

# Part I

## Policy Issues Relating to Strategic Export Controls

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The Government is committed to the development and maintenance of responsible and transparent strategic export control policies. This section of the Report describes how we have continued to take forward that commitment in domestic and international policy since the publication of the last Annual Report on Strategic Export Controls in July 2001.

### DOMESTIC POLICY

#### *Export Control Bill 2002*

The Export Control Bill was introduced to Parliament on 26 June 2001. Its Introduction followed an extensive review of existing export control legislation, as recommended by the Scott Report, in the course of which the Government published first a White Paper in July 1998 (Cm 3989) and then a draft Bill for public consultation in Spring 2001 (Cm 5091). The latest text of the Bill can be found on the website of the DTI's Export Control Organisation ([www.dti.gov.uk/export.control](http://www.dti.gov.uk/export.control)).

The Export Control Bill will replace entirely the export control powers contained in the Import, Export and Customs Powers (Defence) Act 1939. The Bill provides new powers allowing for the imposition of controls on trade from one overseas country to another, on the transfer of technology by intangible means and the provision of technical assistance overseas. The Bill sets clear limits on the Government's powers to impose such controls, provides for Parliamentary scrutiny of the orders introducing these controls, and introduces a statutory requirement to publish annual reports on export controls.

The new power to control trade between overseas countries will be used to control trafficking and brokering in the UK of military equipment to any destination. This power will also be used to control, and in effect prohibit, trafficking and brokering carried out in the UK, or by UK citizens abroad, in arms to embargoed destinations, and trafficking and brokering in equipment used for torture to any destination.

The new power to control intangible technology transfers will be used to control the transfer from the UK of military technology by electronic means. This will bring controls on military technology into line with controls on dual-use technology, which derive from EU law and which have extended to electronic transfers since September 2000.

The Government also intends to use the power to control intangible transfers to control the transfer by any means (including by communication in person) of information that may be or is intended for use in a weapons of mass destruction (WMD) or related missile programme. This control will be supported by the new power to control technical assistance overseas, which will be used to control the provision of technical assistance overseas that is for use in a weapons of mass destruction or related missiles programme. These controls will implement the EU Joint Action of 22 June 2000 concerning the control of technical assistance related to certain military end-uses (2000/401/CFSP).

The Export Control Bill is expected to receive Royal Assent in summer 2002, but will not enter into force at this time. The Government will first be holding a 12 week public consultation on the draft secondary legislation to be introduced under the Bill. This will provide an opportunity for all interested parties to comment on the detail of the new controls. It is expected that the consultation will take place after Royal Assent, and that the new controls will enter into force during the course of 2003.

#### *Strengthened controls on Weapons of Mass Destruction: Anti-Terrorism, Crime and Security Act 2001*

The Government introduced legislation in the Anti-Terrorism, Crime and Security Act 2001 to strengthen existing controls on chemical, nuclear and biological weapons. The new legislation makes it an explicit offence, subject to certain exemptions, to:

- transfer or arrange to transfer a biological agent or toxin for use as a biological weapon;

- knowingly cause a nuclear weapon explosion;
- develop or produce, or participate in the development or production of a nuclear weapon;
- possess a nuclear weapon;
- transfer a nuclear weapon; or
- engage in military preparations intending to use a nuclear weapon.

The Act also introduces a prohibition (under the new offence of "assisting or inducing certain weapons-related acts overseas") in respect of trafficking and brokering of WMD. The Act makes it illegal to aid and abet a foreign WMD programme, including by procurement.

