



Department
for Business
Innovation & Skills

EXPORT CONTROL ORGANISATION

A pre-licensing register of arms
brokers : Government Response

JULY 2015

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Introduction and Contact Details

This paper sets out the Government's response to the Call for Evidence, which was carried out in April and May 2014, about the idea of introducing a pre-licensing register of arms brokers. The purpose of the Call for Evidence was to seek evidence and comments from business and civil society stakeholders.

This paper sets out the official Government response. It provides:

- The Government's key decisions and conclusions from the analysis of the Call for Evidence.
- An outline of what the Government proposes to do next.
- A full summary and analysis of responses to each question posed in the Call for Evidence paper.
- A brief summary of the responses to the survey of other EU Member States about whether or not they used a registration process to regulate brokers.

Further copies of this report may be obtained by contacting: Edwina Osborne, Policy Advisor, Export Control Policy Unit, Export Control Organisation (ECO), Department for Business Innovation and Skills (BIS).

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Complaints or comments

If you have any complaints or comments about the Call for Evidence process you should contact the Department for Business at the above address.

Government Response

The Government aims to operate one of the most robust and transparent arms export licensing systems in the world. At the same time, the Government is also committed to better regulation, which means regulating only when it is appropriate to do so.

In April the Export Control Organisation (ECO), part of the Department for Business, Innovation and Skills published a Call for Evidence which sought views about the idea of introducing a pre-licensing register of arms brokers. The Call for Evidence consultation was launched on 17 April 2014 and closed formally on 30 May 2014.

At the same time as this exercise, the Export Control Organisation also circulated a short survey to other EU Member States to gauge the practises of other countries and their reasons for maintaining or not maintaining such a register.

The responses to the Call for Evidence reflected two main viewpoints. On the one hand, businesses chiefly favoured maintaining the status quo (namely licensing on a case by case basis only) and cited the downsides of a pre-registration system in terms of additional costs or targeting by anti-arms trade campaigners. On the other hand, civil society representatives and non-governmental organisations (NGOs) advocated the benefits of a comprehensive registration system, based on thorough vetting, eligibility and assessment criteria in order to act as a preventative measure to guard against undesirable brokering activity.

Government's Decision and Next Steps

The Government is committed to better regulation, which means regulating only when it is appropriate to do so.

Having considered the range of responses received as part of the Call for Evidence process, the Government considers that there was no consensus or sufficiently powerful arguments in favour of implementing a comprehensive register.

The Government considers that introducing a register would not be sufficiently beneficial so as to justify additional regulation of legitimate UK businesses.

The Government considers that the UK's existing trade control legislation, which ensures that all applications are assessed on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria, is sufficiently robust in this area. Furthermore, continuing to maintain the status quo of case-by-case licensing assessment is compatible with Article 10 of the Arms Trade Treaty, which requires countries to regulate arms brokering but does not stipulate the means of doing so.

The Government is not convinced that the introduction of a pre-licensing register would substantially enhance the enforcement of brokering controls and that it would place considerable extra burdens on legitimate defence companies. HM Revenue and Customs, Border Force and the Crown Prosecution Service will continue to undertake a wide range of enforcement activity to guard against any potential breaches of the existing trade

controls. All these Government departments will also continue to work with the ECO to raise awareness amongst brokers about trade controls via training and seminar events.

The Government has therefore decided not to take forward any further steps in this area.

Overview of responses

78 replies were received in total. 88.4% of the respondents are businesses, 4.3% are business representative or trade associations, and 1.4% charities or social enterprises (or Non-Governmental Organisations).

Of those who indicated they represented a business, the respondents ranged from micro to large businesses as follows:

Company size	Percentage
Micro (Up to 9 staff)	36%
Small (10 to 49 staff)	23%
Medium (50 to 250 staff)	25%
Large (Over 250 staff)	16%

A significant proportion of the respondents were from micro and small businesses. Any decision taken forward regarding the idea of a register or associated ideas short of a register would therefore need to take careful account of any potential impact on small and medium sized enterprises (SMEs).

Given that ECO's main stakeholders are businesses, it is unsurprising that over three-quarters of respondents were from businesses. Despite this natural bias in those who chose to complete the survey, the responses have not been weighted to allow for differences in terms of the nature of respondents. This is because the objective of the Call for Evidence exercise was not simply to provide a strict numerical answer but to look into all the evidence and opinions concerning the issue of a pre-licensing register.

Annex A – Detailed Analysis of Responses

Background

The Call for Evidence paper was published under the previous coalition Government in April 2014. We sought the views of all interested stakeholders with an interest in arms brokering, including brokers as well as defence manufacturers, contractors, associated service businesses as well as NGOs and members of civil society.

The paper set out how brokering is currently controlled through the licensing system under Trade Control legislation and sought views on the potential benefits and costs of a pre-licensing register. We wanted to consider:

- Whether a register should be established.
- The various models of how a register might work.
- Whether any elements might be implemented on a stand-alone basis without a formal registration system.

The Call for Evidence was consulted in line with the principles on consultations that all Government departments should adopt for engaging with stakeholders when developing policy and legislation. These principles are set out at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>.

The paper comprised a total of 21 questions divided into six areas of focus, considering:

- The benefits of a pre-licensing register.
- Whose details should be included on any potential register.
- The criteria against which brokers might be included on a register.
- How a register might improve enforcement.
- The costs of a register.
- And lastly, any alternative ways to enhance regulation of brokering without a register.

The majority of questions posed were qualitative rather than quantitative in nature. Responses to these questions were analysed and grouped into appropriate categories, based on the strongest view expressed by the respondent in answer to any specific question.

Where appropriate, charts are included to aid analysis and quotes included to illustrate respondents' viewpoints.

A register of brokers

In this section, we asked respondents to consider the arguments in favour of introducing a register beyond the three broad arguments laid out in the Call for Evidence paper itself – namely that:

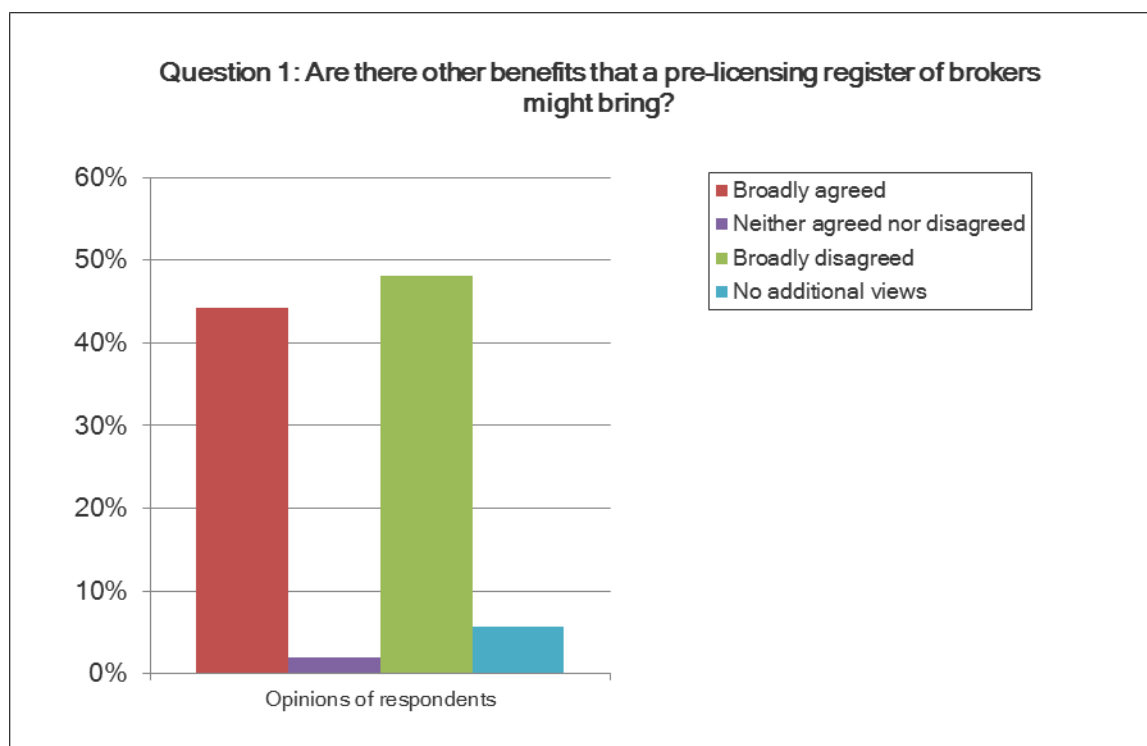
- A publically available list of “authorised” brokers would improve transparency.
- The requirement to pre-register would allow for some form of “vetting” or assessment of the suitability of the applicant to engage in brokering activity.
- It would improve enforcement of the controls.

Analysis of responses

Question 1:	Are there any other benefits that a pre-licensing register of brokers might bring?	52 responses
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Almost half of respondents took a negative viewpoint and considered there to be no anticipated additional benefits (48%) if a register were introduced. In comparison approximately 44% of respondents took a more positive view. This group of respondents foresee a range of additional benefits such as:

- Potentially allowing for better intra-government cooperation.
- Acting as a ‘preventative mechanism’ by helping to prevent undesirable brokering activities from taking place in the first place and making early identification of illegal activity much more likely.
- Reducing the time taken to gain (licensing) approval.



Quotes from survey

“In the UK we are heavily vetted and scrutinised and this will form another part of that process. It is cumbersome and time consuming but on the positive side it will help us prove our credibility and enable to work at a higher level than those who are not on a list.”

“No, as holders of licences are listed by BIS that should be enough. A pre-licensing register would create more paper work for all concerned and the possible positive results are negligible.”

“Registration allows States to judge the reliability of the persons and entities that wish to engage in arms brokering.... Once they have been identified, States can exercise tighter controls on non-compliant licensees and potentially detect illegal and harmful situations.”

A register as a public list of “authorised” or “approved” brokers

This section explored the idea of whether maintaining a public register of brokers would increase transparency. We were also interested in views about who exactly should be included on such a list - should it for instance include former licence holders?

