

**EXPORT CONTROL
ORGANISATION**

Transparency in Export
Licensing : Government
Response

JULY 2012

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Introduction/Overview

Transparency is a key theme of the Coalition Government and plays a vital role in enabling the public to hold the Government to account. It is particularly important in a high profile area such as export control – confidence in the workings of the export licensing system needs to be shared by Parliament and by the public. The system should not just be working properly, it should also be seen to do so.

On 7 February 2012, Vince Cable, Secretary of State for Business, Innovation and Skills made a Written Ministerial Statement to Parliament in which he set out a number of proposals to increase the transparency of the export licensing system. The three proposals are:

- To insert into all open export licences a provision requiring the exporter to report periodically on transactions undertaken under these licences. The Government will then publish this information.
- To explore ways of making additional information (contained in standard export licence applications) public while protecting any sensitive material.
- To appoint an independent person to scrutinise the operation of the Export Control Organisation's licensing process. The role of this independent person would be to confirm that the process is indeed being followed correctly and report on their work.

The full statement is available online at:

<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120207/wmstext/120207m0001.htm#12020767000002>

The Export Control Organisation (ECO) published a Transparency in Export Licensing - Discussion Paper in March 2012 (URN 12/682), available online

at: <http://www.bis.gov.uk/assets/biscore/eco/docs/12-682-transparency-export-licensing-discussion-paper.pdf>

This explained the background to each of the commitments made by the Secretary of State, set out the key issues and asked a number of questions regarding implementation. The answers to these questions have helped us to decide what additional information it would be beneficial for us to make public, to better understand why certain information is considered sensitive and to obtain evidence of the burdens and costs for exporters in providing that information.

Conducting the consultation exercise

On 20 March 2012 ECO published Notice to Exporters 2012/16 - Respond to the discussion on transparency in strategic export licensing. This appeared on BIS website and was emailed to all the 5000 individuals registered to receive information on export controls. (Link as per the Discussion Paper above.)

On 17th April 2012 Dr Cable laid a Written Ministerial Statement (WMS) before the House giving an update on the Transparency Initiative, see <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120417/wmstext/120417m0001.htm#12041725000005>

Written Ministerial Statement

RT HON DR VINCE CABLE, SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS; DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS

EXPORT CONTROLS: ADDITIONAL MEASURES - 17 APRIL 2012

Further to my Written Ministerial Statement of 7th February on Strategic Export Control, I would like to update the House on progress towards increasing the transparency of the export licensing process. My officials have held meetings with representatives of the exporters and Non-Governmental Organisations - these have been constructive and indicated that there is broad support for the proposals, although exporters understandably have some concerns about the burdens of making regular reports on their usage of open licences. Subsequently, my Department issued a discussion paper and questionnaire in order to obtain the widest range of views on specific aspects of the proposals. The paper and questionnaire are available at <http://www.bis.gov.uk/assets/biscore/eco/docs/12-682-transparency-export-licensing-discussion-paper.pdf> The closing date for responses is 20 April and I would encourage all interested parties to contribute their views. I will provide a further update as appropriate, at the very latest before the House rises for summer recess.

ECO met with a range of stakeholders before, during and after the consultation period and also made a presentation about the Transparency Initiative at the FCO-EGAD (Export Group for Aerospace and Defence) industry briefing event on 16 April at the FCO.

ECO Policy Unit met representatives of the following stakeholders during the consultation:

- Arms Export Policy Department, FCO
- Export Policy and Assurance, Ministry of Defence
- Campaign Against Arms Trade (CAAT)
- ADS Group Ltd, and EGAD
- GAMBICA
- Intellect
- Gun Trade Association
- BAE Systems
- Research In Motion UK Ltd
- Rolls-Royce plc
- Thales
- Amnesty International UK
- Oxfam GB,
- Saferworld

The questionnaire and how this document is structured

The questionnaire was divided into five sections:

- | | |
|---|-----------|
| a) General – About you and your organization | Q1 - Q9 |
| b) Reporting on Open Licences | Q10 - Q15 |
| c) Making more routine licensing information public | Q16 - Q20 |
| d) The role of the “Independent Reviewer” | Q21 - Q22 |
| e) Further Comments | Q23 |

The next section “About the Respondents” covers the background information for General – About you and organisation: Q1 - Q9.

