



**Response To:**

**'Consultation Document on Draft Orders to be Made  
Under the Export Control Act 2002'**

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## Introduction

This document is a response to '*Consultation Document on Draft Orders to be Made Under the Export Control Act 2002*', published on 29 January 2003 by the Department of Trade and Industry. It provides a clear conclusion and briefly discusses how it was arrived at.

## Conclusion

It is the recommendation of Professional Projects Co Ltd, and the author, that all the Orders and the practical implementation of the new controls are flawed, especially with regard to the control of intangibles such as cryptographic software. These should all be reviewed and reworked before implementation.

## Approach

Because of the shortness of time between seeing the consultation document and the deadline, and because of the great complexity of the subject matter, this response covers some specific concerns that arise from the Consultation and related documents. No attempt has been made to complete the questionnaire, partly because most of the issues covered here do not relate directly to the questions in that document.

## Concerns

These may be encapsulated as follows. All the following comments refer to both the orders and the general implementation of the new controls.

1. There is inadequate separation between dangerous items that should be controlled, such as nuclear devices, and relatively innocuous items, such as prepayment metering software (which is likely to contain cryptographic code). It is the controls on the intangible items that are especially flawed.
2. There is little understanding that Research (academic, business-sponsored or private) requires an open flow of communications. These controls are liable to be far too restrictive on the general research community and even private individuals.
3. The controls have onerous documentation and licensing requirements, which are prejudicial to small businesses, where such overheads are relatively much higher than for large businesses. Thus the controls are discriminatory, in that they favour large companies.
4. The controls and the associated documentation are incredibly complex, and at certain points seem to be inconsistent and unclear (for example, the different penalties with regard to 'physical' and 'electronic' export – even for the same item). Because of this, far many more people than currently envisaged will be unfairly brought into the scope of the controls: mathematics clubs, for example.
5. Given the complexity of the subject matter, and its lack of clarity and consistency, it seems especially unreasonable to make many of the offences 'strict liability offences'. We believe that some of these offences would be unclear to even the most up to date and skilled lawyers, and few members of the public would realise they might be breaking the law by taking their mobile phone with them.



6. The Consultation process has been flawed. Many interested parties (such as small software companies) have not been made aware of this consultation. In addition, the consultation document itself is unclear (for example, it is not easy to see where Annexes A to H may be found).

## **Conclusion**

The conclusion, based on the arguments above, is that the current proposals, with special regard to export controls on intangibles, need to be completely reworked before implementation.