

## Summary: Intervention and Options

<b>Department /Agency: FCO</b>		<b>Title: Impact Assessment on Promoting High Standards of Conduct by Private Military and Security Companies (PMSCs) Internationally</b>	
<b>Stage: Public Consultation</b>	<b>Version: 1</b>	<b>Date: April 2009</b>	
<b>Related Publications:</b> Green Paper 2002: 'Private Military Companies: Options for regulation', The Montreux Document			

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### What is the problem under consideration? Why is government intervention necessary?

Some services offered by PMSCs, such as armed security, weapons training and even unarmed military and police training, could have direct lethal consequence. There is a risk that, however unintentionally, PMSC activity might give rise to human rights or humanitarian law concerns, assist internal repression, or provoke or prolong internal or regional tension. Government intervention is necessary to promote high standards of the industry globally to minimise these risks, and help prevent future incidents that would cut across the government's foreign policy objectives.

### What are the policy objectives and the intended effects?

Our objectives are to promote high standards of conduct by PMSCs internationally, and to reduce the risk that the activities of a company might give rise to human rights or humanitarian law concerns, assist internal repression, or provoke or prolong internal or regional tension.

### What policy options have been considered? Please justify any preferred option.

**1. Licensing by the Government of individual operations carried out by PMSCs overseas:** This option would be very difficult to enforce as contraventions would occur outside the Government's jurisdiction. Collecting evidence in hostile locations would be complex and would not necessarily be admissible in UK courts. This option is not enforceable on an international level and would only potentially affect UK based companies, and not the wider industry. There would be no way of stopping companies relocating to avoid regulation altogether. Once established, a licensing regime would impede competitiveness in the industry through likely time delays for each license. This option would be disproportionately costly to small businesses.

**2. Licensing by the Government of operations performed by an approved list of companies:** A Government approved register of companies would be difficult to create, maintain and use effectively. Establishing criteria to be accepted on to the register which would not leave HMG open to legal challenge would be problematic. It would be necessary to keep the register continuously updated. There is a risk that the register could be seen as a stamp of approval for all of the company's activities, even though we would still have to license individual contracts. Finally, this could be perceived as placing non-UK EU based companies at a competitive disadvantage because HMG would have more difficulty in obtaining robust independent information on overseas companies. This could leave HMG open to challenge under EU law. There would be further difficulties as per option 1.

**3. Combined policy to raise standards through industry self-regulation and international promotion of higher global standards: THIS IS THE PREFERRED OPTION.** This option recognises the need for an international approach to an international industry. It builds on existing work by the industry association, the Swiss government and the International Committee of the Red Cross such as the Montreux document, which highlighted existing international legal obligations for states and presented a range of good practices for regulating the industry. A standards based approach will be the most effective solution as the deterrent effect of a loss in reputation will ensure the industry adheres to stringent standards. The ease of introducing this approach will ensure that the legitimate industry can operate effectively. The Government would also use its position as key buyer to leverage improvements in standards of the industry globally. The Government would agree with the relevant trade association performance indicators to measure the effectiveness of self-regulation (membership targets, reduction in number of complaints upheld). These would be summarised in a published annual report. The Government would review the self-regulation regime on an annual basis, and make a decision after three years on whether it was proving equal to the task.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Foreign and Commonwealth Office will review this policy 3 years after agreement to establish progress.

**Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options***

Signed by the responsible Minister:

A handwritten signature in black ink, reading "Mark Malloch-Brown". The signature is written in a cursive, slightly slanted style.

24 April 2009

Lord Mark Malloch-Brown

## Summary: Analysis and Evidence

Policy Option: 1

Description: Licensing of individual operations

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Staff costs to industry, £2.7 million; Staff costs to the Government, £691,000; One-off costs to the Government of £80,000 to set up IT systems; Costs of four potential investigations to the Government leading to prosecution at £2.159 million per annum.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£ 80,000	1	
	<b>Average Annual Cost (excluding one-off)</b>		
	£ 5.551 million	10	<b>Total Cost (PV) £ 47.852 million</b>
Other <b>key non-monetised costs</b> by 'main affected groups' There will be a longer lead time for contracts, which may reduce competitiveness in the industry, particularly smaller companies, who survive on being quick to react to commercial opportunities.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' This monetised benefit is a hypothetical one only as we do not believe this option is enforceable: reduced risk of incidents requiring one-off Government enquiry at £91,000.
	<b>One-off</b>	<b>Yrs</b>	
	£ 91,000		
	<b>Average Annual Benefit (excluding one-off)</b>		
	£ n.a.		<b>Total Benefit (PV) £ 91,000</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'. This approach would provide the Government with the capacity to scrutinise individual contracts.			

**Key Assumptions/Sensitivities/Risks** Legislation will likely prove unenforceable, as most instances of breaches would take place outside of UK jurisdiction, with monitoring and investigation near impossible in hostile locations overseas. Some companies, particularly more maverick operators, will likely move their contracts offshore to circumvent regulation, defeating its purpose. Licensed activity may end up subcontracted to a less reputable company. We have also assumed that there will be 1200 licenses to process annually (which constitutes the range of predicted global business won by UK based PMSCs), and estimate that at least four licenses would be breached and would need to be investigated. Because of the high costs of a compliance officer, this option is disproportionately costly to small businesses.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV) £ n.a.</b>	<b>NET BENEFIT (NPV Best estimate) - £ 47.761 million</b>
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What is the geographic coverage of the policy/option?	UK-based			
On what date will the policy be implemented?	1 – 2 years			
Which organisation(s) will enforce the policy?	To be determined			
What is the total annual cost of enforcement for these organisations?	£2.930 million			
Does enforcement comply with Hampton principles?	No			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro £90,000	Small £90,000	Medium £90,000	Large £90,000
Are any of these organisations exempt?	No	No	No	No

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>				(Increase - Decrease)
Increase of	£	Decrease of	£	<b>Net Impact</b> £
Key:				Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis and Evidence

**Policy Option: 2**

**Description: Licensing of individual operations plus a Government approved register of contractors**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Staff costs to industry, £3.3 million per annum (£600,000 extra to Option 1); Costs to the Government to set up regulation authority, £274,000 per annum; Staff cost to the Government of £691,000 per annum to run licensing agency; One-off cost to the Government of £80,000 to set up IT systems; Costs of four potential investigations to the Government at £2.159 million per annum.	
	<b>One-off (Transition)</b>	<b>Yrs</b>		
	<b>£ 80,000</b>	1		
	<b>Average Annual Cost (excluding one-off)</b>			
	<b>£ 6.504 million</b>	10	<b>Total Cost (PV)</b>	<b>£ 53.016 million</b>
Other <b>key non-monetised costs</b> by 'main affected groups' As for option 1. Also, potentially grave impact on a company's business if approved status refused.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' This monetised benefit is a hypothetical one only as we do not believe this option is enforceable: reduced risk of incidents requiring one off Government enquiry at £91,000.	
	<b>One-off</b>	<b>Yrs</b>		
	<b>£ 91,000</b>			
	<b>Average Annual Benefit (excluding one-off)</b>			
	<b>£ n.a.</b>		<b>Total Benefit (PV)</b>	<b>£ 91,000</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' This approach would provide the Government with the capacity to scrutinise individual contracts.				

