INVESTIGATION INTO EXPORT LICENCES GRANTED IN BREACH OF UNDERTAKINGS TO COURT AND COMMITMENTS TO PARLIAMENT

Introduction

1. On 16 September 2019, the Permanent Secretary for the Department for International Trade (DIT) commissioned, on behalf of the Secretary of State for International Trade, an independent investigation into the circumstances and process which led to two export licences being granted in breach of the undertakings provided by the then Secretary of State to the Court recorded in the Order of the Court dated 20 June 2019. A further licence had also been identified as having been granted contrary to the additional commitments given by the then Secretary of State to Parliament in his statement of 20 June.

2. The independent investigation, led by Jonathan Mills, Director-General Policy Group at the Department for Work and Pensions, was asked to establish:

- the precise circumstances in which these licences were granted;
- whether any other licences have been granted in breach of the undertaking to the Court or contrary to the statement in Parliament; and
- confirm that procedures are in place to ensure that no further breaches of the undertaking can occur.

3. Subsequent to the investigation being commissioned, internal review identified a further two licences that had been issued in breach of the Government's commitments – one in breach of the undertaking and the other the statement to Parliament

4. The investigation was conducted between 16 September 2019 and 25 November 2019. Officials in the three main departments involved in export licensing – DIT, the Foreign and Commonwealth Office (FCO) and Ministry of Defence (MoD) were interviewed, along with lawyers from the Government Legal Department and FCO Legal. Relevant papers and emails were provided and reviewed.

5. This report sets out:

- background and context to the investigation;
- the evidence describing the circumstances in which the licences in question came to be granted, and an assessment of these;
- the process that has been followed by the departments involved to determine whether any further licences have been issued in breach of the Secretary of State's commitments, and the likely robustness of these; and
- the procedures that have been put in place to avoid further breaches and the extent to which they address the issues identified.

Background and context

6. Export licensing exists to regulate outbound trade of certain goods and services to certain countries or regimes. The statutory framework for this is provided by the Export Control Act 2002, which is supplemented by secondary legislation and guidance issued under section 9 of the Act. Export controls are the responsibility of the Secretary of State for International Trade, but involve interests from a range of departments including the FCO (in relation to human rights and international humanitarian law, conflict and security in the recipient country or region, and consistency with international obligations), the MoD (in relation to the impact on national security and the UK's military capabilities, and risk of diversion to unintended or undesirable end use), the

Department for Business, Energy and Industrial Strategy, relevant security agencies, and the Department for International Development (DfID).

7. The Export Controls Joint Unit (ECJU) was established in 2016 to bring together operational and policy expertise from DIT, the FCO and the MoD. The unit is physically based within DIT's offices with all three departments co-located there. It is responsible for the operation of the UK's system of export controls and licensing for military and dual-use items, and trade controls and sanctions.

8. Applications for licences are assessed on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria (known as the Consolidated Criteria), which were most recently published by the then Secretary of State for Business, Innovation and Skills in 2014 (Annex A).

9. Within the ECJU, the roles of and dependencies between the co-located departments in the process are clearly identified. DIT is responsible for the regulatory and statutory framework, including decisions to grant or refuse an export licence, whereas FCO and MOD are DIT's principal advisers on whether proposed exports are consistent with the criteria. Other departments also advise DIT on elements of the criteria as relevant.

10. Lead advisory departments provide recommendations on the basis of their criteria through the electronic case management system known as SPIRE. Where there are disagreements about whether cases should be approved or refused they are referred to a weekly case conference of the departments. Final sign-off can be at varying levels of seniority at official level or at Ministerial level depending on the level of sensitivity and risk. An agreed escalation system is used to assess which cases should be decided at which level.

The 20 June 2019 Court of Appeal judgment and the Government's undertakings to the Court and statement to Parliament

11. The Court of Appeal handed down judgment on 20 June 2019 in relation to an appeal brought by the Campaign Against the Arms Trade (CAAT). This appeal sought to challenge a 10 July 2017 judgment by the Divisional Court in relation to CAAT's claim for judicial review of decisions by the Secretary of State on export licences, which began in 2016. Appeal was sought on three grounds, claiming an error of approach; an error in failure to ask questions identified in the EU's User's Guide; and a failure to rule on the meaning of "serious violations" of international humanitarian law. The Court found in favour of the Secretary of State in relation to the second and third of these, but in favour of the claimant in relation to the first.