The Sections of the Act relating to Weapons of Mass Destruction entered into force on 14 December 2001. The text of the Act and Explanatory Notes relating to it can be purchased from HMSO, or found on the HMSO website ([www.hmso.gov.uk/acts/acts2001/20010024.htm](http://www.hmso.gov.uk/acts/acts2001/20010024.htm))

#### ***Export Controls following September 11***

The terrorist attacks on the USA on 11 September were a shocking demonstration of the threat that international terrorism posed for international peace and stability. The subsequent adoption of UN Security Council Resolution 1373 (2001) underlined the international community's strong commitment to cooperate in the war against terrorism. In the aftermath of these events, the Government reviewed its arms export control policy to ensure that it adequately reflected the need to combat terrorism, and that it allowed us to comply fully with the UN Resolution. The Foreign Secretary announced the results of that review in his reply to a Parliamentary Question on 13 December 2001 (attached at appendix G). The review highlighted the key anti-terrorism features of our existing arms export control commitments under the Consolidated EU and National Arms Export Licensing Criteria and the new measures being put in place under the Export Control Bill and the Anti-Terrorism, Crime and Security Act. This means that we either have already taken or soon will take the steps identified as necessary to respond effectively to the threat posed by

international terrorism, and to comply fully with the UN Resolution.

## **INTERNATIONAL POLICY**

### ***The EU Code of Conduct***

The Government has continued to work closely with its EU Partners to develop further a common understanding and interpretation of the EU Code of Conduct. The Third Annual Review of the Code of Conduct, published in December 2001 and attached at Appendix E, described a year of both consolidation and development of EU partners' common practices under the Code.

EU Member States agreed to improve the transparency of information provided in the EU Annual Reviews on licences approved by each Member State. The Third Annual Review included a breakdown by geographical region of the licences approved by each Member State in the previous year, where previous reports had only provided total numbers of licences approved. Improving the transparency of these licensing statistics will continue to be a UK objective for the EU Reviews.

Throughout 2001, we and our EU Partners took forward discussions about controls on the trafficking and brokering of arms. These discussions resulted in the adoption of guidelines for controlling trafficking and brokering that could act as a basis for national legislation by EU Member States. These guidelines, which were published in the Annual Review of the EU Code, are a political commitment by EU Member States to control trafficking and brokering. We will be meeting this commitment with the controls on trafficking and brokering the Government has proposed to introduce under the Export Control Bill.

We supported and took part in the EU's efforts to engage third countries on arms export control issues, particularly the EU's activities to promote the principles of the EU Code of Conduct with the EU Applicant States. This included participating in a seminar with EU Associated States in Nicosia in June 2001, which was the first in a series of activities to promote compliance with the EU Code and best practice.

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### ***Small Arms***

With our EU Partners, the UK worked hard for a positive outcome to the first UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York in July 2001. UN Member States now have in place a comprehensive Programme of Action on Small Arms. The Programme sets out national, regional and global initiatives, committing States politically to put in place export control mechanisms and measures to ensure small arms traceability, to control brokers and to destroy surplus weapons. The UK will be an active participant in assessing developments and results to date at the first biennial meeting following the UN Conference, to be held in 2003.

By putting policy into practice through targeted projects and programmes and by working in partnership with other governments, Non-Government Organisations (NGOs) and industry, the UK is playing a leading role in coordinated implementation of the UN Programme of Action. UK policy on small arms is broadly three-fold: to combat illicit trafficking; to pursue a responsible and transparent policy on legal transfers; and, to promote the removal and, where possible, destruction of surplus weapons from affected societies. A Small Arms Policy Committee, bringing together key Government Departments, meets regularly to ensure the coherent and coordinated implementation of the UK's small arms policy.

Ben Bradshaw, then FCO Minister responsible for arms export policy, gave the UK Ministerial address at the UN Conference. He further enhanced the UK's already high international profile in tackling small arms problems by announcing the allocation of £19.5 million over three years to be spent on programmes and projects to curb the misuse and spread of small arms throughout the world. These funds will support the work of UN agencies, regional organisations, governments and NGOs. Projects include support for weapons collection, management and destruction programmes (primarily through the UN Development Programme Small Arms Reduction Programme); assistance in setting up and implementing new

regional and country-specific agreements; and support for civil society and NGOs, including the International Action Network on Small Arms (IANSA). Funds will also support policy-focused analysis and evaluation of small arms problems and their impact.