**Key Assumptions/Sensitivities/Risks** The risks are the same as under Option 2, plus the added risk that a decision to exclude a company from the approved list could be taken to judicial review and that approved contractors could act irresponsibly. This option could be perceived as placing non-UK EU based companies at a competitive disadvantage. This could leave the Government open to challenge under EU law. We have also assumed that there will be 1200 licenses to process annually, and estimate that at least four licenses would be breached and would need to be investigated. Because of the high costs of a compliance officer, this option is disproportionately costly to small businesses.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ n.a.</b>	<b>NET BENEFIT (NPV Best estimate) - £ 52.925 million</b>
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What is the geographic coverage of the policy/option?	UK-based			
On what date will the policy be implemented?	1 – 2 years			
Which organisation(s) will enforce the policy?	To be determined			
What is the total annual cost of enforcement for these organisations?	£3.204 million			
Does enforcement comply with Hampton principles?	No			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro <b>£110,000</b>	Small <b>£110,000</b>	Medium <b>£110,000</b>	Large <b>£110,000</b>
Are any of these organisations exempt?	No	No	No	No

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>		(Increase - Decrease)	
Increase of	£	Decrease of	£
		<b>Net Impact</b>	<b>£</b>

## Summary: Analysis and Evidence

**Policy Option: 3**

**Description: Self regulation by the relevant industry association combined with international promotion of higher global standards**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Cost to trade association of setting up and overseeing the code of conduct at £250,000 per annum; Staff costs to the Government of drafting code of conduct alongside trade association at £45,500; Costs to industry on Global Security Benchmark (not just UK industry) at £90,000 per annum for UK industry to fund and run an international secretariat.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	£ 45,500	1	
	<b>Average Annual Cost (excluding one-off)</b>		
	£ 340,000	10	<b>Total Cost (PV) £ 2.972 million</b>
Other <b>key non-monetised costs</b> by 'main affected groups.' trade association compliant companies could lose work to less conscientious operators.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Trade association compliant companies achieve recognition and advantage in bidding for work and should be best placed to win the most prestigious government and large company contracts internationally; PMSCs working to higher internationally agreed standards reduce risk of incidents requiring one off Government enquiry at £91,000.
	<b>One-off</b>	<b>Yrs</b>	
	£ 91,000	1	
	<b>Average Annual Benefit (excluding one-off)</b>		
	£ n.a.		<b>Total Benefit (PV) £ 91,000</b>
Other <b>key non-monetised benefits</b> by 'main affected groups.' Higher standards of behaviour significantly reduce risk of incidents that have political, human and administrative costs. Legitimate UK industry loses "mercenary" tag, gains increased respectability by signing the code of conduct, and acquires a sense of ownership of the process. Enhanced reputation for UK industry strengthens the Government's and private sector's ability to operate in difficult locations overseas.			

**Key Assumptions/Sensitivities/Risks** We assume that ethical corporate employers would prefer trade association and the Global Security Benchmark compliant companies. The trade association would require near 90% membership and a rigorous code of conduct to be most effective. After consultation, the relevant trade association feels this would be achievable. Members would need to be convinced of value of trade association and Global Security Benchmark. Joining these initiatives would not be of interest to the more maverick operators, who would not relish the stringent requirements of high operating standards.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV) £ n.a.</b>	<b>NET BENEFIT (NPV Best estimate) - £ 2.737 million</b>
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What is the geographic coverage of the policy/option?	Global			
On what date will the policy be implemented?	ASAP			
Which organisation(s) will enforce the policy?	Trade association			
What is the total annual cost of enforcement for these organisations?	£250,000			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro £3000	Small £6000	Medium £15,000	Large £15,000
Are any of these organisations exempt?	No	No	No	No

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>		(Increase - Decrease)	
Increase of	£	Decrease of	£
		<b>Net Impact</b>	£
Key: <b>Annual costs and benefits: Constant Prices</b>		<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### What is the problem under consideration? Why is government intervention necessary?

1. Private Military and Security Companies (PMSCs) provide security abroad for private sector contractors, governments and other bodies, including aid agencies and NGOs. They carry out a variety of duties, from close protection of personnel and static protection of premises such as ministries and embassies, to risk and security consultancy across the globe. They provide a vital and necessary role in hostile environments, and enable the Government to fulfill its policy objectives in countries such as Iraq and Afghanistan by providing essential security services, as well as ensuring operational NGOs are able to carry out important humanitarian work. The industry contributes significantly to our objectives, and it is important that a legitimate and important industry is not over burdened.
2. Many of the services offered by security companies are not contentious; others, such as armed security, weapons training and even unarmed military and police training, could have direct lethal consequences. There is a risk that, however unintentionally, PMSC activity (of UK based and international companies) might give rise to human rights or humanitarian law concerns, assist internal repression, or provoke or prolong internal or regional tension. Government intervention is necessary to promote high standards of the industry globally to minimise these risks, and help prevent future incidents that would cut across the government's foreign policy objectives. This is an international industry. A key measure of effectiveness of any regulation regime will be how far it impacts on the PMSC industry across the globe, and not just in the UK.
3. The government published a Green paper in 2002 exploring options for regulating PMSC activities in response to concern at the increased use of PMSCs in areas of conflict and instability. The Green paper of 2002 formed the basis of a six-month consultation and we are grateful to those who submitted written responses. A large number of responses favoured some form of regulation, including self-regulation and a licensing regime. Other responses emphasised the concern that we should not adversely affect legitimate business activities with blanket legislation.
4. Drawing on these responses, officials across Whitehall carried out a more detailed review of the options for regulation in 2005, including self-regulation through a trade association, national regulation based on export controls, and national regulation based on a company licensing system alongside a government register of approved companies. This review highlighted difficulties with regard to implementation or enforcement for each of the options and led to continued extensive discussions across Whitehall and with key stakeholders on the best way forward. We have also drawn heavily on our direct operational experience of the industry in Iraq and Afghanistan.