12. The Secretary of State was therefore ordered to reconsider the decisions not to suspend extant licences and to continue to grant licences in line with the Court's judgment, and gave an undertaking not to grant new licences:

    "for the export of arms or military equipment to Saudi Arabia for possible use in the conflict in Yemen"

    until there was either a stay in judgment or the decisions had been retaken.

13. On the same day the Secretary of State gave a statement to Parliament committing that:

    "we will not grant any new licences for exports to Saudi Arabia and its coalition partners that might be used in the conflict in Yemen".

2. The precise circumstances in which licences GBSIE 2019 / 06449, GBSIE 2019 / 07556 and GBSIE 2019 / 06671 were granted.

14. On 9 September FCO officials in the ECJU identified, through routine analysis of export licensing statistics, a licence which appeared to be inconsistent with the undertakings that the Government had given to the Court. DIT officials confirmed this assessment. This led to the immediate preliminary review of 183 licences issued for exports to Saudi Arabia and / or its coalition partners since the Court's judgement on 20 June 2019. This initial review identified a further licence which had been granted in breach of the undertakings and another which was in breach of the commitments that the Secretary of State had made in the House.

15. Following the first part of its terms of reference, the investigation has sought to clarify the circumstances in which licences were issued in breach. To do this, officials involved in processing these licences were interviewed, and evidence from the SPIRE database was reviewed as were further papers and communications as relevant. Ministerial papers from DIT, MoD and FCO relating to export licences between the start of June and 9 September were also reviewed.

GBSIE 2019 / 06449

16. The application for licence GBSIE 2019 / 06449 was received by the ECJU on 21 May 2019. It sought a licence to export a single Wirewound air cooler for use in a Renault Sherpa Light Scout, to be used by the Royal Saudi Land Forces (RSLF).

17. Following the usual process of technical assessment advice was sought from FCO and MoD on 29 May. On 3 June, FCO recommended approval, and reported that the RSLF were not involved in military action in Yemen. According to the evidence provided by interviewees, this judgement was made on the basis of the accepted assessment in the FCO part of the unit rather than through a specific new enquiry to post or elsewhere.

18. On 4 June MoD recommended approval on the basis that the equipment could not be used against the security or capability of the UK and that equipment would not be used or passed to an undesirable end-user. The case was recirculated to the FCO who again recommended approval.

19. The licence was formally countersigned and issued on 26 June, following clarification of a number of technical details by the exporter[1]. The item was shipped and therefore the licence is now spent.

20. Subsequent to recommending approval of this licence, a separate licence request for components to fit in a mortar system prompted the FCO desk on 17 June to ask post in Riyadh to confirm that the RSLF were indeed not involved in operations in Yemen. On 18 June the post replied that there was, in fact, evidence of RSLF activity in Yemen. While it was not clear whether this itself would prevent a positive recommendation that the threshold under Criterion 2(c) was met for this equipment (in relation to whether there was a clear risk that the items for export might be used in the commission of a serious violation of international humanitarian law), the licence itself was held pending further assessment against the Consolidated Criteria.

21. By this point the FCO's formal involvement in GBSIE 2019 / 06449 had ended and this new information was not passed to DIT staff in the unit. FCO staff in any case believed that GBSIE 2019 / 06449 would have been issued at this stage, as they understood the FCO advice to be the last stage in the processing of most licence applications.

[1] These clarifications had been sought in parallel with advice from MoD and FCO and included correcting spelling mistakes, confirming the identity of the end user and any involvement of third parties.

GBSIE 2019 / 07556

22. The application for licence GBSIE 2019 / 07556 was received by ECJU on 29 April 2019. It sought a licence to export 260 items of radio spares to the RSLF signal corps.