The Government Response section groups the questions by theme for ease of reading, under the headings of b) – e). Each themed section is considered under three headings:

- Analysis of responses – a summary of the range of responses received to each question
- HMG response – to the main stakeholder points
- Conclusion – how the main points made will or will not be taken on board in taking the policy forward

These final sections are Overall Conclusion, Next Steps, Contact details and Annexes.

About the Respondents

105 replies were received in total. This represents around 5% of the 2000 or so exporters who apply for export licences each year.

Question 2: Please select the sector where you work as appropriate

96 replied to the question. 92.7% are businesses, 3.1% NGOs and the others include trade associations, legal representatives, training providers and consultants.

Question 3: Please indicate in which capacity you are responding (either on behalf of an organisation or as an individual)

101 replied to this question. 90.1% on behalf of an organisation and 9.9% as an individual.

Questions 4: If you are responding on behalf of an organisation did you consult others within your organisation before formulating your response?

94 replied to this question. 57.4% had consulted others, 42.6% had not.

Question 5: If you represent a business, what size is it? Please select from the list:

96 replied to this question.

Company Size	Percentage
Micro (Up to 9 staff)	3.1%
Small (10 to 49 staff)	13.5%
Medium (50 to 250 staff)	43.8%
Large (Over 250 staff)	39.6%

Question 6: If you represent a business, which industry do you operate within? Please select from the list:

98 replied to this question.

Answer Options	Response Percent	Response Count
Aerospace	11.2%	11
Automotive	1.0%	1
Chemical	2.0%	2
Defence	32.7%	32
Electrical/Electronic Equipment or Components	9.2%	9
Industrial Equipment / Machinery	1.0%	1
Manufacturing	21.4%	21
Marine	1.0%	1
Nuclear Equipment/Material	1.0%	1
Pharmaceutical/Medical	0.0%	0
Oil and Gas	3.1%	3
Small Arms	0.0%	0
Telecommunications/Computers or IT Services	6.1%	6
Transport Services (including Freight Forwarders)	1.0%	1
Other (please specify)	9.2%	9

The others are multi sector, and include professional services companies, eg legal advisers and consultants.

Question 7: Does your business operate across multiple sites?

98 replied to this question.

62.2% operates on multiple sites, 37.8% do not.

Question 8: Approximately how many exports or transfers has your business made using open or general licences in the last 12 months?

96 replied to this question.

Answer Categories	Band	Response Count
1	0 - 49	42
2	50-99	12
3	100-199	14
4	200-299	5
5	300-499	3
6	500-999	6
7	>1000	9
8	N/K or N/A	5

ECO Customer Satisfaction Survey 2010 (URN 10/1198). The sector breakdown of respondents to this survey was:

Sector	Percentage
Defence	19%
Aerospace	15%
Marine	6%
Automotive	4%
Chemical	2%
Nuclear Equipment or Material	1%
Manufacturing	20%
Telecommunications, Computers and IT Services	5%
Gun dealer	3%
Electrical/Electronic Equipment or Components	7%
Industrial Equipment/Machinery	5%
Oil and Gas	6%
Transportation Services inc. Freight Forwarding	1%
Others	6%

The vast majority of respondents applying for licences were Small and Medium sized Enterprises (SMEs). 40% of ECO's respondents were small companies (with 1 to 49 employees), 42% were medium sized enterprises (50 to 499 employees) with only the remaining third working in larger companies of 500 employees. Only 7% of respondents have over 2500 employees.

Both the sector breakdown and size of company correlates quite well for both surveys. The Customer Satisfactory Survey had over 600 responses.

Government Response

Reporting on Open Licences

Analysis of responses

Question 10: What information do users consider should be collected and published? Is 'item description' (or rating), quantity and destination sufficient? Do you think it would also be desirable to publish generic information about end-users (e.g. to identify the end-user as 'government', 'commercial entity' etc)? Would exporters be content to provide and to have this information published?

72 replied to this question.