### What are the policy objectives and intended effects?

5. Our objectives are:
  - a. to promote high standards of conduct by PMSCs internationally, and:
  - b. to reduce the risk that the activities of PMSCs might give rise to human rights or humanitarian law concerns, assist internal repression, or provoke or prolong internal or regional tension.

### What policy options have been considered?

6. Three main policy options have been considered:
  - a. Licensing by the Government of individual operations for a set of defined activities

- b. Licensing by the Government of individual operations for companies on a list of the Government approved contractors
- c. Regulation through the relevant trade association combined with promotion of higher global standards

**What other options have been included in the deliberations?**

- 7. Ban PMSCs: this would raise problems of definition and enforcement and could deprive weak but legitimate governments of needed support. The problems of definition are similar to those in Option 2; defining the activities that constitute a PMSC would be difficult to determine and so would present problems in enforcing a ban. It would be difficult to ensure that no services that fell into the PMSC bracket occurred as they would take place overseas in hostile locations where state capacity is normally reduced. This would also prevent legitimate business opportunities for PMSCs, and would block the work PMSCs currently undertake to support stabilisation in hostile environments.
- 8. Approved contractor scheme, without contract licensing (possibly akin to Security Industry Authority (SIA) arrangements but in this case compulsory): this would have the costs noted at Option 2 without the benefits of scrutiny of contracts.
- 9. Guidelines on good practice drafted by the Government: companies would be required to undertake not to breach international standards or sanctions regimes, or knowingly to operate in a way that resulted in a violation of human rights or undermined internal or regional stability. They would also be obliged to maintain specified standards of vetting, training and technical proficiency. There is little scope for sanction in this option, whereas if it was owned by the trade association there is a greater possibility for enforcement if a company does not adhere to the code of conduct.
- 10. General government licences authorising the provision by PMSCs of a range of military/security activities overseas across a specified list of countries or end-users: by giving advance blanket approval of this kind, the Government would risk giving the appearance of official endorsement for individual operations about which it had no knowledge or control. This risk would only partially be mitigated by a system of regular review of each general licence, even if this were on an annual basis. There would be no mechanism to scrutinise individual contracts. The establishment of criteria for issue, rejection and revocation of a company licence would be difficult.

## DO NOTHING (Current situation)

11. The UK industry currently has a favourable reputation and we could continue the current status quo. This is a dynamic and evolving industry. It has changed significantly since the increase in companies entering the market offering military services in the late 1990's.
12. The reason the status quo needs to change is that there are real risks that require government intervention. If we do not act, there is a risk that, however unintentionally, PMSC activity (of UK based and international companies) might give rise to human rights or humanitarian law concerns, assist internal repression, or provoke or prolong internal or regional tension. Government intervention is necessary to promote high standards of the industry globally to minimise these risks, and help prevent future incidents that would cut across the government's foreign policy objectives. Doing nothing will also prevent the industry itself from gaining increased legitimacy through some form of regulation.
13. Doing nothing could cost the legitimate industry business opportunities unnecessarily in the future. We could miss a key opportunity to take advantage of momentum building in the international community to improve standards globally if we do not act now.

## OPTION 1: LICENSING BY THE GOVERNMENT OF INDIVIDUAL OPERATIONS FOR A SET OF DEFINED ACTIVITIES

### How the option would work

14. Licensing would focus on the provision of specified categories of military/security services that might cause concern to the Government if they were performed in sensitive political and security situations overseas. This option would license specified activities. Primary legislation would be introduced to set up a licensing regime that would scrutinise proposed operations on a case-by-case basis, each in its specific context.
15. We would consider licensing activities that relate to the potential use of lethal force or that involve the potential transfer of sensitive knowledge and skills such as involvement in armed conflict. We might license activities that could have sensitive political implications if provided to certain destinations or end-users, for example kidnap and recovery advice, defensive driving, and training in ordinance disposal, including de-mining.
16. The Government would take account of the track record and operating practices of the applicant company. Companies proposing to apply for licences would be expected to register with the licensing authority, and to keep records of the export of licensable services that should be made available to government inspectors. Licence refusals would be subject to appeal.

### Enforcement, monitoring and sanctions

17. No suitable enforcement authority can be identified to take on this task. We would ask embassies, if still operating in regions of conflict or instability, to monitor and report on the activities of PMSCs linked to the UK. However, embassy staff are likely to have limited capacity in these circumstances. We would also have to rely on reports from a wide range of other sources (other governments, NGOs, international organisations, media etc), of activities which might be in breach of its provisions.
18. The enforcement authority would act on reports if there seemed a credible case to investigate. Before referring a case for prosecution, the enforcement authority would need to be convinced that there was proof to a criminal standard that the alleged illegal activity overseas had taken place, and that either the contract had not been licensed or that activity went beyond the terms of the licence.
  - a) In particular, securing a successful conviction would rely on the level of assistance forthcoming from the host states' investigative and judicial authorities, as well as on the reliability and admissibility of evidence obtained from often-remote places. If a person alleged to have committed a breach of UK criminal law is not present in the UK, that person would need to be extradited from the State where he or she is present, but whether that would be possible would depend upon the terms of the extradition arrangements between that State and the UK; and in any event extradition is rarely a straightforward process. The chances of successful prosecution would be remote, as demonstrated by existing South African legislation, which has not yet resulted in a successful prosecution.
  - b) UK companies channel a significant proportion of their contracts through overseas subsidiaries and any attempt to bring these within UK legislation would face serious legal and diplomatic problems. Subsidiaries are subject to regulation in their place of incorporation, rather than in the UK: any attempt by the UK to regulate such companies would be contrary to our normal policy that there should be no extraterritorial regulation of companies by States other than that of their incorporation, and might provoke complaints from States where such companies are incorporated.