23. Following the usual process of technical assessment advice was sought from FCO and MoD on 31 May 2019. FCO recommended approval on 6 June – again, as with 2019 / 06449, before the involvement of the RSLF in Yemen had been registered within the Unit. MoD recommended approval on 26 July 2019.

24. The licence application was countersigned and issued on 29 July 2019. It was cancelled on 16 September 2019, following discovery of the contravention of the undertakings to the Court. By this point 180 of the parts had been shipped; 80 had been licenced but not shipped.

GBSIE 2019 / 06671

25. The application for licence GBSIE 2019 / 06671 was received by the ECJU on 21 June 2019. It sought a licence to export radar equipment for the United Arab Emirates (UAE) Navy.

26. Following the usual process of technical assessment advice was sought from FCO and MoD on 25 June. The window for advice closed on 1 July and FCO and MoD both recommended approval. The FCO commented:

    "naval radar equipment for use by the UAE navy …. UAE Navy are not involved in SLC ops in Yemen"

27. The licence application was countersigned and issued on 1 July 2019.

28. Following discovery of the contravention of the undertakings to the Court, it was reconsidered as part of the internal review and subjected to additional scrutiny. This review decided that, in light of this further examination, it was granted contrary to the Secretary of State's statement to Parliament because it was not possible to be sufficiently confident that the equipment would not be used in the conflict in Yemen. It was therefore revoked on 16 September 2019. No items were shipped against this licence.

GBOIE 2019 / 00197 and GBOIE 2016 / 00197b

29. After the discovery and disclosure of these three licences a further more detailed stage of the internal review process was undertaken to assess all relevant licences issued since 20 June 2019. More detail on that process is provided in section three below.

30. This process identified two further licences that had been issued in contravention of the Government's commitments: a licence relating to counter-improvised explosive device equipment for Saudi Arabia, which breached the undertaking; and fuel gauges for F-16 aircraft for a number of countries including Jordan, which breached the Government's commitments to Parliament.

31. The application for licence GBOIE 2019 / 00197, relating to the counter-improvised explosive device equipment, was received on 14 February 2019. It sought a licence to return after repair equipment which had previously been exported under licence. Recommendations were received to

issue from FCO and MoD on 2 April and 16 July respectively, and the licence was issued on 13 August. It was revoked on 20 September 2019 without having been used.

32. Licence GBOIE 2016 / 00197b related to an open licence originally issued in 2016 and due to expire on 5 August 2019. A licence extension was sought and was granted by DIT officials on 28 August 2019, whose understanding was that Jordan was not an active part of the coalition. Advice from other departments is not routinely sought in the case of open licence extensions. Subsequently information emerged which indicated that Jordan was in fact involved in military activity associated with the coalition. The licence extension was therefore revoked on 26 September 2019 in relation to Jordan

Assessment

33. The investigation did not find any evidence that the issue of export licences in breach of the undertakings to the Court or the commitment to Parliament as a result of deliberate or knowing contravention of those commitments.

34. Nor was there evidence of a failure to follow agreed processes or procedures. All those involved in processing the licences seem to have approached the cases as expected. These cases were considered by officials at the delegated level of authority and Ministers were not involved in decision-making.

35. Ministerial papers reviewed in the three departments involved showed no evidence that there had been Ministerial involvement in decisions on these licences.

36. The inadvertent issue of the licences instead was a result of shortcomings in the processes in place, which meant that they were not sufficient to ensure that the Government would be able to implement the commitments that it had given. In the absence of the right processes, information was therefore not shared as needed in relation to the progress of cases or changes in the facts that should affect decisions. In particular:

    - no mechanism was put in place for identifying cases that had been advised upon by the FCO and MoD before 20 June, but had not yet been issued;
    - there was no systematic approach to enable changes in relevant live situations to be applied to decision making (e.g. Jordan);
    - the interpretation of key elements of the undertaking, such as the meaning of it being "possible" for items to be used in the conflict in Yemen or the treatment of dual use equipment was not clarified; and
    - similarly the membership of the coalition was not clearly and robustly defined, as was evident from differences of understanding within the Unit about the level and nature of different countries' involvement.