Answer Categories	Category	Response Count
1	Rating, description, quantity or value, destination and no end use data.	25
2	Rating, description, quantity or value, destination and generic end use.	23
3	Rating, description, quantity or value, destination and detailed end use.	6
4	Confidentiality and competitive concerns.	13
5	Not publish additional information.	2
6	Other.	3

Quote from survey

"High level descriptions, quantities and destination of export, as a maximum. To do otherwise and drill down into fine detail would present a considerable burden as for example, an export of a system or piece of equipment with associated items and or, technology, could involve many (hundreds) of line items, down to the smallest ancillaries. To capture these in such an exercise would present a significant task in its own right, create an unmanageable amount of data and provide no useful further insight into the export.

On the identity of end-users, for any exporter in the defence sector or an industry requiring secure business relationships, this would not only be difficult if not impossible in terms of security considerations (including those mandated by Governments), but create a strong disincentive for overseas entities to consider UK supply.

The above comments are primarily in relation to the export of physical goods. Technology exports, especially intangible, would present a different set of issues, given the record keeping requirements. If it was intended to extend the reporting to these, estimates would need to be used and it is highly questionable if a) there was any consistency (of reporting) across industry and b) if there would be any value at all to the resulting data?"

Question 11: How often should the data be provided and/or published? Would it be easier for exporters if data could be supplied in "real time" (or at least, "when convenient") rather than at specified times?

69 replied to this question.

Answer Categories	Category	Response Count
1	Specified times-Quarterly/six monthly/annual reporting.	39
2	Real time-when convenient.	22
3	Never or confidential.	3
4	N/A.	5

Quote from survey

"In times of crisis i.e. the Arab Spring it may be useful to have the information more frequently but as a norm I would say quarterly is sufficient."

Question 12: What would be the burden (in number of hours) on exporters of providing data on item description (or rating), quantity and destination? If this could not be achieved within current resources please provide an indication of what extra resources would be required, including an estimate of the cost of providing them?

68 replied to this question.

Answer Categories	Category	Response Count
1	Minimal Resources.	50
2	Extra resources needed.	7
3	Difficult to do or quantify.	5
4	Other.	6

Quote from survey

“Talking on behalf of a small Company, this would involve quite a few hours of time, to go through listing everything at this moment, it is not possible for me to estimate the cost, but still someone's salary has to be paid for the input.”

Question 13: How do we ensure consistency of the information provided by different exporters?

66 replied to this question.

Answer Categories	Category	Response Count
1	Clear and concise reporting template with standard criteria, integrated into SPIRE, together with detailed guidance for completion and periodic auditing.	45
2	Difficult.	3
3	Other, compliance visits and use of CHIEF/SPIRE.	18

Quote from survey

“A clear reporting template based on a standard set of criteria would be the best way of ensuring consistency of information to be provided by exporters. If such a template could be integrated into SPIRE this would further reduce the burden on both industry and HMG.”

Question 14: Is there a “technical solution” to data collection, rather than simply asking exporters to manually key data into a form on SPIRE? What would such a solution look like – for example, could there be an interface to businesses’ internal software (e.g. Enterprise Resource Planning (ERP) software) – and what are the obstacles to achieving this?

65 replied to this question.

Answer Categories	Category	Response Count
1	Technical solution favoured.	3
2	Do not favour a technical solution on grounds of cost, security and complexity.	18
3	Spire with Excel spreadsheet.	24
4	Other, use CHIEF data, N/A.	20

Quote from survey

“If it uses something that is compatible with Excel, this would help as majority of ERP systems or export records can export the details into an excel spreadsheet then this could just be copied and pasted into the SPIRE form.”

Question 15: Is there a trade-off or synergy between the provision of this data and the compliance process which might provide a compensatory reduction in burdens for business?

62 replied to the question.

Answer Categories	Category	Response Count
1	Yes, or there maybe trade off of more data leads to less compliance visits.	25
2	No reduction in burden on business.	16
3	Other, don't know, N/A, a wider review of export licensing, no reduction in compliance visits.	21

Quote from survey

“The trade off would be if businesses are doing this as per there standard process, then yes, the other question would be what would a business gain by sharing this information and would it be 2 way exchange of information?”