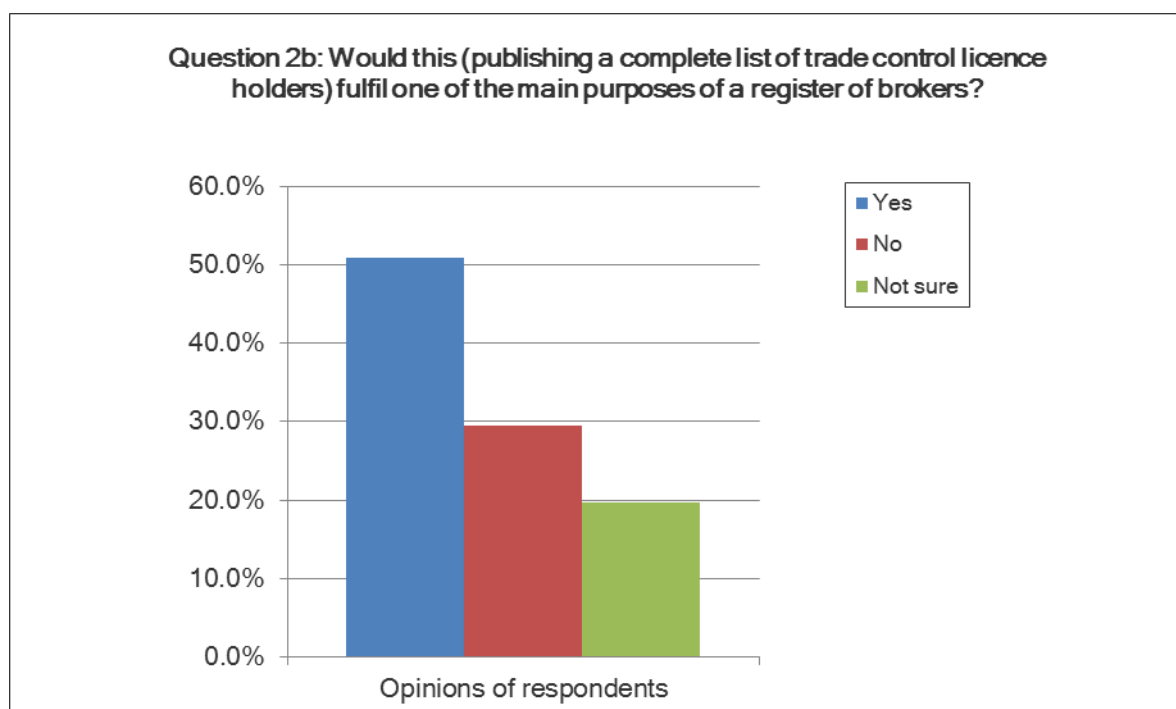
Publishing details on a register also raises questions about commercial sensitivity and confidentiality and we sought views on how such risks might potentially be mitigated.

Analysis of responses

Question 2a:	What are your views on publishing the completed list of trade licence holders?	60 responses
Question 2b:	Would this fulfil one of the main purposes of a register of brokers?	61 responses
Question 2c:	If not, why not?	26 responses

This series of questions sought to capture views on the perceived value of publishing a list of trade licence holders.

29% of respondents were categorically opposed to the idea of publishing such as list, compared to 51% who agreed that publication would fulfil the main purpose of a register of brokers. A further 20% indicated that they were unsure about the exact merits or otherwise for such a list.



Several respondents, who objected to the idea of publishing a list in the public domain, highlighted the risks to health and safety of staff. Other objections were based on the fact that companies could risk face being refused banking services as a result of being listed. One respondent thought that publishing a list would represent duplication of effort, since such information could be made available by making a Freedom of Information request.

Quotes from survey

"I believe it will be a very good way to confirm the legitimacy of specific companies. I believe anyone or company who has operated illegally in the past should not be allowed to be entered on to this list for a minimum of 5 years."

"It may improve business opportunities."

"The Government already hold all the details of legitimate brokers through licence applications. Nobody else needs to hold this information".

"The call to increase transparency is based on the misguided belief that a register of brokers will somehow control the Arms trade more; it will not."

"The problem is that there is a lot of misunderstanding about Arms, and a broad spectrum of brokers involved. I have personally been targeted by activists such as the Campaign Against The Arms Trade, although have only ever arranged transfers of Arms from Europe to North America. They have put personal information and my address online, claiming that I am a very unsavoury character. Aside from engaging lawyers and so incurring expense, there is nothing I can do about it. Local Police even advised me I could expect public demonstrations by such groups on my doorstep! A public register may jeopardise the safety and privacy of brokers. I think it is best if such a register was not in the public domain."

Analysis of responses

Question 3a:	Whose details should be included on a published list of brokers?	60 responses
Question 3b:	How often should such a list be updated?	55 responses

In the event that a list was published, we wanted to understand views on the practicalities surrounding publication in terms of whose details, exactly should be included and how often the list should be updated.

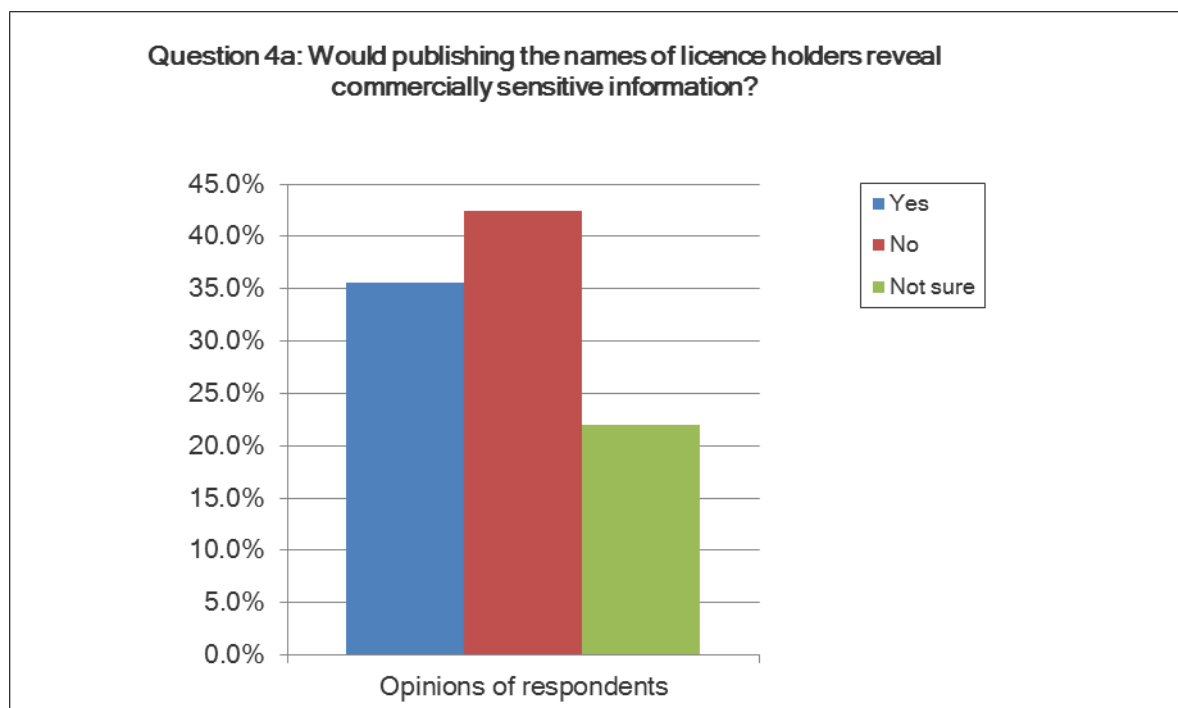
A majority of respondents (71%) thought that the list should refer to current licence holders only compared to those (29%) who thought that both former and current holders should be listed.

The Call for Evidence paper tabled two suggested update periods – either annually or quarterly (which would be in line with either the annual or quarterly reporting processes already in place for release of export control statistics). 42% of respondents favoured quarterly updates compared to 20% who favoured annual updates. The remaining 38% of respondents suggested a diverse range of other update periods such as every 6 months or immediately on a "live" basis as and when new brokers are approved to the list.

Analysis of responses

Question 4a:	Would publishing the names of licence holders reveal commercially sensitive information?	59 responses
Question 4b:	How would this be harmful to commercial interests?	47 responses
Question 4c:	How could these risks be mitigated or reduced?	42 responses

The Export Control Organisation is extremely mindful of the need to maintain a balance between commercial confidence and transparency. The paper therefore wanted to understand any particular concerns in terms of commercial sensitivity. With regard to Question 4a, 42% of respondents did not consider that publishing licence holder names would reveal commercially sensitive information compared to 36% who did and 22% who were unsure.



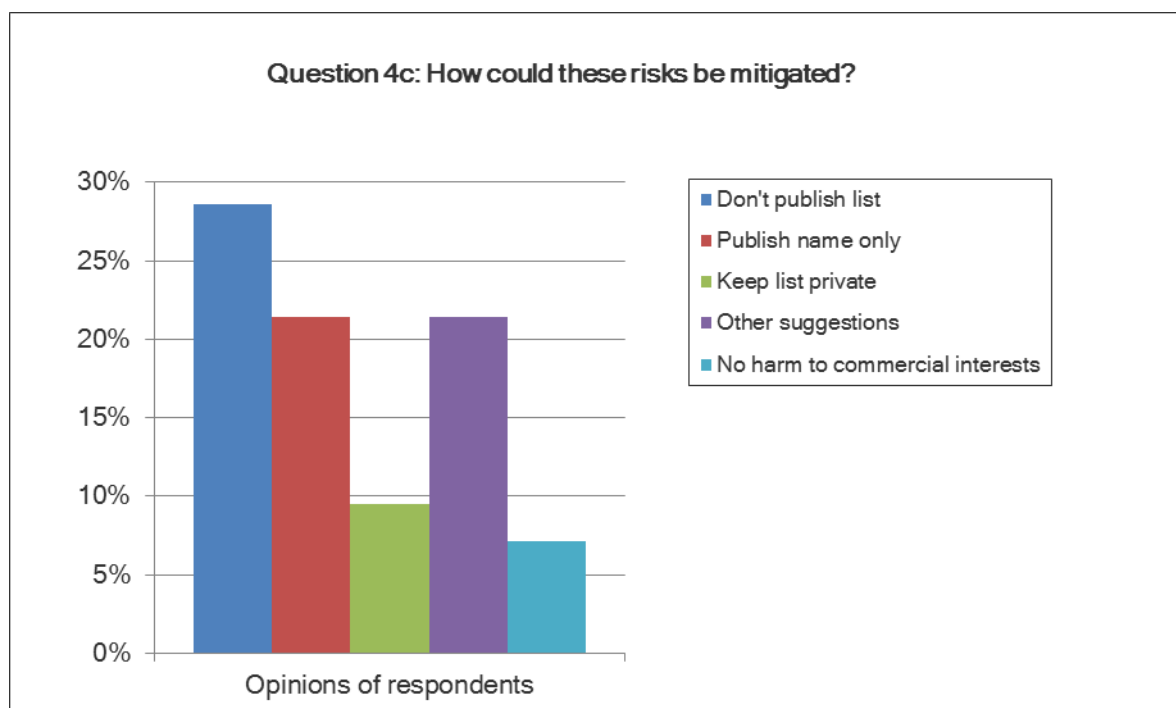
Question 4b delved deeper into considering any potential issues. 26% of respondents considered that there were no specific concerns, compared to 66% who cited concerns. The remaining 8% of respondents were either unsure or did not answer the question.