37. Had these process issues been identified and addressed then the licence applications should have been registered as in scope for the undertaking and treated accordingly. More systematic cross-departmental senior oversight and support, including additional operational expertise, could improve risk management in future.

The response to the 20 June judgment

38. Implementation of the undertaking to the Court, and the statement to Parliament, carried significant risk. A new set of rules were overlaid on the well-established Consolidated Criteria with little chance for preparatory work due to immediate implementation. While there was likely to be some continuity in practice from the previous application of the Consolidated Criteria to the

situation in Yemen, there was an immediate change in the context for the unit. If nothing else, specific commitments had now been made backed by clear legal consequences.

39. The undertaking itself was produced very rapidly by a small number of people working under conditions of strict confidence. This meant that the new rules to be followed in processing relevant export licences were developed without the opportunity to test deliverability and implementation issues.

40. A number of interviewees report that the scope for senior managers in the unit to consider such issues immediately around 20 June 2019 was limited because of the demands of managing the wider impacts of the judgment.

41. The nature of the judgment, and of the new commitments that the Government had made, were communicated to ECJU staff in an email from the head of unit, a DIT Deputy Director responsible for the unit as a whole, on 21 June 2019. The email set out that:

    "The consequence of the judgment is that the Government is remitted to reconsider our decisions in accordance with the "correct legal approach" (that is, to address the question of whether there was an historic pattern of breaches of IHL by Saudi Arabia).

    The Government is now carefully considering the implications of the judgment for decision-making. While we do this, we will not grant any new licences for exports to Saudi Arabia and its coalition partners (UAE, Kuwait, Bahrain and Egypt) which might be used in the conflict in Yemen (in practice this mostly covers air combat platforms and associated components, and air-to-ground munitions and associated components). The Court Order accompanying the judgment requires us to do so.

    Extant licences – those granted before this judgment – are not immediately affected by the Court Order. CAAT did not seek an Order to suspend licences and the Court has not ordered it. But we are remitted to reconsider the decisions we made about those licences."

42. Interviewees report that there were no further unit-wide operational instructions issued. Within the DIT-only part of the Unit, implementation was thought to be an issue for the FCO team and so these staff did not produce any new formal instructions themselves; conversely the FCO staff involved in implementing the new requirements discussed the impacts but did not believe it necessary to produce any new formal processes or guidance. The overall level of detail in planning the operational response was therefore limited at the level of the unit, and within individual teams marked, across the different departmental teams involved, by assumptions about responsibility and a relatively informal approach. Beyond the initial email from the head of unit, accountabilities for further action were largely implicit and so risked being unclear.

43. As a result, a number of issues relating to the implementation of the Government's commitment were not identified at this stage. For example, the potential for licences to have already received FCO advice, but not yet have been issued, required an understanding of how the end-to-end process for licensing worked in practice. Questions of interpretation in relation to the Government's commitments were not identified, resolved and recorded.

44. The review process that has been followed since the first licences issued in breach were identified shows the impact of a different approach. In the review, staff from across the unit and legal advisers have been considering cases potentially in scope together. This has enabled them to bring their different expertise and perspective to bear and has enabled the identification and resolution of the implementation issues outlined above.

Wider issues

45. The ECJU functions as a co-located, rather than fully joint, unit. This approach was intended to preserve links to existing departmental responsibilities. However it can create a risk that, while each of the constituent parts of the unit plays its role effectively, wider issues get missed and that accountability for cross-cutting questions is not adequately clear. Moreover where there are gaps or shortcoming in formal processes then a strong collective ownership of all aspects of a unit's performance can provide a safeguard as individuals are more likely to identify and take action to address the resultant risks.

46. In the case of these licences it would have been possible either for FCO staff to realise that licences on which they had advised had not yet been issued, or for DIT staff to realise that the recommendations that they had received dated from before the time of the undertaking and that circumstances might have changed. Such steps would have involved going beyond the requirements of the specified processes and the defined roles of the different parts of the unit. Interviewees gave some examples of previous occasions on which FCO officials have advised DIT of changes in the circumstances of cases after their initial advice had been given, which may impinge on whether or not licences remain consistent with the Consolidated Criteria, but this does not appear to be codified in any specific rules or procedures.