HMG response

There appeared to be a broad consensus regarding the information to be provided about usage of open licences. A majority were content to provide a description of the items exported (including the rating), the value/quantity, and destination. There was some difference of opinion among exporters regarding information about end-use/end-user, whereas the NGOs have indicated that for them this is one of the most valuable pieces of information. Given there was no overwhelming majority against providing at least some information about end-users, we have therefore decided that we will collect generic information about categories of end-user. The precise categories are still to be determined. Therefore we will collect and publish information on:

Rating;

Description;

Quantity or value;

Destination;

Generic information on end-user.

The majority of companies expressed a preference for specific time periods for reporting data (e.g. data to be provided on a quarterly or six-monthly basis), but a significant proportion preferred to be able to report in “real time” (i.e. data to be provided at the time the transaction occurs). We will therefore make both options available. In terms of the frequency or timeliness of publishing the data, the NGOs would clearly welcome more regular reporting but appear content to accept that the current arrangements – quarterly publication, 3 months after the end of the quarter – should continue.

Two respondents raised specific points on technology exports, especially intangible ones. It was felt that this would present a different set of issues, given the record keeping requirements. Consistency of reporting across industry and the usefulness of this data was a concern. For intangible technology transfers a quarterly report on completed projects was suggested.

One of our aims in implementing this initiative is to impose the minimum additional administrative burden on exporters. We therefore welcome the fact that the majority of companies stated that they could accommodate these requirements within existing resources or with only minimal additional resource. For companies who actually gave us a numerical value for the cost of providing this information, a small company estimated £100 per annum; medium sized companies’ estimates included figures of £200 per month, £3000 per reporting period and £40,000 per annum (which includes IT support); while large companies provided estimates ranging from £170 for 10 to 15 hours work inputting data, £1000 per reporting period up to an exceptional figure of £245,000 per annum for supplying information in a disaggregated format on SPIRE. The cost is dependant on the level of detail required and is clearly greater for larger companies operating across multiple sites. We will continue to bear in mind during the implementation phase the potential staff and IT costs involved.

Respondents indicated that a clear and concise reporting template with standard criteria, integrated into SPIRE, together with detailed guidance for completion was the way to ensure consistency of data from a variety of companies. Compliance visits would be used to ensure that standards are consistent across all businesses.

Respondents were very clear that a “technical solution” using ERP software to interface with SPIRE was not the preferred solution for uploading data. This was considered to be too complex, with respondents citing the technical difficulties of getting different IT systems to “talk” to each other, and potential security restrictions, as barriers to direct interfacing. The message was “keep it simple”. A clear and concise reporting template in Excel integrated into SPIRE to ensure consistency of information was considered to be a better way forward. A number of respondents asked why we couldn’t simply extract this information from HMRC’s CHIEF system. However, as mentioned in the Discussion Paper extracting information from HMRC’s CHIEF system is not that straightforward. Whilst ECO does receive some information from CHIEF regarding usage of open licences (OIELs (Open Individual Export Licences) and OGEL (Open General Export Licences) this only tells us that a particular licence has been used at a particular time, but tells us nothing about rating, quantity, value or destination. Also as explained in the Discussion Paper, such information is only received when a customs declaration is made on CHIEF and not all transactions require a customs declaration. Hence the need collect this data separately.

We believe that an increase in information reported may in the long term lead to a reduction in the burden in business. This is because the availability of detailed and comprehensive information on a company’s use of open licences could facilitate less frequent and more structured compliance audits. This is broadly in agreement with the business view. As we develop these proposals, and in line with ECO’s separate initiatives on Service Improvement, we will consider what, if any, trade-offs may be possible.

Conclusion

For open licences collect and publish data on rating, description, quantity or value (most sensitive), destination and limited information on end use. Taking into account the volume of transactions under open licence reported in Q8 this is likely to result in a significant increase in the quantity of published data.

Intangible technology exports will require more detailed guidance., which we will develop during the implementation phase.

Reporting at specified times, possibly quarterly, via a clear and concise reporting template integrated into SPIRE; and in real time via direct entry onto SPIRE using a form.

The majority of companies could encompass additional reporting using minimal resources, though at some staff cost and some additional programming cost.

A clear and concise reporting template in Excel integrated into SPIRE is favoured to ensure consistency of information supplied and is the preferred technical solution, over a direct interface between SPIRE and ERP software.