### Monetised costs

19. We judge the annual monetised costs to business to be £ 2,700,000:

- a. £2,700,000 - the companies affected would incur administrative costs in making licence applications. At the very least, each company would require a compliance officer at a cost of c. £90,000 p.a. To reach the overall figure we have multiplied the membership of the trade association (30 companies) by £90,000. Such an additional cost would significantly reduce competitiveness, particularly for smaller companies.
20. We judge the annual monetised costs of the regime to the Government to be £690,846, being the cost of establishing and maintaining an authority:
    - a. £364,564 (cost of a licensing authority). An established licensing authority would require four staff (Full Economic Cost = 4x mid level civil servants at £91,141 each p.a.) to carry out the full licensing process, including rating applications against controlled activities to determine licensability, processing casework and issuing licences, visits to companies to check compliance, parliamentary and media casework, company visits to check compliance, industry awareness including website maintenance.
    - b. £182,282 (full economic cost of FCO staff). The FCO would need to allocate staff at a Full Economic Cost of £91,141 each p.a.
    - c. £15,000 (running costs of IT investment for FCO).
    - d. £114,000 (full economic cost to MoD). The MoD would need to allocate 2 x mid level staff at a Full Economic Cost of £114,000 p.a.
    - e. £15,000 (running costs of IT investment for MoD).
  21. We judge the cost of enforcement of 4 breaches of the regime through investigation and prosecution of this option to be £2.159 million a year:
    - a. £1,200,000 (Licensing authority cost of 4 investigations per year at £300,000 each). It is likely that there would be up to four investigations per year. The full cost of an overseas investigation is likely to be up to £300,000, depending on its complexity and whether it leads to prosecution. (Extra investigation resources would be required to ensure priority action).
    - b. £39,850 (if each investigation led to prosecution). The enforcement authority would need to appoint additional policy staff in the event of prosecution at full Economic Cost per annum of £129,514 (1 x senior member of staff x 16 weeks).
    - c. £920,000 (for 4 prosecutions lasting 4 weeks each including lawyers' and counsel's fees and the administrative costs of a crown court). The Revenues and Customs Prosecution Office (RCPO) estimate the likely cost of 1 prosecution is £50,000 for preparation by their lawyers and £50-80,000 for counsel. The Ministry of Justice (MoJ) have advised that the administrative cost of a case in a Crown Court would be £25,000 per week.
  22. We judge the one-off monetised costs to the Government to be £80,000:
    - a. £40,000 (one off IT investment for FCO)
    - b. £40,000 (one off IT investment for MoD)

### **Non-monetised costs**

23. For companies there would be an obvious negative impact if they were refused a licence. Regulation, which did not take account of the industry's requirement for confidentiality (or for an urgent response by government to licence applications to enable companies to respond quickly to contract opportunities), could put legitimate businesses at risk. The requirement for a licence could place UK companies at a significant competitive disadvantage. Licensing procedures and timetables would have to recognise the regulatory authority's requirement to consult several government departments and possibly to submit to Ministers.
24. This policy option is not proportionate to the scale of the problem in the UK. The UK based industry has a favourable reputation and operates to high standards. This is a global

industry, regulating just the UK industry would reduce competitiveness unnecessarily and would not prevent serious human rights abuses abroad. This option would be a blanket approach to a legitimate industry.

### **Monetised benefits**

25. This monetised benefit is a hypothetical one only as we do not believe this option is enforceable: reduced risk of incidents requiring one off Government enquiry at £91,000.

### **Non-monetised benefits**

26. This approach would provide the Government with the capacity to scrutinise individual contracts. However, as in paragraph 30, we may not be able to scrutinise more than 30% of the UK industry.

### **Key assumptions/sensitivities/risks**

27. We do not believe that this option is enforceable because any breach of the regime would almost certainly take place outside of the UK. Consequently, investigation, obtaining evidence and enforcement are all likely to prove impossible. In particular, securing a successful conviction would rely on the level of assistance from the host states' investigative and judicial authorities, the reliability and admissibility of evidence obtained from often remote places together with legal issues concerning extradition. The chances of successful prosecution would be remote, as demonstrated by existing South African legislation, which has not yet resulted in a successful prosecution.
28. In addition, as UK companies channel a significant proportion of their contracts through offshore subsidiaries and overseas companies, any attempt to bring these under UK legislation would face serious legal and diplomatic problems. Some experts estimate that the introduction of licensing along the lines proposed might give the Government blanket influence over no more than 30% of the industry currently operating out of the UK. This would not increase the Government's visibility on the industry by an acceptable level considering the cost of the option.
29. Standards in the industry would be undermined as it became clear a licensing regime in this field had no teeth. There would be a loss of credibility to the licensing regime, which would undermine its authority in promoting international standards for this industry. Ultimately, this would undermine our attempts to minimise serious contraventions of international humanitarian law.
30. We have to recognise that under this form of regulation companies determined to evade control, and who seek non governmental contracts overseas, would be able to simply bypass any licensing regime if their procurer does not insist on buying from a Government licensed company. In this instance, a maverick company would probably not worry about seeking a license for its contract.
31. The risk that, once sanctioned, a contract might be subcontracted or passed to a second company that we would be less content to see perform the operation in question. Legislation would have to take account of this potential problem (adding extra time and cost) by limiting the right to subcontract or pass on.

## OPTION 2: LICENSING BY THE GOVERNMENT OF INDIVIDUAL OPERATIONS FOR A LIST OF THE GOVERNMENT APPROVED [or REGISTERED] CONTRACTORS

### How the option would work

32. The government would compile a register of approved contractors who operate in overseas markets. To obtain approved status, a company would have to submit its accounts, vetting, training and employment policies, ethical criteria for accepting contracts, and code of conduct for employees for scrutiny. The government would need to satisfy itself of the company's technical competence, and would examine in detail the history and track record (especially in overseas markets) of both the company and its directors. The receipt of approved status would give public recognition to a company's bona fides. Approved status would be reviewed every two years. Registration would be mandatory. Approved companies would then apply for a licence to carry out overseas activities.
33. The list of activities to be licensed would be as at option 1, as would the criteria to determine the issuing of the licence. In order to submit an application for a license for a regulated activity, a company would have to be on the approved list of contractors.
34. The licensing of activities would be monitored and enforced as in option 1. However, responsibility for the implementation of the approved contractors register would also need to be resolved.

### Monetised costs

35. The costs for the licensing of activities would be as at option 1, with additional costs to companies of applying for registration and supplying evidence to maintain its approved contractor status every two years. The trade association estimate a figure of £110,000 per annum per company for this work, which would make a total cost to industry of £3,300,000 per annum (an extra £600,000 to option 1). The costs to the Government would be the same as option 1 with the addition of costs for implementing the approved contractors scheme. A registration authority would require 3 staff (Full Economic Cost at £273,423 per annum, 3 x mid level staff at £91,141 each) to carry out the registration process, such as processing applications against agreed criteria, checking companies' accounts, vetting, training and employment policies. The registration authority would be required to check the technical competence of the company and to examine in detail the history and track record (especially in overseas markets) of both the company and its directors. This would have to be reviewed every two years. Companies could be charged for registered status, in order to recover the Government's administrative costs.
36. As with option 1, there would be one-off monetised costs to the Government of £80,000 for IT.