47. In some of the cases there was scope for improvement in the consistency of information coming in to the Unit; for example there was some initial disagreements in the responsible departments' wider networks about the extent of RSLF involvement in the conflict and about Jordan's involvement in the coalition. This information is likely to change in real time, and to be subject to some conflict between different sources, but this makes it particularly important that the government as a whole is able to make the most of the information that it has available to it and to identify and reconcile differences of assessment.

48. As set out above, the 20 June judgment and the implementation of the Government's response created significant implementation risk. The extent to which those risks were recognised and owned beyond the Unit itself appears limited. The risks associated with implementation of the undertaking to the Court and the statement to Parliament did not appear on the risk registers of DIT, MoD, or FCO, and there is no structured mechanism for interdepartmental oversight and governance. In general, while the Unit has frequent contact with Ministers it does not seem to have often had great visibility or prominence within any of its constituent departments. Had the work of the unit been more visible and supported by more systematic oversight and governance then a more effective response might have resulted.

3. The potential for other licences to have been granted in breach of the undertaking to Court or the statement to Parliament

Action taken since 9 September

49. After licences GBSIE 2019 / 06449, and subsequently GBSIE 2019 / 07556 and GBSIE 2019 / 06771, were identified, the Secretary of State instigated a complete and full internal review of all licences granted for Saudi Arabia and its coalition partners after 20 June.

50. GBSIE 2019 / 07556 and GBSIE 2019 / 06771 were identified through an initial intensive review. The robustness of the full internal review that followed is the critical factor for determining the robustness of the overall position, as it sought to be comprehensive and exhaustive.

51. DIT led this process in close consultation with FCO and MOD in order to identify any further breaches. Multiple collaborative reviews were held with representatives from each department, this involved more senior grades than required by the usual process along with DIT Legal. The review process also included additional consideration and urgent review of the identification of Coalition partners and any licences that may have been granted to them.

52. Paragraphs 29 to 32 give details of the two licences, GBOIE 2019 / 00197 and GBOIE 2016 / 00197b, which have been identified through the full review process.

Assessment

53. This investigation has sought to assess the robustness of the review process that has been followed. It has not sought independently to reassess the licences that have been issued.

54. The review process since 20 June has been structured in a way which addresses the shortcomings which led to cases being missed in the first place. Questions of definition, interpretation and evidence have been identified, clarified and shared effectively.

55. Substantial time, resources and capability have been invested in the process. There was no evidence from those interviewed of any constraints being placed on this process because of resources or time, and staff at all levels have been directly involved.

56. The usual application process is largely linear, with different departments and elements of the Unit providing advice in a process overseen by DIT. By contrast the review process has been conducted in a much more iterative and real-time way, with officials from all parts of the Unit working together at the same time to assess licences. This has meant that different perspectives and professional expertise were brought rapidly to bear on individual cases and the risk of issues being missed has reduced.

57. The two stages of the review process have successfully identified two cases that were issued in breach of the Government's undertakings to the Court and two licences contrary to the commitment to Parliament, as set out above. While it is difficult to use this as a direct metric of the rigour of the process, it indicates that there was a willingness and ability to bring potentially difficult issues to light, rather than simply "brushing them under the carpet".

58. Overall therefore the process of review seems to have been conducted with rigour commensurate to the seriousness of the issues in question, and on the basis of a good understanding of the immediate shortcomings which had led to the initial errors. Nonetheless it is not possible to eliminate the potential for licences to have been granted which subsequently prove in breach of the undertaking to Court or the statement to Parliament.

59. The nature of the judgements involved in reassessing licences, as in approving them in the normal process, inevitably has some scope for contention and dispute as it involves decisions based on risk. Moreover in the case of the undertaking to Court and the statement to Parliament there are questions of fact involved (such as the involvement of particular countries in the coalition) where it is always possible that the information available to decision-makers at any one time is inaccurate or out of date. Those interviewed described a cautious approach to these judgements and to the risk of incomplete knowledge. This was consistent with the evidence of the process shown to the investigation.