Additional reporting could lessen the compliance process and lead to less work before an audit and less frequent visits from compliance officers, whilst others remained more doubtful about reducing the burden on business. This will only become more evident once

the policy is implemented, but ECO will work closely with industry to ensure that burden on business is kept a minimum.

Marking more routine licensing information public

Analysis of responses

Question 16: What additional information should be made public?

57 replied to this question.

Answer Categories	Category	Response Count
1	Rating, description, quantity or value, destination and no end use data.	14
2	Rating, description, quantity or value, destination and generic end use.	6
3	Rating, description, quantity or value, destination and detailed end use.	2
4	Confidentiality and competitive concerns.	8
5	No change, keep current arrangements. No more info published.	16
6	General info only.	2
7	Other.	9

Quote from survey

“We see no need to make any additional information on licensing decisions to be made public. We question whether there is any genuine public interest in such information.”

Question 17: What should be routinely published in the Quarterly/Annual Reports and what should be available “on request”, e.g. in response to a request under the Freedom of Information Act?

53 replied to this question.

Answer Categories	Category	Response Count
1	Rating, description, quantity or value, destination and generic end use data published. On request, detailed info on end user, licensing decision, product types, name of exporter, accessor credentials checked.	9
2	Protect company confidentiality, commercial sensitivities, security concerns.	7
3	Little or no change, keep current arrangements.	6
4	Rating, description, quantity or value, destination and info on license numbers and refusal.	2
5	Generic and limited information. Publish eg rating and quantity. On request eg quantity, destination, value.	10
6	Other, eg dependant on data collected.	8
7	Rating, destination and quantity.	8
8	Very detailed info.	3

Quote from survey

“We would have no problem with all the information suggested at 10 & 16 above being included in reports (i.e. rating code, number of shipments, country destination & nature of business). If quantity was included then we would not be happy for this to be published nor available on request.”

Question 18: What information is truly sensitive and should continue to be withheld? Why? Is there a time-factor after which data is no longer sensitive?

56 replied to this question.

Answer Categories	Response Count
Named entities and addresses. eg exporters, end users.	23
Commercially or government sensitive information, may be subject to contract.	6
Technology under development, product diagrams, IP, anti-proliferation, commercial and technical data.	5
Value/price attached to individual items on SIELs and individual transfers under open licences, manufacturing costs, quantity with value, quantity.	18
Detailed product information.	11
Loose competitive advantage.	9

Sensitive data. Always sensitive (Y) or time factor when becomes not (N)	Y	N
	4	8

Quote from survey

“Information on the value attached to individual line items on SIELs and individual transfers under open licences should not be released. This would provide useful intelligence to competitors and others and would disadvantage British companies who would be subjected to a degree of openness not matched by other jurisdictions.”

Question 19: What are your views on a system whereby applicants are required to “tick the box” on a licence application and provide a justification for any information they wish to be withheld (see, for example, the confidentiality statement on page 9 of the associated Discussion Paper document)?

50 replied to this question.

Answer Categories	Category	Response Count
1	Yes, companies to demonstrate need for commercial confidentiality. Report to CAEC. Info released when licence expired. To exclude value.	20
2	No, FoI leads to pushing the boundaries. Assumption of confidentiality. Greater work for Government Departments.	17
3	Not work for technology transfer.	1
4	Other. Eg concerns over disagreeing whether information is confidential or not, no comment.	12

Quote from survey

“This seems like a good idea, but if non disclosure is requested, then this should be honoured. We would see the disclosure of certain information as a threat to continued business and in no ones interest except ours.”

Question 20: How could the presentation of the existing data be improved?

41 replied to this question.

Answer Categories	Category	Response Count
1	Improve existing database, eg search ability, make raw data available, executive summaries for tables, clear and concise information, more reporting on open licences.	9
2	No comment.	18
3	Updates on as licence application proceeds, approved licences by country to help SMEs.	1
4	OK with status quo, but cease Annual Review in print format, move to electronic.	5
5	Other comment.	8

Quote from survey

“Clarity of existing information could be improved by including the rating, description, licence count and value of each item together. Moreover, we have found the searchable database is not particularly user-friendly and would welcome the opportunity to discuss possible ways in which this might be improved.”