We supported the three year extension, agreed last July, of the Moratorium of Economic Community of West African States on the import, export and manufacture of small arms and light weapons, and are examining practical ways of supporting the implementation of the moratorium.

In these ways, the UK gives practical as well as political support to the efforts of the international community and civil society to assist other States and regions curb the spread and misuse of small arms, the primary instruments of death and injury in conflicts and criminal acts worldwide.

On 6 May 2002, the UK signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts, Components and Ammunition, one of three protocols to the UN Convention on Transnational Organised Crime. We are encouraging others to sign and work towards its implementation. One of the Protocol's key articles relates to the marking of weapons. In this context, the UK was active in support of the Small Arms resolutions adopted at the 56th Session of the UN General Assembly in 2001. In particular, the UK will be actively involved in the new UN Panel of Governmental Experts that will examine the feasibility of developing an international instrument on the marking and tracing of small arms. These are issues of particular concern since the terrorist atrocities of 11 September.

The UN Programme of Action includes a clear call to all States to support the strengthening of regional initiatives. In the Organisation for Security and Cooperation in Europe (OSCE), we are working towards improved information exchange and best practice guidance in implementation of the OSCE Document on Small Arms, negotiated under UK coordination in November 2000. This involved submitting the first information return in June 2001 on national

legislation and procedures on export controls (including over brokering), manufacture, marking systems and weapons destruction.

#### ***Framework Agreement on European Defence Industrial Restructuring***

On 6 July 1998 the Defence Ministers of France, Germany, Italy, Spain, Sweden and the United Kingdom signed a Letter of Intent (LOI) designed to facilitate defence industrial restructuring in Europe. The LOI specified the areas where the governments were committed to identifying proposals to remove some of the barriers to restructuring. The resulting treaty, the Framework Agreement, was laid before Parliament in November 2000.

France, Germany, Spain, Sweden and the UK have completed their ratification of the Framework Agreement. The treaty is now in force in all five nations. Italy is yet to ratify and continues to have "observer" status.

During 2001 we and our Partners continued to make progress towards implementation of the Framework Agreement. One of the treaty's specific aims is to introduce simplified arrangements for licensing the movement of military goods and technologies between Partners. These would apply, as appropriate, to transfers of items between Framework Agreement Partner countries participating in collaborative defence projects to subsequent exports of the final product to jointly agreed destinations.

The export control elements of the treaty include:

- *Provision for Global Project Licences (GPLs):* These would permit multiple exports of specified military goods and technology between Framework Agreement Partners in relation to individual collaborative defence projects. The arrangements would be designed to assure supply and to streamline the licensing process for collaborative projects. The intention is that the national authorities of each Partner country will issue a national GPL for each project.

- *Permitted export destinations:* For individual collaborative projects permitted export destinations for exports of finished products would be agreed by the authorities of the participating countries in a particular project. These would be based on the destinations proposed by industry where they believe there are likely prospects for exports of the finished products. The treaty makes clear that where circumstances have changed significantly for the worse, a permitted export destination could be removed. In the majority of such cases, it is unlikely that EU (and therefore Framework Agreement) countries' policies on military exports to that destination would differ. If, however, consensus is not possible, and if even one participating state objects to a proposed export destination, the treaty states that caution would prevail and the destination would be removed.

The UK continues to work closely with the Framework Agreement Partners towards the implementation of these export control measures. The final provisions will take full account of the Partners' national export control policies and their international obligations and commitments, including under the EU Code of Conduct, to which all Framework Agreement countries are party. Applications for both GPLs and licences for final exports from the UK will be assessed against the consolidated criteria in the normal way, and details given in the Annual Report on Strategic Export Controls.

#### ***UK waiver from US International Traffic in Arms Regulations (ITAR)***

Joint US/UK work on simplifying export procedures for military goods and technologies under the US/UK Declaration of Principles has been concentrated on a potential UK waiver from the US's International Trade in Arms Regulations (ITAR). The US Defence Trade Security Initiative, launched in May 2000, identified the UK and Australia as the first countries with which the US would discuss such a waiver.

