UK arms export control policy

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Sir Richard Scott recommended in his 1996 report on the arms-to-Iraq inquiry that a thorough review of strategic export controls and export licensing procedures should be carried out. This note outlines the main changes to arms export control policy and practice that have been introduced since 1997 on the basis of that recommendation.

Controversy since 2011 about UK arms exports to Middle Eastern and North African countries involved in the Arab Spring has led to the announcement of some changes in practice with regard to goods that might be used for internal repression. How significant or effective these changes prove to be remains to be seen. The recent ratification by the UK of the Arms Trade Treaty has required amending secondary legislation and updating the Consolidated Criteria, on which official decisions about whether to approve or refuse an export licence are based.

See also Standard Note SN05802, "The Arms Trade Treaty".

Contents

1 Strengthening the UK and EU legal and regulatory frameworks (1997-2010)

Sir Richard Scott's report of the *Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecution*,[1] of February 1996, recommended that a thorough review of strategic export controls (i.e. controls on military and dual-use goods) and export licensing procedures be carried out.[2] In response to the recommendations of the Scott Report, the Labour Party's 1997 general election manifesto pledged that:

> Labour will not permit the sale of arms to regimes that might use them for internal repression or international aggression. We will increase the transparency and accountability of decisions on export licences for arms. And we will support an EU code of conduct governing arms sales.[3]

1.1 The Consolidated Criteria and the Consolidated List

After the May 1997 election, the Labour Government introduced new national export licensing criteria and supported the creation of a voluntary EU Code of Conduct on Arms Exports. The Code came into effect in 1998 (see also section 1.3 of this note).

In October 2000 the Labour Government introduced the *Consolidated EU and National Arms Export Licensing Criteria* (henceforth, Consolidated Criteria), which brought together the UK's national export licensing criteria with those of the EU Code of Conduct on Arms Exports.[4]

The Criteria included consideration of whether the proposed export would:

- contravene the UK's international commitments
- be used for internal repression
- provoke or prolong armed conflicts or aggravate existing tensions in the destination country
- be used aggressively against another country
- adversely affect the national security of the UK or allies
- be diverted or re-exported under undesirable conditions
- seriously undermine the economy
- seriously hamper the sustainable development of the recipient country

Since then, all applications to export arms and other strategically controlled goods that appear on what is known as the UK's Strategic Export Control Lists, also called the *Consolidated List of Strategic Military and Dual-Use Items that require Export Authorisation* (henceforth, Consolidated List) have been considered, on a case-by-case basis, against the

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1 *Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecution*, HC115, 15 February 1996.

2 'Dual-use' refers to goods which can be used for both civilian and military purposes.

3 *New Labour because Britain deserves better*, Labour Party 1997 General Election manifesto

4 The full text of the 2000 Consolidated Criteria can be accessed by clicking on this link.

Consolidated Criteria.[5] Final decisions about specific applications are issued by the Export Control Organisation (ECO), which is part of the Department of Business and Skills, following consultation with the Foreign and Commonwealth Office (FCO), the Ministry of Defence (MOD) and the Department for International Development (DFID).

The Consolidated List brings together into one document the UK's own lists and those that derive from the EU. It includes the UK Military List, the UK Dual-Use List, the EU Human Rights List, the UK Security and Paramilitary List, the EU UK Radioactive Sources List and the EU Dual-Use List. It is regularly updated.

The full texts of both the Consolidated List (last updated March 2013), which is a highly complex and technical document, and the Consolidated Criteria, which were updated for the first time since 2000 in March 2014 (see below for further details) can be accessed by clicking on these links. The full text of the Consolidated Criteria at March 2014 can be found in an Appendix to this Note.

In July 2002 the Government introduced a number of additional factors for consideration when assessing arms export licences, which have been commonly referred to as the 'incorporation policy'. The policy was intended to respond to the fact that, increasingly, defence goods were manufactured from components sourced in several different countries. This meant that many export licence applications were for goods which were to be incorporated in defence equipment in a second country, after which they would be exported to a third country.