HMG Response

With respect to making more routine licensing information public the respondents replied along very similar lines to those who replied on open licences, but companies’ sensitivities to publishing data appear to be slightly greater. This is probably because SIELs (Standard Individual Export Licences) are used for more sensitive exports and destinations, and applicants for SIELs are required to provide detailed information about the products to be exported and the parties to the transaction. Some respondents seemed unaware of the information about SIELs that we already publish (including description, rating, value and destination). Several felt that existing arrangements should continue and that no further information should be made public although as set out in the Discussion Paper this is not a position we can expect to maintain in the light of the Freedom of Information Act. As we would expect, concerns were expressed regarding confidentiality and commercial

sensitivities, especially where the UK is proposing to publish information which is not made public by other export licensing authorities in competitor countries, and we acknowledge that these concerns are genuine. NGOs support the general principle of all information on an export licensing form being accessible by the public. They think it is also important to ensure that consistency is maintained in reporting across all licence types, including items for temporary export, open and individual trade control licences and transit and transshipment licences. This would help quantify actual volumes of exports and would assist in efforts to monitor compliance and end-use by enabling more systematic tracking and reporting of physical exports made under specific licences. They would like to see the quantity and quality of information on dual-use goods be significantly improved, including by providing greater end-user/end-use information as well as greater contextual information about these licences. They would like to see information published on a monthly basis. The collection of data for both licensed and actual quantities exported would be useful for proper export licensing scrutiny.

When asked what information should be routinely published and what should be able “on request” in response to a FoI request, a wide range of views were expressed. For some respondents the information we already publish for SIELs and are proposing to publish for open licences was suitable for routine publication, with “on request” included detailed information on end user, licensing decision, product types, and the name of exporter. Others thought that more limited information should be published eg. Rating and that quantity, value and destination should be “on request”.

We welcome the clarification regarding what exporters consider to be truly sensitive information that the responses to this question provide. Clearly, this includes named entities and their addresses, information regarding the unit price or manufacturing costs of an item, and detailed product information (intellectual property). There are also occasions when information about a transaction is subject to a confidentiality clause in the sales contract. We recognise that these are all legitimate concerns. Very few respondents provided any information regarding the length of time that the information remains sensitive but we know from our broader discussions with exporters that this varies from case to case – sometimes the information ceases to be sensitive as soon as the transaction is complete (or the licence expires), in other cases it is considered to remain sensitive for the life of the contract or the service life of the equipment in question. It is therefore not possible to draw any hard conclusions on this aspect.

At present, applicants must tick a box on their application to confirm that they understand that information may be released for specified purposes, the implication being that information would otherwise remain confidential. A significant proportion of respondents indicated that they are in favour of the opposite approach whereby they must “tick the box” on a licence application and provide a justification for any information they wish to be considered sensitive and therefore not normally disclosed. A slightly smaller number did not agree, considering that there should be an assumption of confidentiality. However this view is not consistent with the Freedom of Information Act and, in fact, the proposed approach better reflects the existing situation under FoIA. It must be emphasised again that while we will take an applicant’s wishes into account we cannot be bound by them – we must always comply with FoIA.

This question was mostly of interest to NGOs and other users of the existing searchable database accessible via the Strategic Export Controls: Reports and Statistics website.

(Some industry respondents seemed to think this question referred to the usability of SPIRE or the information available to applicants about the progress of their licence applications.) Some NGOs expressed their long-standing wish for access to the “raw data” behind the searchable database. This needs careful consideration because the raw data does include information about values of individual items that is not normally accessible. However, we agree that the existing database could be improved by enhancing both its search-ability and the way that data is presented.

Conclusion

When submitting a licence application, applicants will be required to indicate whether any information in their applications is sensitive and should not be made public, and give reasons why. In considering whether to release this information the Government will take the applicant’s wishes into account but will not be bound by them. We envisage that certain information will always be considered sensitive, such as a product’s unit price and its technical specifications, and in some circumstances the name of the exporter and end-user might also be considered sensitive.

We will improve the presentation of the existing data by enhancing both its search-ability and the way data is presented. We will give careful consideration as to whether or how to include additional information within the existing report format whilst still maintaining the usability of the reports.

