

# The Operation of the WMD End-Use Control: Guidance

## Background

The proliferation of weapons of mass destruction (WMD) and missiles for their delivery poses a threat to regional and global stability. A very wide range of industrial items and materials can assist WMD programmes and would-be proliferators but, in order to limit the burdens on exporters, only the most critical items appear on the Dual-Use Control Lists

<http://www.dti.gov.uk/export.control/pdfs/controllist20040930.pdf>

and thus *automatically* require an export licence. There are, however, many other less sensitive items which *can be made licensable* if they are, or may be, for use in a WMD programme.

The general effectiveness of national export licensing systems, which implement the controls agreed in the multilateral export control regimes<sup>1</sup> have made it harder for WMD programmes to acquire controlled items. This has sometimes forced these would-be proliferators to seek non-controlled equivalents, which often fall just outside the technical parameters of the controlled goods. Furthermore, WMD programmes need to procure items for the overall development of the programme (for example electronics and production equipment) which are not in themselves particularly sensitive, and do not normally require an export licence.

This is why the UK Government, in common with the rest of the EU and other multilateral export control regime partners, has power to make such items licensable on a one-off basis (technically, when they are for what is called a "relevant use"<sup>2</sup>, with a view to refusing their export from the UK under the WMD "end-use", or "catch-all" control. The Government is determined to ensure that UK exporters will not contribute knowingly or unwittingly to WMD programmes of concern, while also minimising the burden on legitimate trade.

**The WMD end-use control can in theory be applied to any export to any end-user involved in WMD in any country outside the EC. In practice we apply it sparingly. As an exporter we know you want predictability but, unfortunately that is not always possible because of the diverse nature of WMD programmes, the goods they seek and the methods used to acquire them. However we are committed to putting informa-**

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<sup>1</sup> The Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement

<sup>2</sup> Relevant use: "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"

**tion into the public domain to help you forestall export licensing problems in the conduct of your business.**

### **What you need to check**

If you know or suspect<sup>3</sup> that your export will be used in a WMD programme or in a WMD delivery system, then you have a legal obligation to contact the Export Control Organisation (ECO), to apply for an export licence<sup>4</sup> under Article 4(3) of the Main Order under the Export Control Act 2002 (ECA)<sup>5</sup>.

However, very often you will not be in a position to know or suspect WMD utility. This guidance is intended to help you judge which exports might potentially be of concern on end-use grounds so that you can factor this in to your business planning and make better-informed decisions on whether to contact the ECO. This is not an area where we can give definitive up-front guidance as the judgement is always made on a case-by-case basis. However we hope that the additional information provided here will raise awareness of WMD issues and be of practical help.

### **ECA 2002 controls on transfer of technology by any means and provision of technical assistance for a relevant use**

This guidance note does not cover the more specialised controls under the ECA 2002 on the transfer of technology by any means, and provision of technical assistance for a relevant use in connection with WMD. These controls were introduced in May 2004. Separate guidance on them is available at

<http://www.dti.gov.uk/export.control/publications/sgnwmdeca2003.pdf>

However, many of the considerations in invoking and assessing applications against the WMD end-use control described in this guidance also apply to these new controls.

### **When do we invoke the end-use control?**

The ECO has to decide firstly whether to “invoke” (ie require a licence under) the end-use control; and secondly whether to issue or refuse a licence.

We will invoke the control when we become aware that a shipment is being made to an end-user about whom we have concerns. This could be in response to an inquiry to us by the exporter, or because we have become aware through our own information. If we invoke

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<sup>3</sup> For guidance on how to spot suspicious enquiries please see the guidance at Annex A

<sup>4</sup> Application forms and guidance are on the ECO website at

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

<sup>5</sup> The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (S.I.2003/2764), as amended by S.I. 2004/1050 (“the Main Order”);

the control, we give the export what is known as an “LR End”, ie licence required, end use, rating. We can invoke the control at any time before the goods leave the UK. For example, sometimes HM Revenue and Customs will detain shipments at the port and consult us as to whether an export licence is required.

Remember, if you know or suspect a WMD end-use, you are legally obliged to apply for a licence. Otherwise there is no obligation on you but many exporters prefer to submit a “rating enquiry” to ECO, ie asking us for an indication of whether the export requires a licence<sup>6</sup>. HM Revenue and Customs are less likely to detain goods at port if the exporter has an export licence or a “no licence required” (NLR) letter from ECO.

Every care is taken in making a rating of your goods in response to such an enquiry. **However** such ratings are not binding on ECO. They are only valid if

- the exporter has disclosed the correct end-user to us (as this is critical in assessing the licensable status of non-controlled goods),
- has correctly described the goods and their proposed end-use **and**
- we have not received any information subsequent to the rating which might change our earlier assessment.