### Non-monetised costs

37. As under option 1 with the additional (potentially high) impact on a company refused approved status.

### Monetised benefits

38. As under option 1.

### Non-monetised benefits

39. As under option 1.
40. An approved company scheme could be used by the Government as a mechanism for monitoring developments in the industry. Mandatory registration of PMSCs would marginalise the less reputable companies. The Government could make more informed decisions regarding its own employment of contractors for security services. Companies with approved status would have enhanced credibility when bidding for contracts, making them more

competitive in the global market with consequent benefits for the consumer. The insurance industry would have a sounder basis than under option 1 on which to make more informed assessments of the risks of insuring PMSCs.

**Key assumptions/sensitivities/risks - As for option 1 plus:**

41. A government approved register of companies would be difficult to create, maintain and use effectively. Establishing criteria to be accepted on to the register which would not leave HMG open to legal challenge would be problematic. It would be necessary to keep the register continuously updated. There is a risk that the register could be seen as a stamp of approval for all of the company's activities, even though we would still have to license individual contracts. Finally, this could be perceived as placing non-UK EU based companies at a competitive disadvantage because the Government would have more difficulty in obtaining robust independent information on overseas companies. It could therefore take longer to agree their inclusion on the register. This could leave open a challenge under EU law.
42. There is a risk that the award of authorised status would be perceived as prior agreement to all of a company's activities.
43. The compilation of criteria for inclusion in the register, which were clear, objective and defensible in judicial review proceedings, might not be easy; particular care would be needed in assessing how the history and track record of a company and its directors should be taken into account. If the bar were set too low, inclusion would come to be perceived as a rubber-stamping exercise, and the regime would lose all credibility.
44. Criteria for inclusion in the register would have to include provision to avoid discriminating against newcomers to the sector.
45. Those companies not wanting to submit their operations to the scrutiny required for registration may choose to base themselves overseas. (However, in taking this action, they could lose market credibility, thereby conceding advantage to companies on the register). Again, companies determined to evade control, and who seek non governmental contracts overseas, will be able to simply bypass any licensing regime if their procurer does not insist on buying from a Government licensed company. In this instance, a maverick company would probably not worry about seeking a licence for its contract, and any third party buyer may not care if the company was not on a list of government approved companies.

## OPTION 3: SELF-REGULATION BY AN INDEPENDENT INDUSTRY BODY COMBINED WITH INTERNATIONAL PROMOTION OF A GLOBAL STANDARD

### How the option would work

#### Self-regulation

46. The relevant trade association was formed in 2006, and represents the interests of UK based PMSCs that operate overseas. If we took this option forward, we would expect to increase the full membership of the association. The trade association is currently drafting a code of conduct and has drawn up standards with which members are expected to comply. We will work with the relevant trade association to agree and implement high national standards / agree a code of conduct for all members and to develop expertise and best practice in the area. NGOs, international organisations and private sector representatives are also expected to be consulted. We will also be consulting on possible content for the code of conduct in our Consultation Document. The Association will enforce the code, which covers compliance in accepting contracts, incidents and accountability, resource management and responsible behaviour and ensures respect for IHL and HRL. In this way, agreed UK standards of behaviour and procedure will be established and the general conduct of the industry influenced.
47. We will work with the trade association to develop expertise and best practice in the area and give them targets such as achieving 90% of the UK based industry membership within 3 years. We will also use our leverage as buyer. The Government is a significant customer for the UK's PMSC industry. We use five PMSCs in both Iraq and Afghanistan to fulfil a number of roles including close protection, static guarding, police mentoring and intelligence analysis. Our current contracts provide a rigorous framework to ensure the highest standards of conduct from the PMSCs we employ, strictly following the British military's rules of engagement. There have been no substantiated instances of misconduct for a Government contracted company, and their conduct – in difficult and dangerous circumstances – has been exemplary. Although EC law would prevent us from contracting only PMSCs that are members of the trade association, we can stipulate clear and stringent expectations of standards we expect for companies to be eligible for the Government contracts, which would be guided by the trade association's agreed code of conduct. *We are consulting on possible incentives in our Consultation Document.*
48. There would need to be a clear delineation of roles within the association, so that enforcing the Code of Conduct was separate from any trade promotion activity. Should the trade association prove inadequate to the regulatory task, then the Government would have the option to reconsider legislation if necessary.

#### International promotion of higher standards

49. Based on a foundation of high national standards, we will extend international cooperation on this issue by building on the Montreux Document. In 2005, the Swiss MFA's legal Directorate and the International Committee of the Red Cross (ICRC) launched an initiative to promote respect for international humanitarian law (IHL) and human rights law (HRL) on the part of PMSCs operating in situations of armed conflict or post-conflict. This multi-stakeholder initiative included states, NGOs, industry, and academia. It has achieved its two objectives:
  - a. to reaffirm and, where necessary, clarify existing legal obligations of States and other international actors under international law (especially IHL and HRL)
  - b. to identify good practices and regulatory options to assist States in promoting respect for IHL and HRL by PMSCs. These good practices offer non-binding guidelines on regulation that States may choose to follow.

50. The 17 participating states – including the UK – agreed these deliverables in the Montreux plenary in September 2008. We will now advocate an extension of the initiative to create internationally agreed standards for companies, building on the national standards drafted by the Government and trade association. We aim to do this within two years of announcing our policy. We will work with the Swiss MFA and other civil society stakeholders who will draw experts and government representatives together. Once an international code of conduct is agreed, we will ask a wide range of PMSC exporting and contracting states and the main industries employing PMSCs to sign up to it.
51. Participating states and key buyers will insist that PMSCs wishing to bid for future contracts will be required to adhere to the internationally agreed standards. The involvement of key buyers from the extractive/natural resource industries will widen the scope of the initiative beyond just Government contracts. The Government is an influential buyer in the UK PMSC industry's customer base, but broadening the scope of the initiative further to include the private sector is critical to incorporate other influential buyers of PMSC services. Our ultimate objective will be for Governments and the private sector to use PMSCs that have made a public commitment to adhere to these internationally endorsed set of standards, creating a Global Security Benchmark in private security procurement and best practice.
52. Companies applying for international registration would need to provide supporting evidence to show that they meet the global standard. Examples might include demonstrating training and management processes are compliant with IHL, and an on-going process review to ensure that all staff receive relevant training.