The role of the 'Independent Reviewer'

Analysis of responses

Question 21: Do you have any comments on the role of the Independent Reviewer, such as on the terms of reference or on the content and means of publication of the reports?

45 replied to this question.

Answer Categories	Category	Response Count
1	No need for a Reviewer. Continue to improve ECO directly, eg open licensing. Accountable to SoS. "Would have no teeth".	4
2	Complete transparency. No restrictions on cases looked at by Reviewer, report annually as part of ECO report. Security cleared and no political agenda.	8
3	More an audit role, check all procedures in order. Need for in depth knowledge.	7
4	Technology transfer kept confidential. IP kept confidence. Also foreign government export restrictions.	1
5	No comment.	19
6	Concerns eg over individual licensing decisions, appointment procedures, cost of appointment, need commercial experience, information published.	6

Quote from survey

"Any independent reviewer should have the teeth to be able to improve the export licensing process. There is no point in having the role if they cannot effect change. It should also be a given to someone who has a background in business independently

appointed from a nominee list provided by businesses and not government, someone who can ask the right question on why things are done the way they are done.”

Question 22: Should the Independent Reviewer be able to investigate complaints from individual companies or members of the public? If so, what should be the criteria for agreeing to investigate?

48 replied to this question.

Answer Categories	Category	Response Count
1	Yes, rationale for decision, publish annual report, if breach of policy, licensing decisions only, general public involvement, already been through correct channels, companies only.	22
2	No, directions from SoS and CAEC. Improvements by discussions with NGOs.	5
3	Current system adequate.	5
4	No comment.	7
5	Concerns over role, more political than procedural, conflict of interest, how would they help a business, commercial and security concerns, information published.	7
6	Audit role to improve procedures.	2

Quote from survey

“There should be a provision for complaints from individual companies or other non-governmental entities. The Independent Reviewer should apply her/his discretion in choosing whether or not to investigate such complaints but must provide a clear and reasonable rationale for their decision. In order to promote confidence in the system, the Reviewer should keep a record of complaints and prepare a periodic (annual) report summarising the complaints received and explaining in general terms the rationale for his/her decision-making about whether to investigate or not.”

HMG Response

There were clearly mixed views about both the role a reviewer might perform and the benefits that such a role might bring. The response count was particularly low (45 responses to Q21, of whom 19 had no comment) and in view of the low level of responses we feel that more research is needed to take this proposal forward.

The views expressed are split between a supporting a Reviewer who would have no restrictions on the cases they can look at and the conclusions they can reach (including on the “correctness” of particular decisions) and who publishes an annual report; and a Reviewer who has more of an audit role and checks procedures. We had anticipated a reviewer who carried out more of an auditor role, checking that procedures had been properly followed. Commenting on the “correctness” of decisions implies a “quasi-judicial” role. This is not possible because SoS BIS Dr Cable is ultimately responsible for decisions on export licences, accountable to Parliament and subject to scrutiny by the Committees on Arms Export Control (CAEC).

Respondents stressed that commercial experience, a lack of political agenda and security clearance are important criteria for the appointment. Exporters favoured the process being open to companies only, once the internal appeals process had been completed, perhaps under direction from CAEC or SoS and in a specified timescale. We will bear these views in mind as we develop these proposals further.

Conclusion

Further work is required to determine how this proposal could be implemented.

Further Comments

Analysis of responses

Question 23: Do you have any other comments that might be relevant to the development of this policy as a whole? Please use this space for any general comments that you may have; comments on the content or layout of this document would also be welcomed.

39 replied to this question.

Answer Categories	Category	Response Count
1	Welcomes greater transparency. Develop on US lines.	2
2	Transparency, but welcome greater use of open licences. Beware greater regulation, admin burden, competitive advantage and respect commercial confidentiality. Develop CHIEF and SPIRE for greater efficiency and reporting. Make reporting as easy as possible.	12
3	Greater clarification for technology transfer wanted. Need to protect IP.	4
4	No comment.	9
5	Damage UK business. Commercial, military and security concerns. Level playing field with EU.	6
6	Other. Reduction in licences for commercial goods slightly altered for military platform. Better feedback on getting a permanent export for a certain reading. Improve service to exporters. Better training for export compliance staff.	6

Quote from survey

“We acknowledge the importance of transparency for the reasons set out in the introduction to the discussion paper. At the same time, however, we would stress the obvious point that transparency is not an absolute right or obligation, and needs to be balanced against other obligations, such as the need to protect information provided in support of the government’s regulatory functions, and the need to reduce the burden of ‘red tape’.