Amongst those who raised concerns, these were chiefly centred on those surrounding the risk of business competitors obtaining sensitive information and the health and safety risk to staff due to targeting by activists.

Response categories	Percentage response
Competitor intelligence risks	34%
Security and ‘direct action’ concerns	15%
Potential for risk but dependent on exact format and nature of published data	15%
General extra business burden	2%

Responses to question 4c ranged from those in favour of publishing a register and who see no harm to commercial interests to those diametrically opposed to the idea of a register. The main two suggestions to mitigate any risk (besides not publishing a list) were to publish the name of the broker only (21%) or to keep the list private or unpublished (10%). Additionally 19% of respondents suggested a range of other ideas, such as allowing each company an opt-out if they didn’t want their details published.

In the context of the Government’s obligations under the Freedom of Information Act (FoIA), creating a register but not publishing it might be problematic. The Government would undoubtedly receive requests under the FoIA for disclosure of the register. Any request would have to be treated on its own merits at the time it was received taking into account, where appropriate, the public interest in disclosure against the public interest in withholding the information. In addition, any decision to withhold the information could be appealed to the Information Commissioner and ultimately to an Information Tribunal. In these circumstances it is not clear that we could continue to maintain the register as a “private” document. Likewise providing an opt-out to companies would defeat the object of any published list.



Quotes from survey

“The UKWG does not believe publishing the names of licence holders would reveal commercially-sensitive information. We also note public reporting on government defence and strategic exports currently does not link specific licence holders with specific licences, nor their value. Experience suggests that improvements in transparency in recent years have had no measurable impact on commercial sensitivity or provided clear economic or commercial costs to the defence industry. We note that the trend is to increase transparency in the field of arms transfer licences, be it through parliamentary enquiries, published reports or FOI requests”.

“Whilst its commercial impact is difficult to gauge, it could have disastrous consequences should the details of persons and premises become known to the public. This information could be used by Terrorists and like-minded individuals to identify persons who have access to Weapons and Ammunition, potentially putting their lives at risk. It will also identify sites where weapons and ammunition could be stored”.

Analysis of responses

Question 5a:	What are your views on the idea that a register brokers might be seen as a “white list” of approved UK brokers?	54 responses
Question 5b:	On balance, would this be a positive or negative development?	59 responses

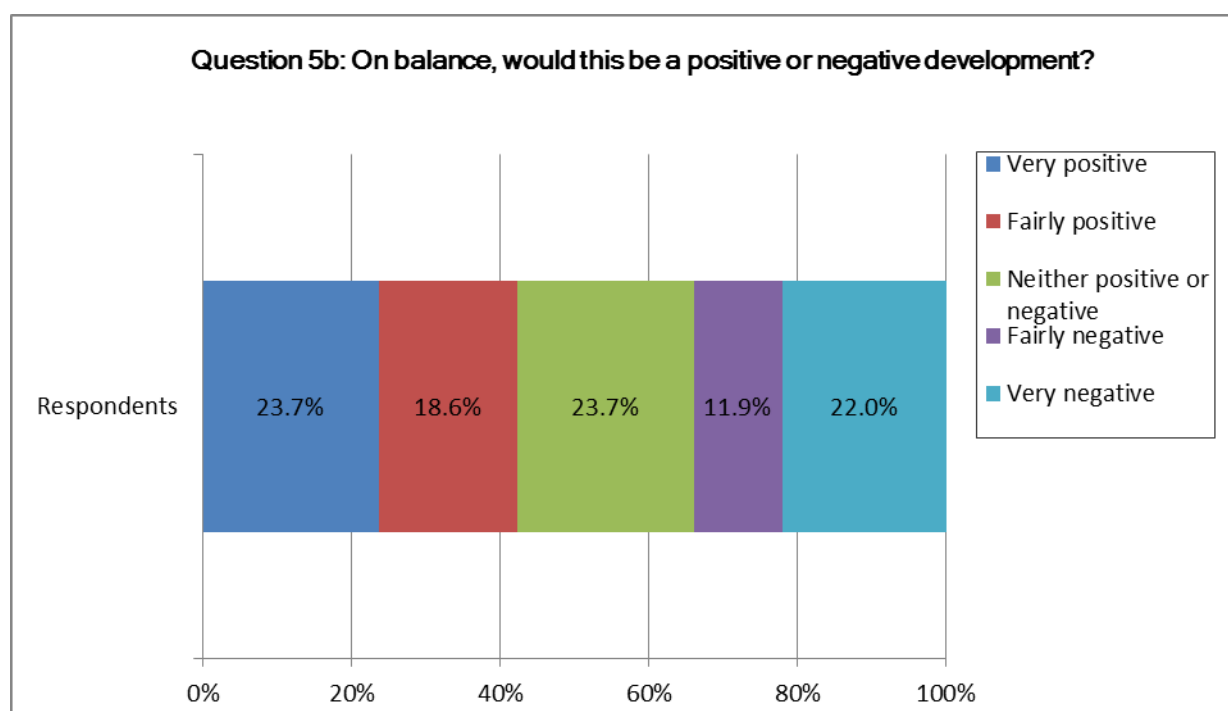
Question 6:	Would there be any benefit to businesses of a register being perceived as a “white list”?	51 responses
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One of the Government’s long-standing concerns regarding a register is that it would be seen as a list of “Government approved” brokers and that foreign parties might simply rely on the presence of a UK entity on the register as a measure of their suitability to conduct certain transactions rather than making a detailed assessment in each case. As such the register might be seen as a “white list” of brokers. While this might have reputational risks for Government we wanted to understand whether businesses saw any benefits in a “white list” (for example, being able to use it as a marketing tool). We therefore wanted to understand respondents’ views on this particular issue.

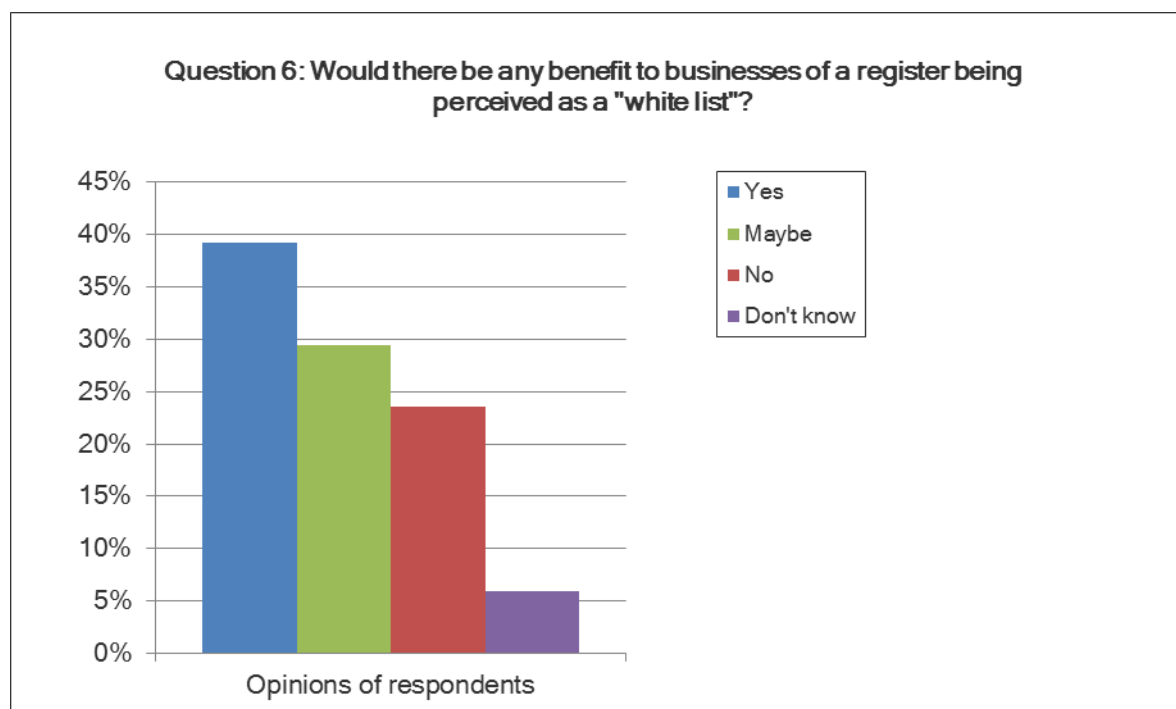
Responses to Question 5a ranged from those who clearly favoured the idea of being on a “white list” to those who thought the idea is flawed. A number of respondents maintained fundamental objections to the idea of publishing a register.

Overall however, there is no consensus on whether the existence of a “white list” is a good idea or not. Opinions were split fairly evenly between those who took positive or negative viewpoints. 26% thought that the notion of having a register, rightly or wrongly implied some form of government approval. 33% of respondents favoured the idea of having such a “white list” compared to 11% of respondents who considered this to be a flawed concept. Those advocating the idea of a register considered the fact of a “white list” to be a manageable risk (7%). A further 9% of respondents expressed other general opinions such as the need for a quick process for dealing with complaints or queries surrounding publication of a name on the list.