## **Enforcement, monitoring and sanctions**

### Nationally

53. The trade association would be expected to establish transparent, simple and expeditious procedures for the handling of alleged breaches of the code (these could come not just from UK sources, but also from overseas governments and international bodies). This might involve, for example, setting up a disciplinary committee, appointed by the membership but separate from other administrative committees, and retaining an experienced legal adviser to review the decisions of the disciplinary committee and act as a court of appeal.
54. A graduated code of sanctions should be established. In some circumstances, the transgressing company might be asked to review its administrative or operating practices and to report back on proposed reforms. Beyond this the disciplinary committee should be empowered to issue a range of fines, and ultimately to resort to expulsion.
55. The Government would agree with the trade association performance indicators to measure the effectiveness of self-regulation (membership targets, reduction in number of complaints upheld). These would be summarised in a published annual report. The Government would review the self-regulation regime on an annual basis, and make a decision after three years on whether it was proving equal to the task.

### Internationally

56. The Global Security Benchmark should be supported by an effective impartial and transparent complaints mechanism. We envisage establishing an international secretariat, paid for by an annual license fee levied on PMSCs, to monitor overall standards and ensure compliance. The right to lodge a formal complaint with the secretariat against a PMSC for a specific incident would reside primarily with the host state, whose authorities would provide the necessary evidence to support the allegation. Where a state does not have sufficient capacity to collect the necessary evidence, the participating states could consider offering technical assistance, but only with full agreement and cooperation of the host state.
57. The convention of participating states will uphold complaints through a series of sanctions overseen by an International Secretariat. There would be four measures of increasing severity against any company found to be in breach:

- a. *Placing additional conditions on their contract.* Conditions may include protective measures to control specified activities of the PMSC for a period of time, and would require buy-in to the arrangement from either the contracting state or the contracting private sector enterprise;
- b. *Issuing the company an official warning.* The company's name and the allegation against it would be publicised on an official website so that contracting and host states in the future are aware of any previous history/behaviour before committing to a contract with that PMSC;
- c. *Financial sanction;* agreed and imposed by the International Secretariat and
- d. *Suspension or eventual removal of the PMSC from Global Security Benchmark initiative.* This – though a last resort – would prevent a PMSC securing a future contract either with/in any contracting or host state or with a private sector buyer who is party to the arrangement, seriously diminishing that company's current and future business opportunities.

*We are consulting on appropriate sanctions in our Consultation Document*

### **Monetised costs**

58. The trade association estimate that the setting up of a rigorous internal procedure to adjudicate on alleged breaches of the code would cost about £250,000 p.a., to cover legal advice and the services of a reviewer.
59. The Government would wish to assist the trade association in drawing up the code of conduct, giving it 'government approved' status. The services of a mid level officer for 6 months to help draw up the documents could be provided at the Full Economic Cost of £45,500.
60. The financial cost to the industry would depend on how the adjudication/investigation costs were met. Currently, annual subscriptions for members range from £15,000 p.a. (for companies with an annual turnover of over £10 million) to £3,000 (for those with a turnover of under £3 million).

### **Non-monetised costs**

61. Self-regulation has no legal sanctions. However, we consider that the Association's range of disciplinary sanctions, such as fines and expulsion, would be sufficient to encourage most companies to comply with the code rather than risking loss of reputation and potential loss of future business. The advantage of self-regulation is that the companies have, by definition, bought into it voluntarily and it therefore empowers the industry itself. The Global Security Benchmark will levy a series of graduated sanctions on those companies determined to be in breach of the code.
62. Self-regulation would be based on the regulation of companies rather than of activities that cause concern. There could be problems defining which companies should be covered. Some companies, while not involved in hard security operations (e.g. those involving weapons) carry out other softer security activities such as risk consultancy that could have the ultimate potential for lethal consequence. These companies may see it as detrimental to their image to associate themselves with the providers of harder security that currently make up the membership of the trade association. On the other hand, abstaining from the association could put them at a competitive disadvantage with respect to larger companies offering a range of hard and soft security services, and drawing on the perceived legitimacy which membership of a government-endorsed trade association or a global membership might provide.
63. An absence of a licensing system does not affect impunity on this issue. There is already existing legislation penalising grave breaches of the Geneva Conventions, as well as torture, genocide, war crimes and crimes against humanity. This applies to acts committed by United

Kingdom nationals overseas abroad, ensuring that they can be prosecuted for these acts even if they take place overseas.

64. If self-regulation does not prove effective, then the Government might have to consider alternatives. There will be costs to making a new intervention. However, we would do so against the background of raised expectations of behaviour generated by the creation of the global standard, and with an increased understanding of this fast moving sector.

#### **Monetised benefits**

65. Reduced risk of incidents requiring one off Government enquiry at £91,000.

#### **Non-monetised benefits**

66. The voluntary raising in standards should reduce the risk that the activities of a company might give rise to human rights or humanitarian law concerns, assist internal repression, or provoke or prolong internal or regional tension.
67. This option has explored possible alternatives to classic regulation in line with Government guidance on impact assessments to find the most effective option to improve standards in the PMSC industry worldwide. Further guidance on Impact Assessments can be found at: <http://www.berr.gov.uk/files/file44544.pdf>
68. Self-regulation could be established quickly. There would be no requirement for parliamentary time in establishing the regime. Further, a self-regulation regime could be adapted or amended quickly and relatively easily to keep pace with new trends and activities in this innovative and fast moving sector.

#### **Key assumptions/sensitivities/risks**

69. We have to recognise that none of the forms of regulation under consideration will constrain companies determined to evade control. In this instance a maverick company would probably not join the trade association to avoid the self-regulatory discipline. However, this industry thrives on its reputation, and we think that the likely loss of reputation and business would be an incentive to all reputable companies to join the trade association and stay within the code. We believe that the same argument applies to the Global Security Benchmark. Any companies that seek to evade the initiative will suffer a severe drop in reputation and therefore business opportunities globally.
70. Assumption that the wider industry would support self regulation and the Global Security Benchmark. Also, that the trade association continues to function, and attains near universal membership.
71. There is a risk that members would not consider the membership fee to provide value for money if they did not see significant additional benefits from a formal self regulatory regime. Many of them already have their own ethics committees to guide their overall policy and the conduct of their operations.
72. Under the self-regulation option, expulsion from the trade association would be the ultimate sanction. This might not deter a maverick company from entering into a lucrative, but questionable, contract.