If you have previously had your goods rated by us as “NLR” under the WMD end-use control, please note that this rating only applies for that specific export, and to that specific end-user, and only at the time of the application. A more detailed description of the mechanics of processing end-use ratings enquiries and licence applications is included at **Annex B**.

If we do invoke the end-use control, we shall formally “inform” you by letter or e-mail that you require an export licence before the goods may be exported.

Sometimes we will make the export licensable and subsequently grant a licence if we satisfy ourselves after a more detailed assessment that there is not an unacceptable risk of use in, or diversion to, a WMD programme.

#### *Refusals under the end-use control*

In the three years between 2002 and 2004 inclusive we refused 270 licences under the end-use control out of total refusals of 822 in the same period.

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<sup>6</sup> Details about rating enquiries on <http://www.dti.gov.uk/export.control/applying.htm>

## **How we assess applications for exports with potential WMD end-use**

Once the control is invoked, the ECO has to assess whether to grant or refuse a licence. We do this on the same basis as we would for controlled goods which always require a licence. We assess the risk of WMD end-use in relation to the proposed export, taking into account the specific circumstances of each individual case. This risk assessment is based on detailed consideration of a range of questions, including the following:

- Does the end-user country definitely, probably or possibly have a WMD or delivery system programme?
- Are the items potentially of high, medium or low utility in relation to any of the activities listed in the WMD end-use control in connection with any WMD programme in the end-user country, namely:
  - “use in connection with the*
    - *development*
    - *production*
    - *handling*
    - *operation*
    - *maintenance*
    - *storage*
    - *detection*
    - *identification*
    - *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”.*
- Are the items relevant to identified procurement requirements of such a WMD programme, either in the destination country or, where the destination country is known or suspected of being involved in secondary proliferation (ie of passing on WMD-related items to a third country) in any of the suspected end-use countries?
- Is the end-user known to be of concern? (If the end-user is not known at all, then any doubts about their bona fides could be sufficient to justify refusal of a licence)
- Is the exporter known to be of concern?

- Are any third parties or intermediaries to the transaction known to be of concern?
- Are there diversionary concerns in relation to any of the parties?
- Is the stated end-use credible (bearing in mind that a credible **stated** end-use will not necessarily preclude a risk of **actual** use in connection with WMD)?

The overall level of risk is then assessed in the round, bearing in mind the answers to the questions above and any other relevant factors and information, including any known specific links between the proposed export and a WMD programme. Based on the risk considerations explained above, if our judgement is that it is likely to be for use in a WMD programme of concern, then we will refuse a licence.

We follow this detailed process because usually neither we nor the exporter know at the outset of an application whether the proposed export is likely to be for WMD use. Only by carrying out a detailed assessment can we reach a view of the risk of WMD use in individual cases.

We aim to complete the assessment within 20 working days of receipt of a completed application, although more sensitive or complicated cases can take longer. In 2004 75% of NLR and LR End licence applications were completed within 20 working days.

## **Goods and destinations of concern**

### *Goods*

As a general point, although any goods could potentially be of concern, in practice those goods which are refused for export under the end-use control tend, by and large, to be those which, at a higher level of technical specification, fall within the international non-proliferation regime control lists and guidelines:

- Wassenaar Arrangement:  
<http://www.wassenaar.org/list/wa-listTableOfContents.htm>
- Australia Group:  
<http://www.australiagroup.net/en/agcomcon.htm>
- Missile Technology Control Regime:  
<http://www.mtcr.info/english/guidelines.html>
- Nuclear Suppliers' Group:  
<http://www.nuclearsuppliersgroup.org/guide.htm>

This is not a hard and fast rule however, and any items may potentially be refused under the control.

The control does not only apply to exports which may be used **directly** in a weapon or missile; the term “**use in connection with**” might, for instance, include goods that could be used in the development of the infrastructure of a WMD programme: research and development programmes at universities, unsafeguarded civil nuclear reactors (where a risk of diversion of fissile material exists), or civil space programmes which may also be involved in ballistic missile development.

**Annex C** contains a general description of goods for which we have actually refused export licences on end-use grounds since 2002.

#### *Destinations*

The Government's Annual Reports on Strategic Export Controls gives details of refusals, by destination, on end-use grounds at <http://www.fco.gov.uk> (then go to Trade and Investment, Export Controls and Sanctions, and Strategic Export Controls Annual Report 2004, which will take you to the FCO page which contains all the Reports back to 1997).

End-use licences to these and other destinations have also been required and approved where, after consideration, the Government decided there was no risk of diversion to a WMD programme.

Other countries which historically were of concern, but for which there are no refusals listed, have been subject to embargoes and therefore there has been no licensable trade. HMG policy is kept under review and adapted to changing circumstances.