The ITAR waiver would permit the transfer of most unclassified defence items, technology, and

services to HMG and qualified companies in the UK without a US export licence. Negotiations on the waiver began in July 2000. It would make a significant contribution to transatlantic defence industry co-operation and promote Alliance interoperability. At the same time it would ensure that comparable export controls were maintained on US and UK defence items. There is already a high degree of commonality between the two governments' export control systems and close co-operation on enforcement.

During 2001 a series of high-level meetings and exchanges have suggested a practical way ahead, although some issues remain to be resolved. Nonetheless, both governments believe that a mutually satisfactory approach to ITAR can be agreed and an agreement successfully concluded.

#### ***The Wassenaar Arrangement (conventional weapons)***

The Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual Use Goods is the only group bringing together most of the world's major arms exporters – including all EU States, the USA and Russia – with the aim of preventing destabilising accumulations of arms throughout the world. Our participation in the WA allows us to promote transparency, data exchange and policy coordination on conventional arms exports – steps which complement initiatives we have taken in pursuit of these goals in other fora, such as the OSCE and UN.

The 2001 Plenary meeting of the WA took place from 6-7 December 2001. The agreed public statement of the Plenary can be found on the WA website ([www.wassenaar.org](http://www.wassenaar.org)). The UK continued to press for the further development of the Arrangement.

Following the terrorist atrocities in the USA on 11 September, the UK joined other WA States in working to ensure that the Arrangement took full account of the need to prevent arms from falling into the hands of terrorists. As a result of these efforts, the WA Plenary decided to amend the "Initial Elements" – the Arrangement's founding

document – to make explicit WA States' continued commitment to prevent the acquisition of conventional arms and dual-use goods and technologies by terrorists. The Plenary agreed to take concrete steps to give effect to this decision.

Through the Global and Regional View exercise – a UK initiative – the WA States continued to exchange valuable information and analysis about international arms flows, to use in establishing their export control policies and informing individual licensing decisions.

The UK played a leading role in discussions on how small arms and light weapons might be reported in the Arrangement's Specific Information Exchange. The Plenary reaffirmed the importance of responsible export policies towards, and effective export controls over, small arms and light weapons to prevent destabilising accumulations and diversion, but was not able to agree on new reporting arrangements. However, the Plenary agreed to continue to explore practical measures in this area, which will continue to be a key WA objective for the UK.

The UK continued to push proposals to widen information exchange on arms transfers. We and like-minded delegations managed to secure agreement to expand the reporting to include armoured bridge-launching vehicles and gun-carriers specifically designed for towing artillery. However, we did not manage to get agreement to report on other categories of equipment, such as armoured recovery vehicles, artillery systems between 35mm-100mm, vessels with displacement of 150 tonnes or more, and missiles of below 25km range. Securing more transparency on these items will continue to be a UK priority in the WA.

Participating States recognised the importance of controlling arms brokering and agreed to continue discussion with a view to refining the criteria for effective legislation on arms brokering, and to continue discussion of enforcement measures.

Certain amendments to the WA export control lists were approved. But proposals to loosen controls on computers and microprocessors could not be agreed,

and the issue was deferred for further study in 2002. 2003 will be a Review year for the WA, when WA States undertake a thorough examination of the Arrangement's procedures and objectives. Throughout 2002 the UK will be preparing the ground for this Review, with the aim of ensuring that the Review delivers real improvements to the WA as a forum for information exchange and policy coordination on conventional arms export controls.