This lack of consensus is mirrored in the responses to question 5b, as shown in the chart below:



Question 6 asked specifically if businesses perceive any benefit from being on a “white list”. 39% thought there would be benefits compared to 24% who didn’t see any benefits. 29% took a middle view and could see pros and cons such as the risks of illegitimate brokers being driven further under the radar and the extent of any checks to be added to a register.



Quotes from survey

“It will immediately become that, even if there is no approval offered by the UK Government. It should also be noted that being on the list in no way whatsoever means that the broker will apply for a trade licence and act legally. If I were an illegal broker I would submit my name for the register, use my inclusion on the register as a mark of UK Government approval to gain business, and then carry on trading illegally.”

“Naturally any list will lend itself to this. Those with less understanding of the requirements or the list itself will see it as a Yes / No question. If you are on the list you must be ok. If you are not on the list you must have something to hide. Whilst the latter may have some truth, the former does not. I would fear that “the register” could be used against BIS in the event that someone on the register falls foul of the law. The argument “you (BIS) approved them”...”

“If vetting, monitoring, auditing and compliance functions are effective there should be little risk of this. The current system which allows brokers to obtain licences without prior vetting is the greatest risk, as a broker could build up a reputation as a legitimate arms dealer and then go on to broker illegal transfers with other states or government agencies. For example, indeed, because UK agencies failed to cooperate and exchange information, Gary Hyde was able to sell weapons and ammunition to the British police and the Ministry of Defence until 2011, notwithstanding the fact that, since 2007, he was being investigated

by the Revenue and Customs Department in connection with transfers of AK-47s to Nigeria. Public disclosure and effective vetting and compliance would mitigate against this risk.”

A register as a means to only permit “qualified” persons or companies to conduct brokering activities

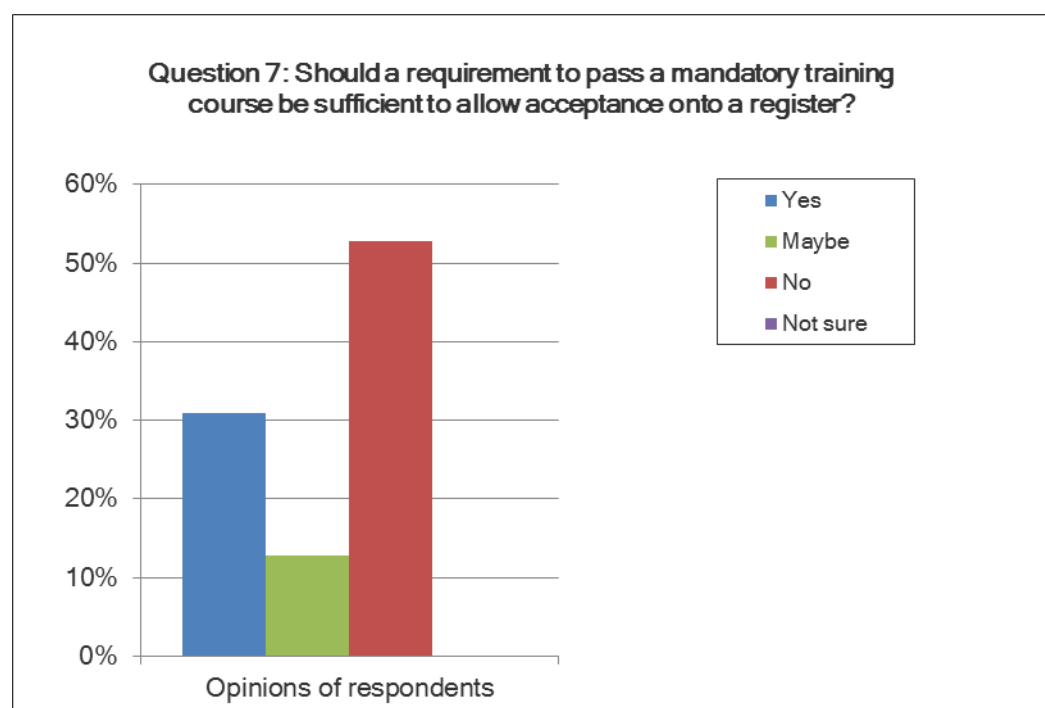
This section sought views on the idea of introducing some form of mandatory training or agreed criteria prior to acceptance on the register.

Analysis of responses

Question 7:	Should a requirement to pass a mandatory training course be sufficient to allow acceptance onto a register?	55 responses
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Over half of respondents (53%) answered that there should be no mandatory training requirement associated with any registration system. This was principally the view of business respondents who queried the value of mandatory training on the basis of cost and value.

Civil society and NGO respondents, however, emphasised that training should be a mandatory requirement as part of a full register with vetting procedures.



Quotes from survey

“Passing a mandatory training course must be an essential requirement for registration. Moreover the Government should also introduce mandatory ‘refresher’ training that forms part of a professional standards certification and accreditation system in order for anyone to remain on the Register. We believe that at a minimum, such training should be required at least every three years, and brokers should be required to have at least one designated staff member who has undergone the training within the previous three years. The Government should also consider offering additional training modules for those involved in associated services such as shipping and logistics, so that the professional standards required on the Register are tailored specifically to encompass the range of service provisions that fall within the regulatory framework for arms brokering.”

“Yes, clearly a mandated training course would be beneficial to all licence holders, as this ensures full compliance with regulatory bodies. However acceptance criteria onto the register should not be on the basis of passing a training course. Company credentials and adherence to some certain security protocols should count.”

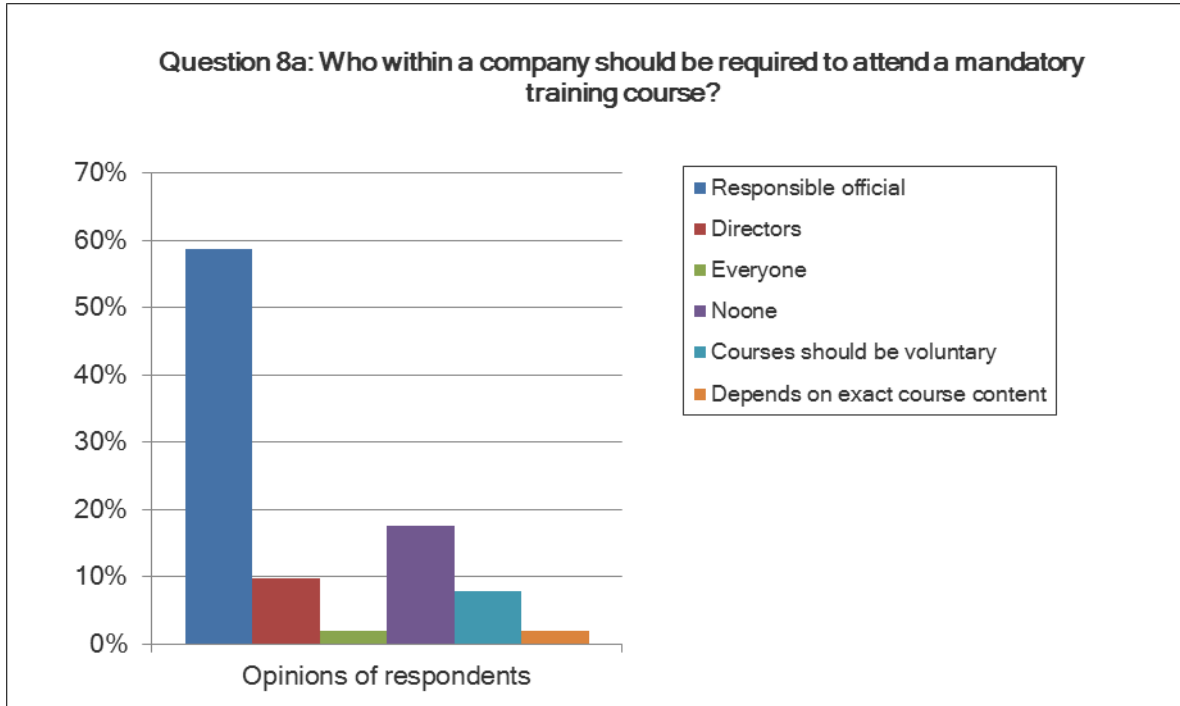
“No. Definitely not. Attending training is massively time-consuming and expensive. Usually left to minions in larger companies and devastating to the productive entrepreneurial time for a small 'one-man' business. The penalties for non-compliance are already draconian and grossly unfair compared to non-compliance consequences for any other business. Therefore it is reasonable to let the business owners/managers decide for themselves whether they need training to avoid these penalties or whether there are more cost-effective ways (internet? just reading the legislation?) of informing oneself.”