It is worth noting that procurement for WMD programmes is usually made through entities which are ostensibly involved in civilian activities and which very often do have legitimate non-WMD businesses. Clearly this poses problems in sectors such as nuclear power generation, the oil and gas industry, research laboratories, pharmaceuticals and precision engineering where legitimate operations may provide a source of equipment and expertise for military programmes. Sometimes equipment is also procured through trading companies, or individuals, based in a different country to the one where the WMD programme is located.

We do not generally publish information about the **end-users** of goods for which an export licence has been refused on end-use grounds except in the case of Iran (see Annex D). Exporters can

however submit a rating enquiry<sup>7</sup> if they wish to obtain guidance about whether we have concerns with an export to a particular end-user. Around 90 per cent of ratings enquiries are completed within 10 working days.

We also provide a separate end-use advisory service by invitation to specific exporters who have a proven record of export control and whose goods are not controlled but which, typically, may be of interest to WMD proliferators, and who would otherwise be applying for many ratings enquiries.

We are actively considering revamping our ratings enquiry and end-use advisory service to provide more tailored end-use advice to exporters than at present. Any changes will be advertised on the ECO website.

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<sup>7</sup> Details about rating enquiries on <http://www.dti.gov.uk/export.control/applying.htm>

## **Annex A**

### **Suspicious enquiries**

Examples of possible suspicious enquiries include:

- The customer is reluctant to offer information about the end-use of the items
- The customer asks that the goods be transferred to a forwarding address in the UK
- The customer is reluctant to provide clear answers to commercial or technical questions which are normal in routine negotiations
- An unconvincing explanation is given as to why the items are required, in view of the customer's normal business or the technical sophistication of the items
- Routine installation, training or maintenance services are declined
- Unusually favourable payment terms such as higher price and/or lump-sum cash payment are offered
- Unusual shipping, packaging or labelling arrangements are requested
- The customer is new to you and your knowledge about him/her is incomplete
- The installation site is an area under strict security control or is an area to which access is severely restricted, or is unusual in view of the type of equipment being installed
- There are unusual requirements for excessive confidentiality about final destinations, or customers, or specifications of items
- There are requests for excessive spare parts or lack of interest in any spare parts
- The dealer you are selling to is new to you, or has been evasive about customers
- The customer or end user is a military or government research body



→ The order itself is unusual in any way eg the quantity or performance capabilities of the goods ordered significantly exceed, without satisfactory explanation, the amount or performance normally required for the stated end use.

## **Annex B**

### **Mechanics of the ratings and licence application process**

1 In considering rating enquiries, DTI will assess relevant WMD concerns (eg biological, chemical, nuclear, missile) for the specified end-user and make some assessment as to the utility of the goods for the specified programme concerned. If this assessment is affirmative, then the exporter is informed that an export licence will be required to export the goods.

When it receives a full licence application, DTI circulates it to advisers in the Ministry of Defence (MoD) and the Foreign and Commonwealth Office (FCO). They will carry out a fuller assessment as to the utility of the goods for the programme concerned. They may conclude that there are in fact no concerns, in which case a licence will be issued.

**For any goods which have been rated Licence Required on End-Use Grounds (LR-End), ECO will either issue or refuse a licence. ECO will not issue a No Licence Required (NLR) letter.**

This can lead to some confusion. The first point to note is that the invocation of the end-use control by DTI does not invariably lead to a refusal and exporters should not always be discouraged from pursuing an application.

2 Second, if in a future case for the same or similar goods to the same end-user the exporter does not apply for a rating, but applies directly for an export licence (as he may) and, if advisors continue to take the view there are no WMD concerns, then the end-use control will not be invoked and the goods will be assessed as being NLR (because they are not on the control lists and the exporter has not been informed). Thus almost identical applications can result in different ratings (NLR/LR-End – licence approved), though the substantive outcomes are the same (export can proceed). This is a feature of the way the law works rather than inconsistency on the part of ECO.

3 Third, it is possible for a different substantive decision to be taken in respect of similar goods. This could be because  
→ the goods are going to a different end-user or  
→ new information has come to light about the use/utility of the goods.

The important point for an exporter is that a rating for one export can change for a subsequent one. Clearly, HMG tries to keep such changes to a minimum.