#### ***Nuclear Weapons (Nuclear Suppliers Group, Zangger Committee)***

The Nuclear Suppliers Group (NSG) Plenary was held in Prague from 13 - 17 May 2002. The first meeting of the NSG Consultative Group, set up last year after a review of the working practices of the group, carried out by a UK-chaired working group, was held in November 2001. The Consultative Group discussed amendments to the NSG Guidelines, including the issue of addressing the threat posed by terrorism. Discussions continued on how to engage non-members in dialogue on non-proliferation. The Nuclear Suppliers Group held for the first time an Enforcement Experts meeting in the week of the Plenary, to exchange experience and best practice between customs officers and other enforcement agencies.

The Zangger Committee held its formal meetings in October 2001 and June 2002. Current issues under discussion include outreach to non-members, the Non-Proliferation Treaty (NPT) 2000 review conference recommendations and discussion of where the Zangger Committee should focus its efforts to fulfil its technical role for the NPT to best effect.

#### ***Missiles (Missile Technology Control Regime)***

At its Plenary in Ottawa, 24-28 September 2001, the Missile Technology Control Regime (MTCR) agreed the text of a draft International Code of Conduct (ICOC) against Ballistic Missile Proliferation. The MTCR agreed that this text should now be used as a basis for international discussions on a text to be launched by the end of 2002. The MTCR draft emerged from intensive discussions in the MTCR throughout 2000 and

2001 about possible means, in addition to export controls, of tackling missile proliferation issues. If adopted, the ICOC would be the first international instrument to address missile proliferation: its aim would be to create initial norms in an area where there are currently none. Measures would include a set of political principles, commitments to non-proliferation, and confidence-building measures including pre-notification of launches. The ICOC is open to all States and, since the Plenary, international meetings have been held in Paris (7-8 February 2002) and Madrid (17-19 June 2002) to reach a text with the widest possible international support.

Since the ICOC was separated from the MTCR, at the Ottawa Plenary, the MTCR has concentrated on getting back to its core business of further improving the effectiveness of export controls and promoting export controls around the world. Discussions at the intersessional Reinforced Point of Contact meeting concentrated on the work of experts involved in updating the annex of controlled goods; information exchange; outreach to countries outside the regime; membership of the Regime and on making the Regime relevant to the threat of terrorism. Discussions continue on the technology which should be controlled. The MTCR Plenary in Ottawa also included an Enforcement Experts meeting for the first time. The MTCR website should be going on-line this year at MTCR.net

#### ***Chemical and Biological Weapons (Australia Group)***

The 2001 Plenary of the Australia Group (AG) was held on 1-4 October 2001 in Paris. Bulgaria attended for the first time, having been formally admitted to the AG in September. The Group examined its role in preventing the spread of chemical and biological weapons to terrorists following the terrorist attacks in New York and Washington of 11 September 2001. It authorised an Intersessional Meeting, held in London on 11-12 February 2002, to take forward work aimed at making the Group more relevant to the terrorist threat and producing agreed Guidelines, setting out the core principles of the Group, for adoption at the 2002 Plenary meeting in June.

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***Export Control Outreach***

Outreach, in the form of bilateral talks and awareness raising seminars, plays a key role in our efforts to promote and support the implementation of responsible export control regimes around the world. Export control matters are often on the agenda of the numerous bilateral political-military talks which regularly take place in London and overseas. In addition, joint teams of officials from FCO, DTI, MOD and HM Customs and Excise conduct dedicated export control bilateral meetings to address the practical issues surrounding export licensing and enforcement in detail. With those countries that are not yet members of the various export control regimes, the aim of these talks is to raise awareness about the regimes and gain support for them. With those

countries that are already members of the regimes, the talks allow us to share experiences of the functioning of the regimes and discuss their further development.

Since the publication of the fourth Annual Report on Strategic Export Controls in July 2001, we have held bilateral talks on export controls with Bulgaria, China, Denmark, Hong Kong, Russia, Romania, Singapore and the USA. In many cases, these meetings were the latest in a series of ongoing contacts focusing on practical export control issues. We also organised export control awareness seminars for officials from Malta, Cyprus, Hong Kong and Russia focusing on the specific operational needs and interests of the countries in question.