Analysis of responses

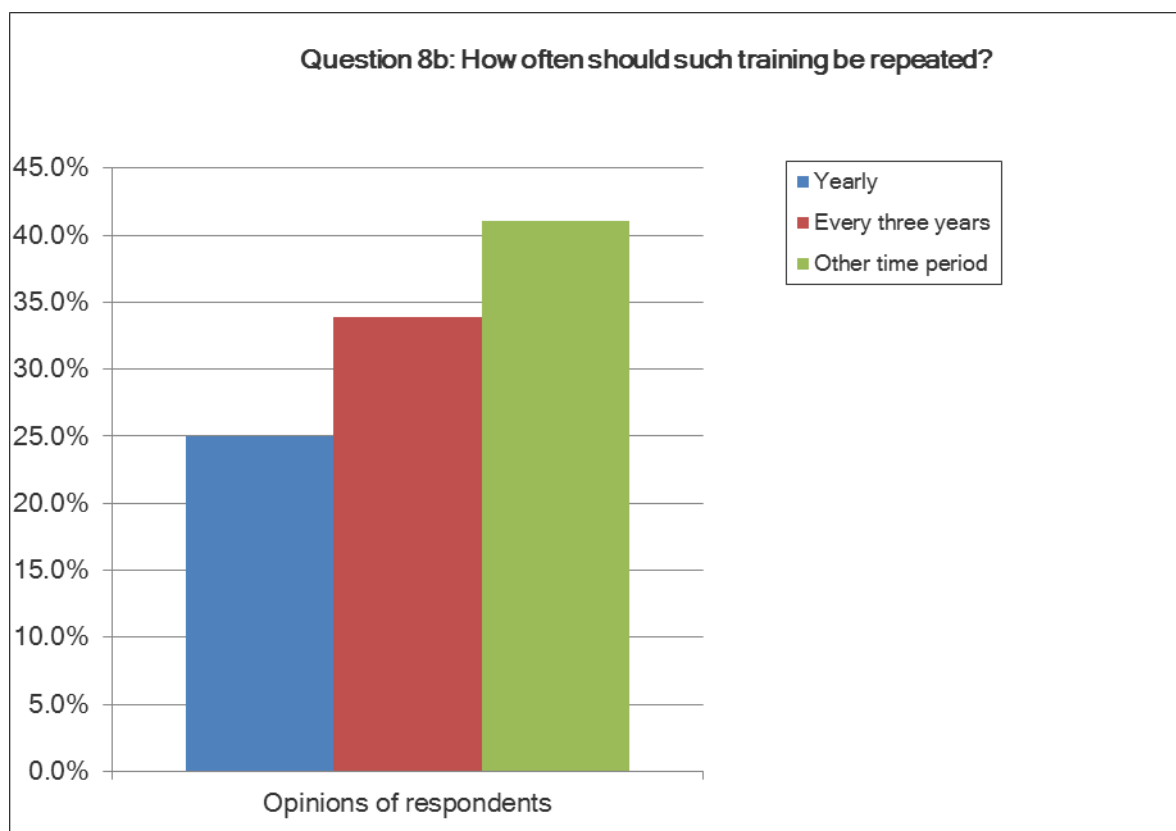
Question 8a:	Who within a company should be required to attend a mandatory training course	51 responses
Question 8b	How often should such training be requested	56 responses

Questions 8a and 8b asked respondents to consider the practicalities surrounding any potential introduction of mandatory training for brokering.

When asked who within the company should attend such training, 59% suggested that a responsible official (not specified) should attend such as the Shipping or Export Control Manager. 10% of respondents thought that directors should be required to attend and 2% indicated everyone within a company should be expected to receive training. A running theme throughout the responses also came from those fundamentally against the idea of the register who indicated that the courses should be either voluntary (8%) or that nobody should be required to attend (18%).



In response to Question 8b in terms of the timeframe for delivery for courses, there was no consensus and responses varied considerably. The tabled time periods in the question were either yearly (25%) or every three years (34%). 41% of respondents indicated that they favoured other timeframes. The responses in this category were very varied and ranged from 'never', to 'bi-annually' and also to 'each time the regulations changed'.



Quotes from survey

“If it is deemed necessary to have mandatory training then this is a very difficult question. If a company is to be registered as a broker then everybody who may be involved in brokering (whether they know it or not) would have to be trained. With the ridiculous “chicken and egg” brokering rules at present i.e. you cannot negotiate transactions without a licence but you cannot get a licence until you have negotiated - even a clerk supplying a pricing sheet to a customer could be classed as brokering.”

“A training course is only marginally relevant. The sort of people who like to sell machines for killing people for a living will use the information they gain from the course to seek to undermine the effect of the legislation.”

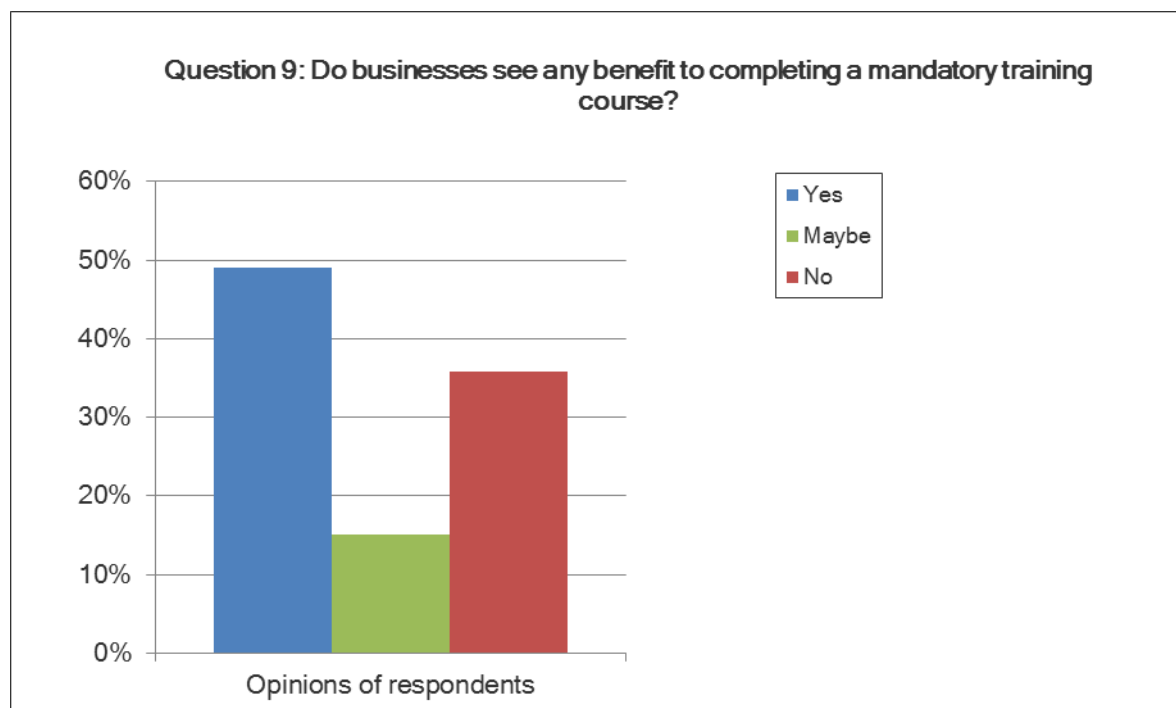
“No comment as I am against the idea of a register or publicly available list of brokers.”

“The person(s) registered with BIS on SPIRE and include a company director.”

Analysis of responses

Question 9:	Do businesses see any benefit to completing a mandatory training course?	53 responses
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Respondents were asked to consider any benefits of attending a mandatory training. Whilst there was still a considerable degree of scepticism and antipathy towards the idea of a register and mandatory training courses, 49% respondents said they could see benefits with an additional 15% falling into the 'maybe' category.



Quotes from survey

"NO NO NO. Every training event I have ever attended has taken 10 times as long as it needs to and rarely provides any insights that cannot be obtained by an intelligent reading of published material. The government could help by cutting down the excessive repetitiveness of much of what they publish so we only need to read it once. Then we will be more likely to read it carefully and not distracted by wondering if there is anything new amid the piles of old stuff."

"Yes - Keeping the business aware of the controls, changes and need for the controls is vital to compliance."

"The problem with courses is often the information is not adequately disseminated throughout the company. They can be costly and not very useful. When someone leaves or moves department any knowledge goes with them."

"Certainly training is useful, but as mentioned in 7, I don't think this needs to be mandatory."

Analysis of responses

Question 10:	What criteria might be suitable as a basis for determining acceptance onto a pre-licensing register of brokers?	52 responses
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Respondents put forward a range of suggestions for criteria that might be used to determine acceptance onto the register. There were no pre-set answer categories for this question and as with other questions, the responses were categorised into broad themes based on the strongest view expressed in any submitted response text. The main themes centred on ensuring that those admitted to any potential register were assessed in terms of:

- The broker's compliance track record (37%).
- Some form of vetting procedure (25%).
- General workable criteria (8%).

The joint response from the UK Working Group on Arms (UKWG) was particularly detailed in advocating a comprehensive 'fit and proper test' as part of the vetting process. They envisaged such a process would include an assessment of relevant criminal records, violations of export controls as well as taking account of compliance and audit systems in place. The group's response also extended into suggestions surrounding sanctions for any brokers found to be in breach of the law. The UKWG were also mindful of the need for any appeals process to counter any potential legal challenges that might result from individuals or organisations whose details might be removed from the register, if in breach of the law.

The UKWG's response was paralleled by that from the Export Group for Aerospace and Defence (EGAD) who also emphasised the importance of "clear, objective and demonstrable criteria with negligible scope for potential future legal challenge", which remained a strong risk.

Quotes from survey

"Applying for acceptance should be a simple process only limited by simple criteria such as age, no convictions for related activity etc. A signed statement to say you understand and will fully comply with the regs is all that should be required."

"Probity should be the only criteria. Someone with a criminal record would obviously be disqualified (probably from police RFD licences and certainly from Home Office Section 5 authority). But, beyond that, people who are reasonably suspected of aiding and abetting those who might wish to harm us (enemies and prospective enemies) should not be given official endorsement. Clearly potential terrorist supporters should not gain the credibility that might make it easier for them to assist hostiles.... what about the others who may not be convicted or publicly exposed - how do you justify refusing them? It's back to the controversial problems of security services, their sources and secret court sessions in defiance of the tenets of British justice. If it is left to discretion of officials then they'll refuse to register me for calling them stupid and petty."

Analysis of responses

Question 11:	What is the relevance of those criteria to assessing the suitability of a person's involvement in the brokering of military goods?	50 responses
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Having considered what criteria might be used in connection with any proposed register, respondents were then asked to consider the effectiveness of such criteria in assessing whether a broker was suitable to be added to a register. The largest proportion of respondents (36%) held the criteria in great weight and considered that they would be an indicator of trustworthiness, experience and compliance. In contrast, 16% of respondents did not consider the criteria to be a guarantee of compliance.

Quotes from survey

"We consider that the criteria test would need to be reasonable and proportionate to any risk posed by the providers of any ancillary services".