We note that industry has several times in the past suggested consideration of a more radical approach to licensing which builds on existing SPIRE, ‘goods checker’ and ‘OGEL checker’ software to enable individual transactional licences to be generated automatically when OGEL conditions are met. This would reduce the need for ex-post audit, and would have the incidental benefit of providing transactional information about the use of open licences, one of the objectives of the discussion paper.”

HMG Response

Thirty respondents gave further comments, some at length, and not always on this particular project, i.e. their comments addressed ECO and export licensing more generally.

The majority welcome improved transparency, but caution about greater burden on business, eroding competitive advantage and the need to respect commercial confidentiality.

Though not a survey on ECO’s performance it gains positive feedback. Exporters would welcome better training for their export compliance staff and an improved service from ECO. These are covered by the Service Improvement Programme.

The respondents are broadly in favour of the proposals in the Discussion Paper, which is reassuring, but further stakeholder discussion on implementation is needed to keep this consensus.

HMG will take all these views on board as it implements the Transparency Initiative.

Conclusion

We will ensure that that specific comments in Further Comments section that may be relevant, eg on training, are followed up.

Overall Conclusion

For open licences collect and publish data on rating, description, quantity or value (most sensitive), destination and limited information on end-use. This will result in a significant increase in the quantity of published data.

Exporters generally accept the rationale for this initiative and are generally supportive provided that the administrative burden is kept to a minimum and that what they consider to be truly sensitive information is protected. The NGOs welcome the addition of reporting on open licence usage and the provision of some information on end-user.

The mechanism for collecting data should be as simple as possible. Develop a reporting template using Excel to allow data to be uploaded or entered into SPIRE.

Require Individual Licence applicants to request that specified information should be considered sensitive, with an explanation why.

Consider further how this additional information can best be made public, whilst enhancing the usability of the existing reports.

Conduct further research into the “Independent Reviewer” role

The recommendations are:

- Provide a facility on SPIRE, the export licensing database, for exporters to upload data on their usage of Open General and Open Individual export licences. The data will include a description of the items exported or transferred, the destination, value and/or quantity, and some information about the end-user. This data will be published in aggregated form, by destination, in the Government’s Quarterly and Annual Reports on Strategic Export Controls, and will be searchable through the Strategic Export Control: Reports and Statistics website.
- When submitting a licence application, applicants will be required to indicate whether any information in their applications is sensitive and should not be made public, and give reasons why. In considering whether to release this information the Government will take the applicant’s wishes into account but will not be bound by them. It is envisaged that certain information will always be considered sensitive, such as a product’s unit price and its technical specifications, and in some circumstances the name of the exporter and end-user might also be considered sensitive. The mechanism by which we make this additional information public is still to be decided.
- Return to the question of the role and responsibilities of an Independent Reviewer at a later date.

Next Steps

July 2012 to March 2013: Implementation phase, including changes to IT systems and preparation of guidance material. We will ensure that representatives of the exporters are involved in the implementation phase.

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Annexes

Stakeholders responded

UK Working Group on Arms. For the purposes of this submission the UK Working Group on Arms comprises Amnesty International UK, Article 36, Omega Foundation, Oxfam GB, and Saferworld.

BAE Systems plc

Campaign Against Arms Trade

Meggitt Defence Systems Limited

Ipeco Holdings Limited

AVIATION TRAINING INTERNATIONAL LIMITED

PWC

SPEAK Network

Cobham Antenna Systems (Microwave Antennas)

Valeport Ltd

Communications Audit UK Ltd

AEM Limited

Goulds Pumps a Division of ITT Industries Ltd

BAKER & McKENZIE

77 respondents were happy for their responses to be published, but without their details.

Eight respondents preferred for their response not to be published on confidentiality grounds.

Impact Assessment (IA)

No Impact Assessment (IA) is needed because the initiative is not regulatory.

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