**Please justify any preferred option.**

73. The PMSC industry expanded considerably in response to events in Iraq and Afghanistan in 2003/04. Following the initial bubble of opportunity, PMSCs have recognised that in order to stay viable in the long term they need to diversify into new areas of activity and new locations. It is becoming increasingly difficult to define what is or is not a PMSC as companies seek to expand their activities into more varied areas such as Security Sector Reform, and the direct provision of humanitarian assistance. Few companies describes themselves as a PMC, or a PMSC; and many eschew the term PSC, preferring to style themselves risk consultants /advisors. This is a complex area and none of the options is without problems. After extensive consultation, and given the limitations of domestic regulation, the Government concluded that a licensing regime would not achieve our policy objectives. This policy area demands an effective code of conduct, the use of our status as a buyer to influence the industry, and international cooperation to have a worldwide influence. We have since been working with international partners to determine an effective global response.
74. **Option 1: Low impact, low feasibility.** The licensing of individual operations relating to a defined list of military/security services by the Government has real enforcement problems. It would increase bureaucracy with no guarantee that it would achieve our objectives of preventing human rights or humanitarian law concerns, PMSCs assisting internal repression, or provoking or prolonging internal or regional tension. In these circumstances, the introduction of legislation that seems unlikely to achieve results is a disproportionate and ineffective response. Option 1 is disproportionately costly to small businesses and could seriously diminish their competitiveness. This response is not proportionate to the scale of the problem and the need to ensure the legitimate industry does not have its competitiveness reduced. This solution is not pragmatic. A licensing regime that cannot be enforced will not prevent human rights abuses or affect standards of the industry. This policy option does not take into account the global nature of the industry - it is domestic only in scope. We cannot justify this option given the cost/benefit ratio; it would have little impact on the UK and international industry.
75. **Option 2: Low impact, low feasibility.** This option raises potential problems with EC law, with the definition of criteria for inclusion in the register, and with the blanket nature of approval which company registration implies. Acceptance onto the register might imply approval for all a company's activities. In addition, companies that only occasionally offered services of concern to the Government would need to subject themselves to the whole process of company scrutiny to get on to the register. This is an unnecessarily invasive process. This option is disproportionately costly to small businesses and could seriously diminish their competitiveness. This response is not proportionate to the scale of the problem and the need to ensure the legitimate industry does not have its competitiveness reduced. This solution is not pragmatic. A licensing regime that cannot be enforced will not prevent human rights abuses or affect standards of the industry. This policy option does not take into account the global nature of the industry - it is domestic only in scope. We cannot justify this option given the cost/benefit ratio; it would have little impact on the UK and international industry.
76. **Option 3: High impact, high feasibility.** Self-regulation through the trade association combined with the creation of a Global Security Benchmark is our preferred option. We have opted for our composite package, and not for licensing, as the best way of ensuring the highest standards are adhered to across the globe. It can be introduced quickly and empowers the industry to regulate itself. It is a fair cost to small businesses and does not disproportionately affect their competitiveness. It recognises that the UK cannot operate alone in this area and aims to raise standards throughout the world, with the aim of making it more difficult for rogue PMSCs to operate. It builds on existing work such as the Swiss Initiative. This is the most pragmatic solution to the policy problem, and the only one that is results focused. This policy option is global in scope and will therefore influence what is an international industry. This solution concentrates on preventing human rights violations and upholding high standards globally.

77. In reaching this conclusion, we have consulted extensively with partners across government, the industry and civil society. The trade association and leading figures from the PMSC sector have made it clear that the success of their business depends upon their reputation. An international standard and national code that they could adhere to would provide the legitimate PMSC industry with a recognised measure of credibility. Rogue operators would not meet the standard and so would be clearly identifiable to potential purchasers. The reputational risk of association with such PMSCs would be highly prohibitive.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	N/A	N/A
Sustainable Development	N/A	N/A
Carbon Assessment	N/A	N/A
Other Environment	N/A	N/A
Health Impact Assessment	N/A	N/A
Race Equality	N/A	N/A
Disability Equality	N/A	N/A
Gender Equality	N/A	N/A
Human Rights	Yes	Yes
Rural Proofing	N/A	N/A

## Specific Impact Tests

### I. Competition Assessment

#### a) current state of the market

Around thirty companies registered in or operating from the UK provide military and/or security services overseas. The range of services they offer is wide: armed security, armed training, other forms of training (Special Forces, defensive training), intelligence services, technical security, logistical support, strategic analysis and planning, kidnap and recovery advice, and post conflict reconstruction. Hence, there is a wide spectrum of customers for their services:

- 80% to 90% of their business is with the private sector, in particular the extractive industry which relies heavily on their services;
- contracts are also signed with overseas governments (e.g. with the US government for work in Iraq), NGOs and international organisations;
- PMSCs also do work for the Government in fields such as training, and especially in the provision of armed security for UK embassy sites and personnel.

For contracts with the Government, there is open tendering based on government regulation. Opportunities are advertised, bids assessed based on standard guidelines, and a list created from which the successful bidder is chosen. Other governments, NGOs, international organisations and commercial enterprises each have their own procedures.

This is an innovative, dynamic and continually evolving sector, where companies are ever looking to expand into new areas of activity. Some companies have expanded from an initial concentration on armed security services into the provision of consultancy, strategic analysis and logistical support. Others began as specialists in recovery advice, but have diversified into armed security. Afghanistan and Iraq created new opportunities. Security sector reform is a relatively new focus of interest for many companies. Some are now showing an interest in taking on the provision of humanitarian assistance.

This is a fast-moving global market for services. British, American (and other) companies compete for customers who can easily switch from one provider to another. Hence the importance of prices and services tailored to individual customers. Other prerequisites for success include cultivation and range of contacts, a global intelligence network, and opportunistic speed of reaction. In order to fulfil their contract obligations, PMSCs have been dependent on the free global labour market of appropriately skilled (usually ex military) personnel.

#### b) would the options directly limit the number or range of suppliers?

The introduction of UK government legislation to licence the provision overseas of specific types of military/security service would have no direct effect on the number of suppliers. All companies would be equally bound by the export licensing requirement, but companies would have to be administratively capable of applying for the licences.

The introduction of a government list of approved contractors would have a direct effect in this area. Companies which failed to meet the criteria for government registration, or which did not apply, would be effectively prevented from bidding for contracts with major customers and might fade from the scene.

Self-regulation through the trade association would be likely to involve the establishment of standards to which prospective members should adhere. As a direct result of these prerequisites, companies which chose not to join the association, or which did not meet the

admission standards, could be at a disadvantage when applying for contracts with the Government, or with other major customers. The failure to compete effectively for these contracts might lead some suppliers to withdraw from the market.

c) would the options indirectly limit the number or range of suppliers?