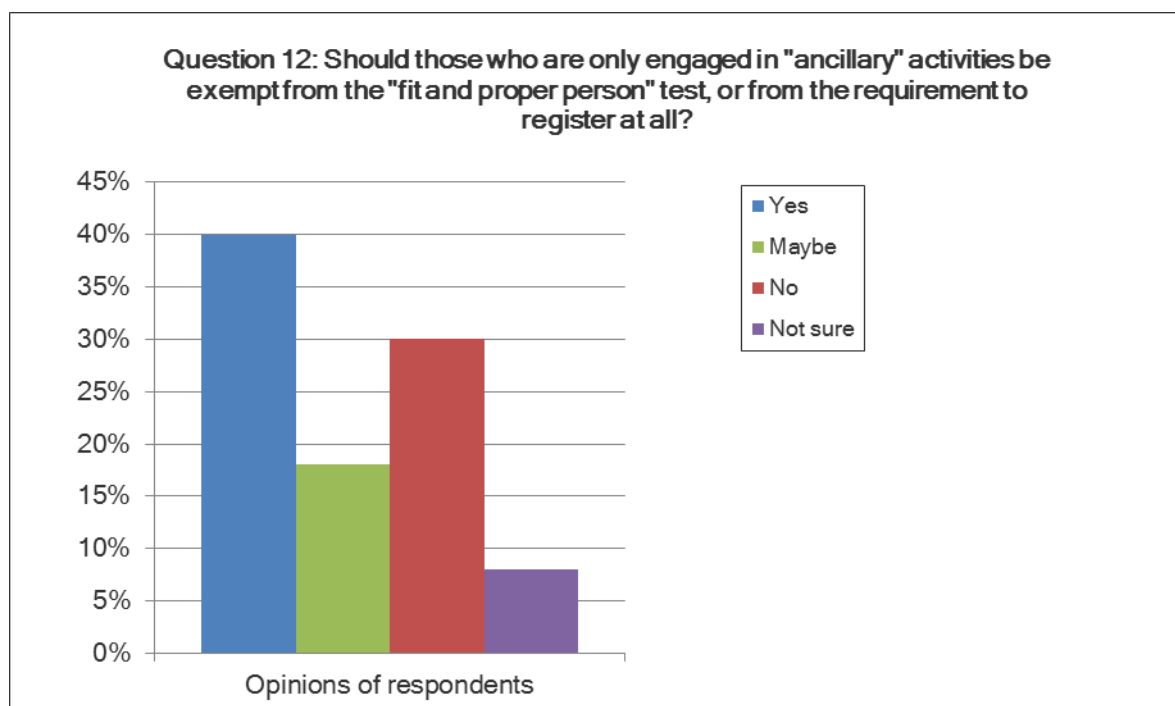
"Those who have breached licence terms or brokered military goods contrary to Export Guidance e.g. to oppressive regimes should be identified as potentially unsuitable for inclusion in the register."

"Apart from the basics above there is no way to assess the suitability of a person to broker. Why is it thought that a person's involvement in brokering military goods requires some form of suitability assessment when no other trade activity does. The person is simply the broker - not the end user. The Government already assesses the suitability of every licence application based on what is being brokered not who the broker is."

Analysis of responses

Question 12:	Should those who are only engaged in "ancillary" activities be exempt from the 'fit and proper person' test or from the requirement to register at all?	50 responses
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There was no overwhelming consensus as to whether those involved in "ancillary" activities (namely provision of insurance or trade and transportation) should be exempt or not from a register. 40% of respondents indicated that such organisations or companies should be exempt compared to 30% who disagreed. The remaining respondents were undecided, or required further definitions of who fell into the category of a providing an ancillary service, to be able to answer properly.



Quotes from survey

"The London Market view is that the fit and proper person test should not be applied to the providers of 'ancillary' services, such as the provision of insurance cover or brokering activities, as the entities who are involved in the provision of these activities will all be firms who require regulatory authorisation from the Financial Conduct Authority (FCA). The fact a firm has been duly authorised, and continues to be supervised by the FCA should be sufficient evidence that a firm remains capable of demonstrating 'fitness and propriety'. Our view is that insurance services should not be part of the registration process for reasons expressed elsewhere in this response".

"No, it should not just be the manufacturer or supplier of the product if we are to be seen serious about "Brokering" compliance".

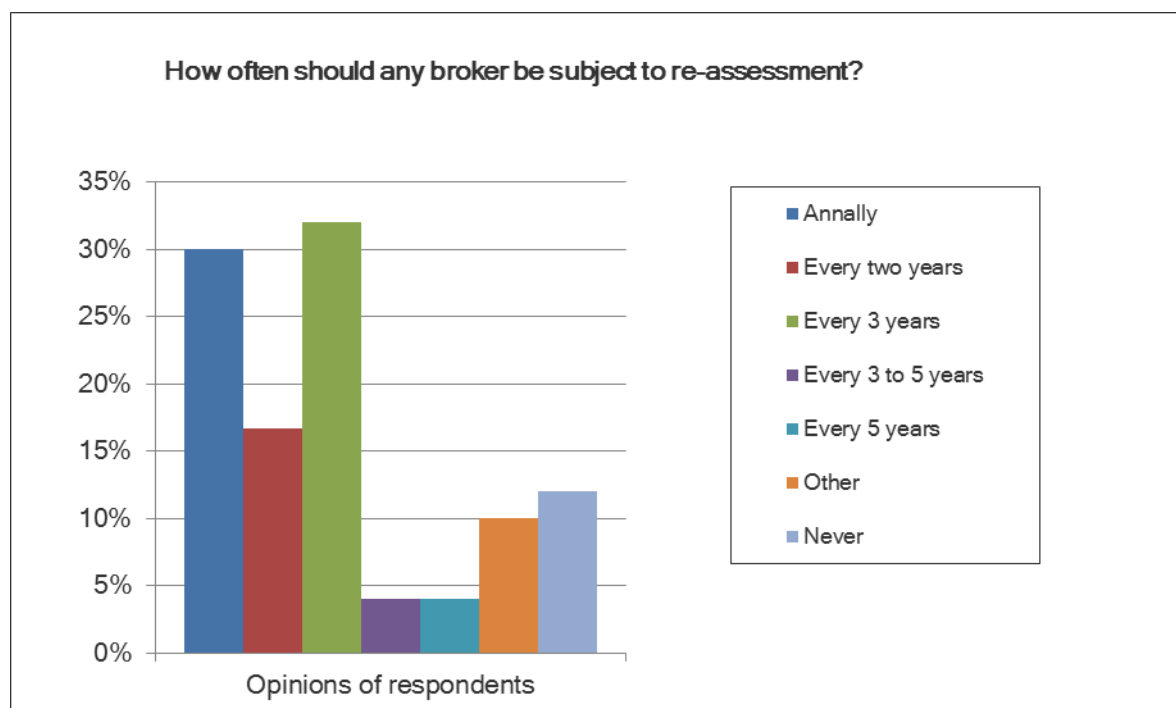
"Everybody should be exempt. It's a stupid idea!!"

Analysis of responses

Question 13:	How often should any broker be subject to re-assessment?	50 responses
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Another key question in terms of the practical operation of any proposed register is how often a broker would be subject to re-assessment to for continuing inclusion on the register, if one were to be introduced. There was no overall consensus with responses ranging from those who thought brokers should be re-assessed annually (30%) to every 5 years (4%). 12% of respondents considered that brokers should never be reassessed in

line with their consistent objection to the basic notion of the register throughout their responses to the whole paper.



Quotes from survey

“See previous answers. The UKWG believe that the Register would require an ongoing system of checking compliance, auditing and monitoring activity. We believe that all registered entities should be required to undertake and pass mandatory refresher training as part of professional standards and certification process. All registered entities should also be subject to regular compliance visits.

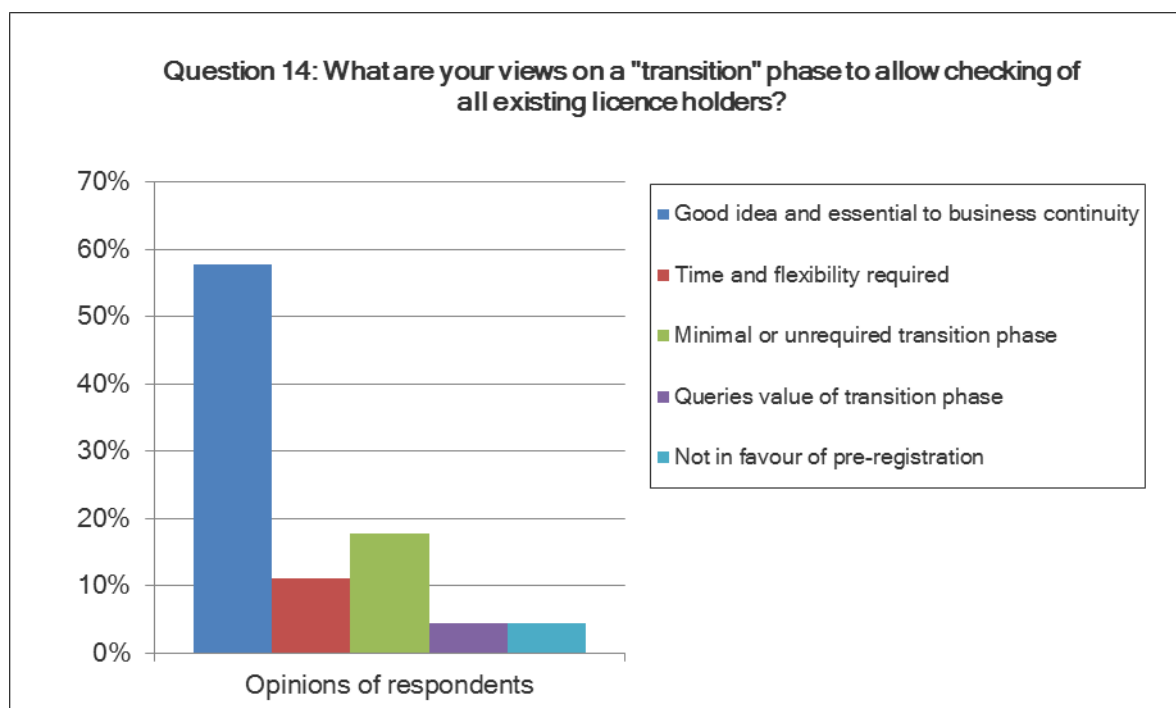
If the Government rejects the idea of follow mandatory re-training, at a minimum any register should set a specific time limit for any entity to remain on it without having to re-register or renew registrations. The UKWG believes this should be set at of three years.”

“Integrated as part of BIS's audit programme”

Analysis of responses

Question 14:	What are your views on a “transition” phase to allow checking all existing licence holders?	51 responses
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This was another question asked to determine the practicalities surrounding the potential introduction of a register. If the idea to implement a register was pursued then 58% of respondents thought that a transition phase was a sensible and practical suggestion. A very small number of respondents (4%) didn't see the value of any transition phase.