4. Procedures in place to ensure that no further breaches can occur

Action taken since 9 September

60. New procedures have been put in place with the aim of preventing any further breaches of the undertaking or the statement. In particular:
    - a new structured operational process has been put in place to assess whether licence applications for goods to Saudi Arabia or its coalition partners are in scope of the undertaking or statement, with an agreed checklist to be used by licensing officers. Departmental responsibilities, including for cross-cutting issues, through the different stages of the process have been codified and signed off at Director / Director-General level;
    - where applications are recommended for approval, a new senior officials meeting, chaired by DIT and involving senior officials from FCO and MoD, reaches a final recommendation on the application, including whether it is in scope of the undertaking to the Court or the commitment to Parliament. This meeting seeks to ensure that:
        - current and full information is available to enable an assessment of whether an export might be used in the conflict in Yemen;
        - any changes in circumstances in Yemen are properly assessed;
        - the decision that an application is in scope is fully in accordance with agreed understanding to the undertaking to the Court and the commitment to Parliament;
        - if there has been a change in circumstances in the conflict in Yemen which impacts an application, that all applications that might be affected by a decision on this application are immediately flagged and reviewed;
        - if it is decided that an application is not "in scope" that the recommendations received from FCO and MoD in relation to the Consolidated Criteria are robust and properly recorded.
    - any recommendations for approval following this stage are then put to Ministers for consideration.

Assessment

61. The new processes address the shortcomings that led to the breaches of the undertaking and the statement. Key definitions, such as the way in which "possible" should be interpreted have been clarified. Processes and systems have been put in place to ensure that critical knowledge, such as participation in the coalition, is shared and kept up to date.

62. The process has a greater iterative and real-time involvement, with the weekly meeting process providing more opportunities for information to be updated and changes in circumstances to be reflected in decision-making. There is greater senior involvement and oversight which should strengthen assurance.

63. By the same token the new processes are significantly more resource intensive within the Unit and more widely. New mechanisms, such as the tools for keeping up-to-date records of participation in the coalition, require consistent prioritisation across the departments involved if they are to provide the reliable and robust information required. Greater involvement of senior staff will inevitably require deprioritisation of other activities for those staff. There is a risk that while this greater investment across departments is made when the process is new it may decline over time as new pressures emerge. The Departments involved need to ensure that the attention and priority dedicated to these new processes is sustained at all levels for as long as it is required.

64. As with the review process described above, this remains a risk-based process based on necessarily limited information. Indeed the incentives for other parties outside government to provide full information are conflicting and there are opportunities for them to seek to withhold or provide partial information – despite the best efforts of export control staff. The choices involved therefore inevitably involve a balance of risk and it is not possible to eliminate entirely the possibility of licences being granted which, after the event, prove to have been used in a way not

anticipated at the time of licensing. The approach that the Unit is taking appears appropriately cautious and reduces the risk to a low level. However the departments involved need to continue to be vigilant and to ensure that they are making assessments of risk actively and consciously, and that appropriate oversight and risk assessment remains in place to enable this.

Annex A - Consolidated EU and National Arms Export Licensing Criteria

Written Ministerial Statement

Rt Hon Dr Vince Cable, Secretary of State for Business, Innovation and Skills

Consolidated EU and National Arms Export Licensing Criteria

Tuesday 25 March 2014

BUSINESS, INNOVATION AND SKILLS

Consolidated EU and National Arms Export Licensing Criteria

The Secretary of State for Business, Innovation and Skills (Vince Cable): The UK's defence industry can make an important contribution to international security, as well as provide economic benefit to the UK. The legitimate international trade in arms enables Governments to protect ordinary citizens against terrorists and criminals, and to defend against external threats. The Government remain committed to supporting the UK's defence industry and legitimate trade in items controlled for strategic reasons. But we recognise that in the wrong hands arms can fuel conflict and instability and facilitate terrorism and organised crime. For this reason it is vital that we have robust and transparent controls which are efficient and impose the minimum administrative burdens in order to enable the defence industry to operate responsibly and confidently.