The introduction of government licensing of specified activity could indirectly lead to the reduction of the number of suppliers. Smaller suppliers might well find it more difficult, and relatively more expensive, than their larger rivals (e.g. the multinationals) to adapt to the bureaucracy of applying for export licences. Moreover, if the Government failed to devote sufficient resources and organisational effort to the establishment of the licensing regime, there is a risk that contract opportunities could be lost because of slow processing of applications. As a result some, particularly smaller, companies could find themselves seriously hurt and be forced to close. Alternatively, some companies might migrate to another jurisdiction in order to avoid regulation - but such an action in itself could lead to a loss of perceived legitimacy, and hence of business.

In the case of the introduction of a government list of approved contractors, the implications would be direct rather than indirect (see above).

In the case of self-regulation through the trade association, the implications for the range of suppliers would be direct rather than indirect (see above).

d) would the options limit the ability of companies to compete?

The introduction of licensing of specified activities on a case by case basis would not control or influence either the price a supplier might charge or the quality of his products. It would not limit their scope for introducing new products or new modes of supply, their sales channels, ability to advertise, or the way in which they might run or structure the company. However, such a licensing regime could limit a PMSC's freedom to supply services in a particular geographical area. In considering a licence application, the regulatory authority would look at the risk an exported service might pose to internal or regional stability or to human rights and fundamental freedoms. In areas of conflict or political or security sensitivity, such risks are likely to be higher and a licence application more likely to be refused.

If a list of contractors approved by the Government were introduced in conjunction with a licensing regime for the provision overseas of specified services, the limitations on company activity would be two-fold:

i) on geographical area of activity (see above)

ii) (depending on the criteria for inclusion in the list) on the quality of product (it seems likely that the criteria would refer to training, vetting and conduct of personnel); and on the running of the company (if the criteria covered budgetary controls, global insurance and ethical standards for negotiating/concluding contracts)

Self-regulation might, by setting down minimum company standards, influence the quality of product which the supplier might offer (for instance with respect to standards of training which took account of accepted international standards). However, it would not limit his freedom in other areas, e.g. price, geographical focus, scope for innovation, mode of organisation etc.

e) would the options reduce suppliers' incentives to compete vigorously?

If the Government introduced a licensing regime for the export of military services, it is possible that some of the smaller players would fall by the wayside. However, a significant number of providers (including those that figure regularly on shortlists for contracts with the Government) would adapt to the requirements of the regime and continue to compete vigorously with one another.

Similarly, the introduction of a government list of approved companies might weed out some of the weaker and less reputable companies who are based in the UK. However, the major and / or more ambitious players would make sure that they met the criteria. Explicit government approval would be regarded as a new launching pad for vigorous inter-company competition.

Self-regulation through a trade association offers a level playing field and is very unlikely to dampen the competitive instinct. Companies have the freedom to make a commercial decision on whether to join the association.

f) Conclusion.

There is a possibility that any form of regulation might have a slight effect on competition by presenting challenges to some of the smaller less well regulated operators. Our preferred option of a composite package of self regulation through the industry association, combined with international cooperation to raise standards, impacts equally on all companies and is unlikely to distort the market. In any case, this is a fast moving and innovative sector and any impact on competition is unlikely to be significant. This risk is outweighed by the benefits to the Government's objectives in the international sphere.

## **2. Small Firms Impact Test**

We estimate there to be around 30 PMSCs registered in or operating from the UK. With the exception of the largest three or four, these fall within a normal definition of small companies, i.e. with less than 250 employees.

- a. licensing of private military/security operations – this option would be disproportionately costly to small business as each company regardless of size would need the services of a compliance officer to ensure contracts were licenced properly.
- b. licensing of individual military/security operations for a list of approved contractors - this option would be disproportionately costly to small business as each company regardless of size would need the services of a compliance officer to ensure contracts were licensed properly. Further, the officer would be required to ensure compliance with the approved contractor scheme.
- c. self regulation through a trade association (with government approved code of conduct/guidelines) - larger companies might have a slight advantage through having a larger administrative capacity to ensure compliance and attend meetings. The trade association's tiered scale of membership alleviates the financial burden on smaller companies.

## **3. Race, Disability, Gender and Other Equality**

We do not believe that there will be an impact on the equality strands as the proposals relate to the provision of services by business rather than on individuals. We have looked at the equality impact initial tests and are confident that there is no impact.

We do not believe the proposed policy will involve, or have consequences for, the people our authority serves and employs because the proposed policy will ultimately involve and have consequences for the PMSC industry (targeting businesses), not the individuals they employ. We also believe that the answers to questions 2 to 7 are also 'no'. Hence, this impact test is not relevant to our proposed policy.

The list of questions to test relevance is below:

1. Will the proposed policy involve, or have consequences for, the people your authority serves and employs?
2. Could these consequences differ according to people's racial group, for example, because they have particular needs, experiences or priorities?

3. Is there any reason to believe that people could be affected differently by the proposed policy, according to their racial group, for example in terms of access to a service, or the ability to take advantage of proposed opportunities?
4. Is there any evidence that any part of the proposed policy could discriminate unlawfully, directly or indirectly, against people from some racial groups?
5. Is there any evidence that people from some racial groups may have different expectations of the policy in question?
6. Is the proposed policy likely to affect relations between certain racial groups, for example because it is seen as favouring a particular group or denying opportunities to another?
7. Is the proposed policy likely to damage relations between any particular racial group (or groups) and your authority?

#### **4. Human rights**

One of the objectives of regulating the private military/security sector is to reduce the risk of company activity overseas impinging adversely on human rights. The introduction of a licensing regime for the export of military/security services, with or without an approved list of contractors, would enable the Government to scrutinise individual export proposals and should provide good safeguards in the human rights context. However, we do not believe this option is enforceable as set out in the evidence base. The voluntary adherence by members of the trade association to a comprehensive code of conduct is also likely to be very beneficial in promoting human rights and giving companies an incentive to ensure they behave to the highest standards.

We have also recognised that this is a global industry and that we need a global approach to tackle possible human rights breaches in this area. Our aim is to expand this initiative to agree international standards covering all aspects of PMSC operation and organisation. If we can agree tough and exacting standards for the UK industry, we can use these as a baseline for any future standards agreed at the international level.

This would build on the Swiss/ICRC initiative and we will advocate to international partners that the initiative be extended to create internationally agreed standards for companies themselves. Participating states and key buyers will insist that PMSCs wishing to bid for future contracts will be required to adhere to the internationally agreed standards. Our ultimate objective will be for Governments and the private sector to use PMSCs that have made a public commitment to adhere to these internationally endorsed set of standards, creating a Global Security Benchmark in private security procurement and best practice.

Companies applying for international registration would need to provide supporting evidence to show that they meet the global standard. Examples might include demonstrating training and management processes are compliant with IHL and HRL, and an on-going process review to ensure that all staff receives relevant training.