## Annex C

### Description of goods for which export licences were refused on end-use grounds since 2002

<b>Nuclear</b>	<b>Missile</b>	<b>CBW</b>
Ceramic materials	Accelerometers	Biotechnology equipment
Chemical processing equipment	A to D converter	Chemical agent detection equipment
Cryogenic equipment	Aero engines	Electrical switching equipment
Dimensional measurement & inspection equipment	Aircraft naval equipment	Environmental test equipment
Electrical/electronic components	Air data test system	Filtration equipment
Environmental test equipment	Ceramic materials	Chemical processing pilot plant
Flow measurement equipment	Chemicals	
Gas purification equipment	Cranes	
General laboratory equipment	Design & manufacturing software	
Image intensifying tubes	Dimensional measurement & inspection equipment	
Industrial generators	Electric motors	
M/C tools & fabrication equipment	Electrical/electronic components	
Materials processing equipment	Electronic test equipment	
Materials test & analysis equipment	Explosives & propellants	
Non-ferrous metals	Ferrous metals	
Particle counters	Fibrous/filamentary materials	
Process control equipment	Flow Measurement equipment	
Pumps	Gas purification equipment	
Vacuum equipment	General laboratory equipment	
Valves	Gyros	
	Hydraulic fluids	
	ICs/computers	
	M/C tools & fabrication equipment	
	Materials processing equipment	
	Materials test & analysis equipment	
	Microwave equipment	
	Non-ferrous metals	
	Pneumatic systems	
	Pressure test equipment	
	Process control equipment	
	Recording equipment	
	Vacuum equipment	
	Valves	
	Vibration test equipment	
	Wind tunnels	

## Annex D

### WMD End Use Control: Applications for Iran

Although the preceding main guidance provides *general* information about the types of goods and destinations which could potentially be of WMD concern, it is recognised that exporters will often not be in a position to know that an end user or other party to an export transaction may be involved in a WMD programme.

Given the current concerns about Iran in particular, we feel it would be useful to provide more *specific* information about end-users in that country. In this context, we are making the attached list of Iranian entities publicly available for the information of exporters.

**This list is intended to help you judge which exports might potentially be of concern on end use grounds, based on previous licensing decisions. This information may be factored into your business planning and help you to make informed decisions on whether to contact the ECO. The list may be amended from time to time and should be checked regularly if you are planning business with Iran.**

Please note the following important points in relation to the information given in the list:

- The entities included on the list are mainly based on the last three years' experience of either invoking the WMD end-use control or refusing licences under it. In addition there are a few other entities for which we have not refused licences or invoked the control, but there is publicly available information indicating their involvement in WMD programmes of concern.
- Inclusion of an entity on the list does not necessarily indicate that an export licence would be refused. Conversely non-inclusion of an entity on the list does not necessarily mean that there are no end-use concerns with that entity.
- Checking against the list *cannot* ever be regarded as a substitute for a case-by-case judgement by the ECO based on the goods to be exported in a particular case and the latest available information.
- Entities on the list may give cause for concern *whatever their involvement in an export transaction may be*. This includes

end users, consignees and third parties. If you are considering a transaction which involves an entity on the list in any capacity it would be prudent to submit a Rating Enquiry <http://www.dti.gov.uk/export.control/applying/ratenq.htm>

- The inclusion of an entity on the list *does not* constitute being “informed” that a licence is required under the WMD end-use control and therefore does not indicate that a licence must *always* be applied for under the WMD end-use control.
- Publication of this list in no way invalidates any existing licences that specifically permit an export to an entity on the list.

Entity Name	<b>“x” indicates entities for which licences have been granted as well as refused</b>
7th of TIR Industrial Complex	
Advanced Manufacturing Research Centre	
Aerospace Industries Organisation	
Arak Petrochemical Co	x
Atomic Energy Organisation of Iran	
Azar Ab Ind Co	x
Darou Pakhsh Company	x
Electric Power Research Centre, (Matn)	
Esfahan Chemical Industries	
Fan Pardazan Co	
Government of Iran, Department of Defence	
Harris Co	
IFP (Industrial Factories of Precision Machinery)	
Iran Communications Industries ICI	
Iranian Mineral Processing Research Centre	x
Jaber Ibn Hayan Research Laboratories	
Jahad Engineering Research Centre	

Kalaye Electric Co	
Kanavaran Mining and Industrial Co	
Kavoshyar Iran Co	x
Khaje Nassir-Al-Deen Toosi University	x
Mesbah Energy Co (Sahami Khase)	
Mesbah Energy Company Qatran Project	
Mileace (United Arab Emirates)	
Mineral Engineering Research Centre	
Mizan Machine Manufacturing Group	
National Research Center for Genetic Engineering & Biotechnology	x
Niru Battery Mfg Co.	x
Noavar Hava	
Nuclear Research Centre for Agriculture And Medicine	
Pars Oil & Gas Company	x
Pars Oil & Gas Project (POGP)	
Petrochemical Industry Development Management Pidm Co	x
Sahaf Electrical Wire	
Samamicro Company	
Sanam Industrial Group	
Shahid Bagheri Industries Group	
Shahid Hemmat Industrial Group	
Shian Co	
TSS Co	
Tabriz Petrochemical Co	x
Tarbiat Modarress University	x
Tehran University	x