Quotes from survey

"This will be necessary as with the implementation of any comprehensive licensing framework."

"A competent government should be able to do this in two weeks."

"There has to be an adequate transition phase for the smooth introduction of such a system, so that companies (and customers) can continue to operate legally, and ensure that the UK Government has adequate time to ensure that it is introduced effectively, within its own resource constraints."

"Aren't they checked already? The current system works so why change it?"

Analysis of responses

Question 15:	Are there any other requirements besides the need to attend compulsory training and/or pass a "fit and proper person" test which would determine whether a person or entity is accepted onto a register?	45 responses
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The final question in this section about training requirements and more broadly the criteria on which to base a company or individual's acceptance onto the register, asked for any additional requirements that ECO might not have already considered as tabled in the Call for Evidence paper. 44% of respondents indicated that no further requirements were

needed. The remaining respondents provided suggestions which were grouped into the following response categories:

- Activity history and criminal record (20%).
- Financial and business integrity (11%).
- Other suggestions (16%) including 'business need' and maintaining a 'simple and straight-forward process'.

Quotes from survey

"In our view, and bearing in mind that this is not going only to affect the actual traders, themselves, but also those who undertake supporting ancillary tasks, as well as the customers, along with those UK expatriate nationals whose activities may make them subject to the UK's Trade Controls system, and so as to avoid introducing an unnecessarily and disproportionate additional burden, then it would need to be kept as simple and straightforward as possible."

"A loaded question!! - Training is unnecessary as the law is clear. "Fit and Proper Person Test" can only really take into account criminal past - Brokering does not involve taking ownership of arms or ammunition. A standardized audit system would work well - simply listing transactions of goods (with description), between which countries, companies and individuals, with a date of the onset of discussions to the conclusion of the business. Finally, submission of an "I have read and understood" statement relating to the law and related procedures establishes that an individual knows what they are doing and the implications of any transgressions."

"As the parameters of the 'fit and proper person' test are not yet defined it is difficult to respond to this. If it is comprehensive enough and includes all the elements covered in the call paper it should be sufficient."

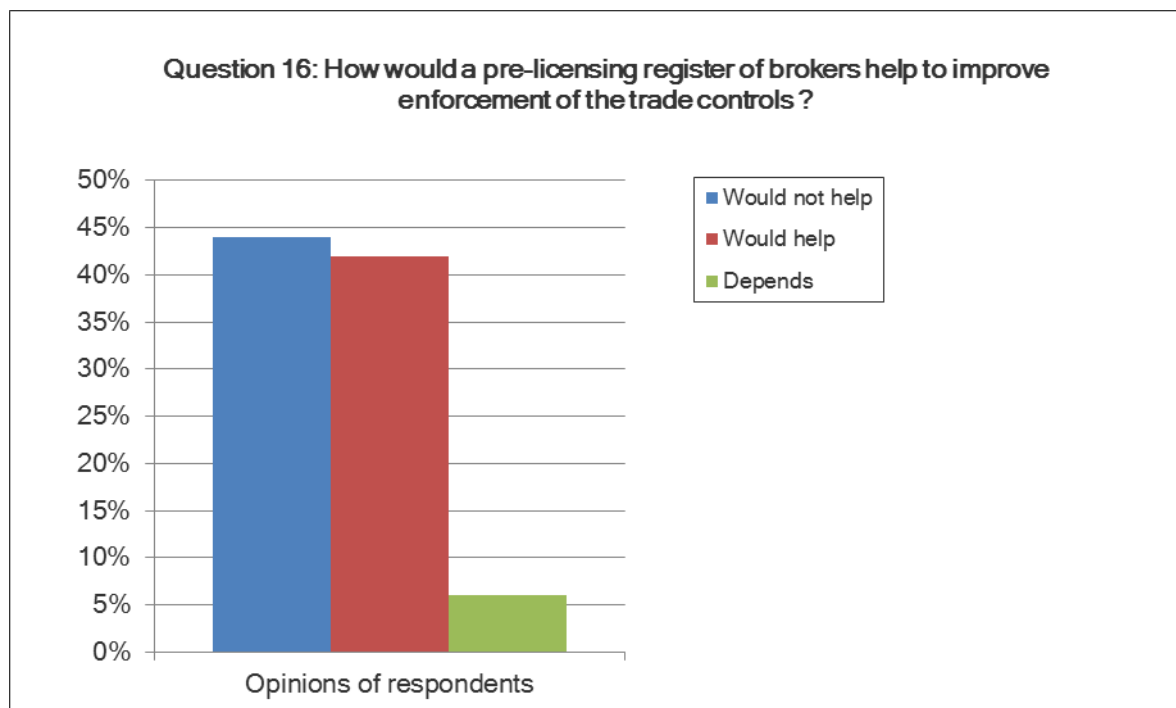
A register as a tool to improve enforcement

In this section we sought views on one of the main arguments cited by proponents of a register – namely that a register would drive up standards of compliance with trade controls.

Analysis of responses

Question 16:	How would a pre-licensing register of brokers help improve enforcement of the trade controls?	50 responses
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Again there was no consensus in response to this question with respondents split. 44% of respondents believe a pre-licensing register would not help improve enforcement compared to 42% who think it would help.



Quotes from survey

“Apart from the lack of enthusiasm of the response to the previous proposals to the Government, there is the fundamental reality that, those who wish to conduct illegal activities will do so, regardless of any such register or similar requirement.”

“Standards of compliance would be greatly enforced by acceptance onto the pre-register/licence”.

Costs of a register

Setting up and maintaining a dedicated register would entail costs for both Government and business. In this section we sought views on anticipated costs.

Analysis of responses

Question 17:	Are there any other costs or problems that a pre-licensing register of brokers might bring?	50 responses
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Respondents were asked the downsides or problematic issues that might be associated with the introduction of a register. The responses were grouped into a range of themes as follows:

- Added financial and administrative burdens (26%).
- Cost of potential lost business (14%).
- Training costs (10%).
- Risk of legal liabilities (4%).

Quotes from survey

“Yes the costs will be significant for micro businesses and start-ups. The Government will have to form a Department to handle the new section which will be drawn up to regulate a group of business that are not doing anything wrong. This will lead to cutbacks in the dredging of Somerset.”

“A registration fee should be applied to cover costs of vetting and maintaining the register.”

“It depends on what these costs might be, certainly the administration would add to this but to what extent would this remove money from other government regulated areas. If there is already an existing record maintained, then surely this is the basis of what should be used, ie: not to reinvent the wheel.”

Analysis of responses

Question 18:	What regulatory burdens might be reduced or removed altogether to compensate for the costs imposed by a register?	45 responses
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In light of a consideration of the costs that might result from introducing a register, all respondents were asked to consider if any regulatory burdens might be reduced or removed instead. 22% didn't express an opinion, 20% could envisage no reduction in regulatory burdens and 11% of respondents maintained their objections to the register in principle. The remaining respondents gave a range of suggestions which were grouped into broad themes, the most common of which were as follows:

- More focused compliance function (9%).
- More focus on destinations of goods of major concern (7%).
- Faster licence processing times and upgrading SPIRE (7%).

Quotes from survey

"I believe the original intent of the brokering regulations may not have been specific enough and has captured a wider group of companies and products that was intended. Perhaps we could narrow down the specific product or destinations that would not fall under the cover of the trade controls."

"The primary purpose to the register should be to enhance existing controls over arms brokering and ancillary services. The implicit assumption is therefore that it would require some additional regulation as a necessary condition of improving and controls oversight of arms brokering. It is wrong in principle therefore, to assume that registration would or should result in a reduction of export control burdens elsewhere."

Enhancing regulation of brokering without a register

This final section sought views on whether there are any alternative approaches to avoid the costs of setting up a dedicated register.

Analysis of responses

Question 19:	What are your views on implementing some of the ideas explored in this paper through the licensing system rather than through a dedicated register?	48 responses
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With this particular question, respondents were asked to consider alternative options to a register. As with the responses to previous questions respondents fell into two distinct camps – with those in favour of a register and those against. Respondents on behalf of the NGOs advocated a register as the best way forward. Similarly, brokers and companies continued, unsurprisingly, to maintain a call for the status quo.

Quotes from survey

"If it is not broken, don't fix it. Controlling through the current system seems to be meeting all the requirement called out by the original trade control."

"I would prefer the register, this would be a step forward. If no register I think the benefits would be almost completely diminished"

Analysis of responses

Question 20:	Which of the ideas explored in this paper would be most important to take forward in the absence of a dedicated pre-licensing register?	46 responses
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To ensure comprehensiveness, the paper gave respondents the opportunity to put down any other sensible and constructive suggestions as alternatives to a register. Understandably this question generated a range of responses such as more training and awareness activities, and enhanced enforcement and compliance. The main suggestion was to focus more on training activities (26% of respondents). 7% of respondents suggested enhanced enforcement and compliance assessment and 7% of respondents suggested other publishing options such as recording a statistical breakdown of brokers by business sector.

Quotes from survey

“More clarity of what the definition of a broker is and the services that a broker can provide.”

“The introduction of a “fit and proper persons test” and mandatory training, certification and accreditation should be the minimum requirements for eligibility export licences relating the brokering services. The same minimum standard should be applied to anyone bidding for government-approved contracts.”

“Awareness raising is utterly essential, with or without the introduction of such a registration system.”