The Government's policy for assessing applications for licences to export strategic goods and advance approvals for promotion prior to formal application for an export licence was set out on behalf of the then Foreign Secretary on 26 October 2000, *Official Report*, column 199W. Since then there have been a number of significant developments, including:

- the entry into force of the Export Control Act 2002 the application of controls to electronic transfers of software and technology and to trade (brokering) in military goods between overseas destinations the adoption by the EU of Council common position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment
- further development of EU export control law, including: the adoption of Council regulation (EC) 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment; directive 2009/43/EC of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community; and the re-cast Council regulation (EC) 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items
- the adoption by the UN General Assembly on 2 April 2013 of an international arms trade treaty, which the UK signed on 3 June 2013.

The Government believe that the procedures for assessing licence applications and our decision-making processes are robust and have stood the test of time. We also believe that the eight criteria continue adequately to address the risks of irresponsible arms transfers and are fully compliant with our obligations under the EU common position and the arms trade treaty. Nevertheless it is appropriate to update these criteria in light of developments over the last 13 years. In particular: the list of international obligations and commitments in criterion 1 has been updated; there is explicit reference to international humanitarian law in criterion 2; and the risk of reverse engineering or unintended technology transfer is now addressed under criterion 7 rather than criterion 5. There are also minor changes to improve the clarity and consistency of the language used throughout the text. None of these amendments should be taken to mean that there has been any substantive change in policy.

These criteria will be applied to all licence applications for export, transfer, trade (brokering) and transit/transhipment of goods, software and technology subject to control for strategic reason—referred to collectively as "items"; and to the extent that the following activities are subject to control,

the provision of technical assistance or other services related to those items. They will also be applied to MOD form 680 applications and assessment of proposals to gift controlled equipment.

As before, they will not be applied mechanistically but on a case-by-case basis taking into account all relevant information available at the time the licence application is assessed. While the Government recognise that there are situations where transfers must not take place, as set out in the following criteria, we will not refuse a licence on the grounds of a purely theoretical risk of a breach of one or more of those criteria. In making licensing decisions I will continue to take into account advice received from FCO, MOD, DFID, and other Government Departments and agencies as appropriate. The Government's strategic export controls annual reports will continue to provide further detailed information regarding policy and practice in strategic export controls.

The application of these criteria will be without prejudice to the application to specific cases of specific criteria as may be announced to Parliament from time to time; and will be without prejudice to the application of specific criteria contained in relevant EU instruments.

This statement of the criteria is guidance given under section 9 of the Export Control Act. It replaces the consolidated criteria announced to Parliament on 26 October 2000.

CRITERION ONE

Respect for the UK's international obligations and commitments, in particular sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations.

The Government will not grant a licence if to do so would be inconsistent with, inter alia:

a) the UK's obligations and its commitments to enforce United Nations, European Union and Organisation for Security and Co-operation in Europe (OSCE) arms embargoes, as well as national embargoes observed by the UK and other commitments regarding the application of strategic export controls;

b) the UK's obligations under the United Nations arms trade treaty;

c) the UK's obligations under the nuclear non-proliferation treaty, the biological and toxin weapons convention and the chemical weapons convention;

d) the UK's obligations under the United Nations convention on certain conventional weapons, the convention on cluster munitions (the Oslo convention), the Cluster Munitions (Prohibitions) Act 2010, and the convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (the Ottawa convention) and the Land Mines Act 1998;

e) the UK's commitments in the framework of the Australia Group, the missile technology control regime, the Zangger committee, the Nuclear Suppliers Group, the Wassenaar arrangement and The Hague code of conduct against ballistic missile proliferation;

f) the OSCE principles governing conventional arms transfers and the European Union common position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment.

CRITERION TWO

The respect for human rights and fundamental freedoms in the country of final destination as well as respect by that country for international humanitarian law.

Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, the Government will:

a) not grant a licence if there is a clear risk that the items might be used for internal repression;

b) exercise special caution and vigilance in granting licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the European Union;

c) not grant a licence if there is a clear risk that the items might be used in the commission of a serious violation of international humanitarian law.

For these purposes items which might be used for internal repression will include, inter alia, items where there is evidence of the use of these or similar items for internal repression by the proposed end-user, or where there is reason to believe that the items will be diverted from their stated end use or end user and used for internal repression.

The nature of the items to be transferred will be considered carefully, particularly if they are intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment; summary or arbitrary executions; disappearances; arbitrary detentions; and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the universal declaration on human rights and the international covenant on civil and political rights.

In considering the risk that items might be used for internal repression or in the commission of a serious violation of international humanitarian law, the Government will also take account of the risk that the items might be used to commit gender-based violence or serious violence against women or children.

CRITERION THREE

The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.

The Government will not grant a licence for items which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

CRITERION FOUR

Preservation of regional peace, security and stability.

The Government will not grant a licence if there is a clear risk that the intended recipient would use the items aggressively against another country, or to assert by force a territorial claim.

When considering these risks, the Government will take into account, inter alia:

a) the existence or likelihood of armed conflict between the recipient and another country;

b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

c) the likelihood of the items being used other than for the legitimate national

security and defence of the recipient;

d) the need not to affect adversely regional stability in any significant way, taking into account the balance of forces between the states of the region concerned, their relative expenditure on defence, the potential for the equipment significantly to enhance the effectiveness of existing capabilities or to improve force projection, and the need not to introduce into the region new capabilities which would be likely to lead to increased tension.

CRITERION FIVE

The national security of the UK and territories whose external relations are the UK's responsibility, as well as that of friendly and allied countries.

The Government will take into account:

a) the potential effect of the proposed transfer on the UK's defence and security interests or on those of other territories and countries as described above, while recognising that this factor cannot affect consideration of the criteria on respect of human rights and on regional peace, security and stability;

b) the risk of the items being used against UK forces or against those of other territories and countries as described above;

c) the need to protect UK military classified information and capabilities.

CRITERION SIX

The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law.

The Government will take into account, inter alia, the record of the buyer country with regard to:

a) its support for or encouragement of terrorism and international organised crime;

b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;

c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament instruments referred to in criterion one.

CRITERION SEVEN

The existence of a risk that the items will be diverted within the buyer country or re-exported under undesirable conditions.

In assessing the impact of the proposed transfer on the recipient country and the risk that the items might be diverted to an undesirable end-user or for an undesirable end-use, the Government will consider:

a) the legitimate defence and domestic security interests of the recipient country, including any involvement in United Nations or other peace-keeping activity;

b) the technical capability of the recipient country to use the items;

c) the capability of the recipient country to exert effective export controls;

d) the risk of re-export to undesirable destinations and, as appropriate, the record of the recipient country in respecting re-export provisions or consent prior to re-export;

e) the risk of diversion to terrorist organisations or to individual terrorists;

f) the risk of reverse engineering or unintended technology transfer.

CRITERION EIGHT

The compatibility of the transfer with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

The Government will take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, IMF and Organisation for Economic Co-operation and Development reports, whether the proposed transfer would seriously undermine the economy or seriously hamper the sustainable development of the recipient country.

The Government will consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid, and its public finances, balance of payments, external debt, economic and social development and any IMF or World Bank-sponsored economic reform programme.

OTHER FACTORS

Article 10 of the EU common position specifies that member states may, where appropriate, also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the criteria in the common position.

The Government will thus continue when considering licence applications to give full weight to the UK's national interest, including:

a. the potential effect on the UK's economic, financial and commercial interests, including our long-term interests in having stable, democratic trading partners;

b) the potential effect on the UK's international relations;

c) the potential effect on any collaborative defence production or procurement project with allies or EU partners;

d) the protection of the UK's essential strategic industrial base.

In the application of the above criteria, account will be taken of reliable evidence, including for example, reporting from diplomatic posts, relevant reports by international bodies, intelligence and information from open sources and non-governmental organisations.