) No 428/2009

Article 4

5. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter has grounds for suspecting that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1.

(This is adopted/maintained by the UK under Article 6 of the Export Control Order 2008 and earlier UK legislation)