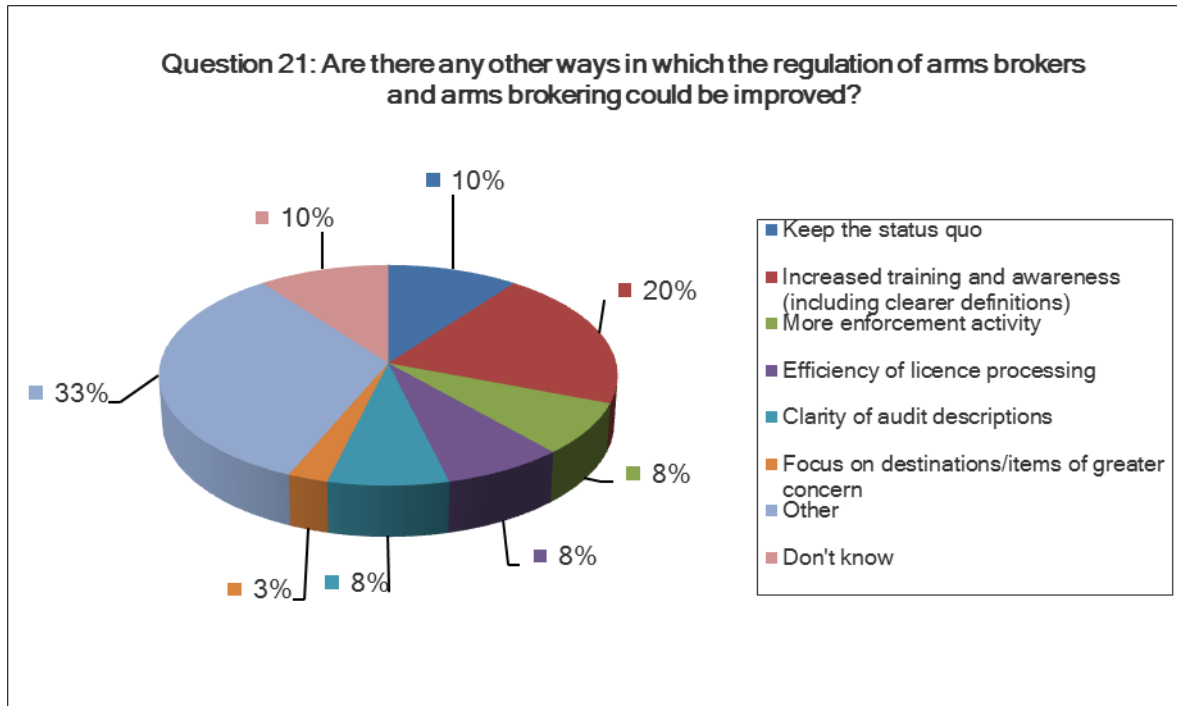
Analysis of responses

Question 21:	Are there any other ways in which the regulation of arms brokers and arms brokering could be improved?	43 responses
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This question provided a final opportunity for respondents to raise any essential points. As with the responses to the previous question, the responses can be broadly categorised into calls for:

- More training and awareness activity (including clearer definitions of terminology). (20%)
- More enforcement activity (8%)
- Further efficiencies in licence processing (8%).

12% of respondents suggested maintaining the status quo and 33% tabled a broad range of other improvements such as considering the issue of whether brokers should be charged for licence applications and whether an agency would be better placed to act as the UK's strategic export licensing authority. These responses clearly reflected the respondents' general daily concerns with the licensing system.



Quotes from survey

“Demonstrable enforcement of existing brokering controls at defence exhibitions. It is of serious concern that repeated violations of promotion of Category A goods at defence exhibitions have resulted in zero prosecutions or any demonstrable activity on behalf of the UK to enforce this area of law. Such controls could be enhanced by the introduction of civilian penalties and fines, rather than automatically requiring criminal prosecution.”

“The regulation is only as good as the people who abide by it. No amount of increase in regulation or "transparency" will improve this. The fact is that countries and people will buy and manufacture these goods; that will not change.”

“They will use brokers to facilitate the deals. If the brokers are UK citizens and law abiding they will follow the regulated route and the UK Government will have full right of veto over the deal. If the brokers are not law abiding they will ignore the system and broker the deal regardless. No amount of "transparency" will change that. The call for "transparency" is driven by groups that either cannot see that simple fact or that are determined to attack those brokers carrying out legitimate trade in items they have a moral objection to.

Annex B – Survey of other EU Member States

Alongside the publication of the Call for Evidence paper, a short survey was also conducted of other EU Member States with the aim of learning lessons from those Member States who already operate a register of brokers, as well as understanding the reasons why other Member States have chosen not to operate a register.

Responses were received from five Member States in total. Two of the Member States, namely Germany and Austria, indicated that they did not currently maintain a register of arms brokers. The reasons for not having a register were given as trying to avoid creating incentives and the policy stance that brokers should apply for individual licences (in the case of Germany) and due to the small number of arms brokers which means that they are managed within existing systems and processes (in Austria).

The remaining three respondents were Portugal, Sweden and Estonia, each of which operates a register in addition to a requirement to obtain a brokering licence for specific brokering activities.

Each Member State was asked further supplementary questions as follows:

- 1. Are there any restrictions on who may register as a broker, or any formal requirements that the broker must meet in order to be accepted onto the register? For example: Are persons with a criminal record excluded? Must the broker have an internal compliance programme (ICP) in place? Must the broker undertake any formal training? Please provide as much detail as possible.**

Under the Portuguese model, “economic operators”¹ must firstly be authorised. This includes a security clearance and a criminal record check, alongside a technical, human and financial assessment, with evidence provided by the organisations concerned that they possess the expertise to engage in the trade of military goods.

Estonia’s registration model only applies to Estonian citizens or a person living permanently in Estonia and not to those registered overseas. There are no requirements for a broker to have an internal compliance programme in place or for formal training but previous track records are considered. There are also clear guidelines on who might be refused admittance to the register, such as whether the applicant has knowingly supplied false documentation.

Sweden’s response emphasised that they apply a case-by-case licensing procedure for brokers, which they stated was “in practice considered equivalent to maintaining a

¹ The term “economic operator” in this context refers to any company or entity involved in trade activities including importing, exporting or brokering.

register". They also highlighted that a criminal record would not automatically preclude an individual from being added to the register (for instance a speeding ticket would not in itself be considered grounds for a breach but a breach of firearms regulations would). As with Estonia there is no formal internal compliance programme (ICP) requirement but it is strongly recommended and most brokers do have one in place. There is also no formal training requirement, however those granted a licence are expected to meet the Swedish Inspectorate for Strategic Products for an assessment which includes an introduction to the rules and regulations.

2. How many persons or entities are currently registered? Is the register made public?

Each of the Member States has a far smaller number of brokers registered compared to brokers licensed by the UK. In Sweden, 30 brokers are registered, although this list is not made public. In Estonia, there are 8 brokers on a public list published at: <http://vm.ee/en/registered-brokers-military-goods>. Portugal's response stressed that they didn't operate a specific register of arms brokers but rather a general pre-licensing register for "economic operators" (see definition above) wishing to engage in the "activities of trade (which includes brokerage, import, export, etc.) and industry of military goods and technology.

3. What are the main benefits of a register? How does a register improve compliance with the controls or make it easier to enforce the controls?

The benefits cited were:

- Acting as a precautionary measure by sending out strong message to general public and business that brokering of military goods is a specific and controlled activity.
- Better outreach to companies involved in brokering.
- Enhanced enforcement (for instance in cases where evidence of illegal brokering is not strong enough).
- Facilitating the exchange of information between national and overseas export control authorities.
- Listed brokers being considered 'trustworthy' in eyes of end-user.
- Requiring checks upfront reduces some elements of bureaucracy when analysing individual brokering transactions.

4. A pre-licensing register of brokers might be considered to be an "authorisation scheme" under Directive 2006/123/EC (the Services Directive). In that case we would need to show that the register complied with Articles 9 and 16 of the Directive. Have you assessed whether your register is compliant with the Directive? If so, why did you conclude that it was compliant?

Both Estonia and Portugal considered that the operation of their registration requirements for brokers and “economic operators” respectively to comply with the terms of the EU Services Directive. In the case of Sweden it was judged that, on the basis and form of Swedish legislation, the authorities did not need to comply with the Directive.

5. Please provide any other comments that you think would help us decide whether or not to introduce a pre-licensing register of brokers.

Portugal emphasised that they did not specifically operate a register aimed at controlling the activities of arms brokers only, so any direct comparisons would be difficult to make. Sweden emphasised that they considered maintaining a register to be useful in terms of complying with the requirements of Article 10 of the Arms Trade Treaty. Lastly, Estonia drew attention to the practicalities surrounding introducing a registration system in terms of assessing brokers every 5 years. In practice, newly assessed brokers can be re-assessed every two years, which would have a considerable impact in terms of resources if the UK took the same approach to frequency of reassessment.

Conclusions

Based on the responses received from other EU Member States, the Government considers that there is no one uniquely effective approach to introducing a registration system. Such systems have been introduced in a way that stems from the different set up of national authorities and legislation. These are all structured differently to the UK model.

It is also notable that where countries already have such a system, they have a much smaller base of brokers which may be monitored more easily through a registration system. With the larger number of UK brokers (approximately 450 trade control licence holders) a registration system may not prove such an effective tool. Management of a UK register is likely to be more resource intensive than those operating in other EU Member States.

Annex C – List of respondents

Stakeholders who responded (A to Z list)

There were a total of 78 responses to the Call for Evidence paper.

Out of the total respondents, 24 respondents were happy for their details to be published and 37 respondents were happy for their responses to be published but without their details being provided. A further 14 respondents preferred for their response not to be published on confidentiality grounds.

Below is the list of respondents who were content for their responses to be published including their details.

Abbasworldwide trading
Alick Munro (individual)
Alphard Maritime
Argonaut Security Ltd
BSL Express Service Ltd
Centre for Trust, Peace and Social Relations, Coventry University
Cerberus Risk Solutions
Drumgrange Ltd
Dypro Ltd
Export Group for Aerospace & Defence (EGAD)
HSL
Huncoat Ltd
Infinite Security Solutions
Lloyds
Magnum Spedition Ltd
Meggitt Aircraft Braking Systems
MIL Power Ltd
Moog Components Group Ltd
SDMS Security Products UK Ltd
Supacat Ltd
Twickenham, Richmond and Kingston Network Against the Arms Trade (TRAKNAT)
UK Working Group on Arms (Action on Armed Violence, Article 36, Amnesty International UK, the Omega Research Foundation, Oxfam and Saferworld)
United Scientific Instruments Ltd
Wolf Trade UK

The total number of respondents included both the Campaign Against Arms Trade (CAAT) and ADS (the trade organisation representing the UK's aerospace, defence, security and space industries). They both provided responses in the form of a general overarching paper summarising their responses to all the questions. The Committee on Arms Export Controls (CAEC) also made reference to their calls for a register over a number of years.

Annex D – Impact Assessment

No Impact Assessment (IA) is needed as the consultation was a Call for Evidence exercise inviting views from interested parties only.

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