1.2 The Export Control Act 2002

The previous Labour Government also took steps to review the statutory framework governing export controls. The result was the *Export Control Act 2002*. The Act replaced all of the export control provisions contained in the *Import, Export and Customs Powers (Defence) Act 1939*.

As well as maintaining the Government's power to control the physical export of goods, the *Export Control Act 2002* gave the Government new powers, allowing controls to be imposed in the following areas: Intangible transfer of military and other sensitive technology; transfer by any means of WMD-related technology; trade in controlled goods between overseas countries (trafficking/brokering); and the provision of technical assistance overseas. The Act came into force in May 2004. The specific controls introduced under these main provisions are contained in the secondary legislation for the Act, the Export Control Order 2008.

Under the Act, greater consideration was given to sustainable development when assessing export licence applications. The Act was also intended to increase the transparency and accountability in the export control regime, by setting limits on the Government's overarching power to control exports by providing that controls may be introduced only on categories of equipment and technology specified in the Schedule of the Act, or in order to implement an international or EU obligation. Temporary controls could be introduced for reasons outside the Schedule of the Act, although only with the approval of Parliament.

Additionally, the Act provided for parliamentary scrutiny of new Export Control Orders contained in the secondary legislation, introduced under the Act. A Statutory Instrument

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[5] The phrase used by Peter Hain, then Minister of State in the FCO, when announcing the establishment of the Consolidated Criteria, about how they should be used was: "they will not be applied mechanistically but on a case-by-case basis, using judgment and commonsense".

containing a Control Order must be approved by affirmative Resolution in each House within 40 days of the Instrument being laid. However, the Act did not provide, as some had hoped, for prior parliamentary scrutiny of the export licensing regime.

The Act also formalised the requirement on the Government to report annually to Parliament on the controls imposed on both strategic and cultural exports (Section 10, Clauses 1 and 2). This is achieved through the *Strategic Export Controls: Annual Report*, which is published by the Government, usually every July. Click on this link for the 2012 Report. Since the beginning of 2004 the Government has also published a quarterly report covering export licences and refusals for the specified period. All of these reports are available online.

The Government's reports are scrutinised by the members of the four Commons Select Committees with a direct interest in the UK's regulatory framework for arms exports: the Foreign Affairs, Defence, Business and Skills and International Development Committees. Originally known as the Quadripartite Committee, in March 2008 it was renamed the Committees on Arms Export Controls (CAEC). CAEC reports, along with the Government's published responses, are also available online.

In 2007 there was a review of the *Export Control Act* by the previous Labour Government. The aim of the review was to examine the effectiveness of the controls introduced under the Act, in particular with respect to brokering, trafficking and licensed production, and determine whether further changes needed to be made to the legislation without imposing a disproportionate burden on business. Key official documents relating to this review are available online.

The review led to a series of changes to the UK's legal and regulatory framework for arms exports. The extraterritorial provisions of export control legislation were extended by the introduction of a new three-tier system of trade controls. Trade in Category A goods – security and paramilitary goods – by UK persons anywhere in the world is prohibited.[6] Trade in Category B goods, which on the basis of international consensus have been identified as being of heightened concern – for example, small arms, light weapons and man portable air defence systems – is prohibited by UK persons anywhere in the world unless they obtain a licence. Trade in Category C goods – any item on the UK Military List not included in Categories A and B – is not controlled unless it is carried out by persons within the UK. The Labour Government rejected proposals by CAEC and by NGO and industry stakeholders to apply extra-territorial controls to Category C goods by extending them to UK persons overseas as part of efforts to combat international arms brokering.

The review also led to measures being implemented to bring aspects of transport and ancillary services, and transit and transshipment, within the ambit of the UK's legal and regulatory framework for arms exports. For example, Category B goods in transit or being transshipped through the UK to "destinations of concern" would in future require a licence.

1.3 EU measures

After a long period of negotiation, a revised, legally binding, version of the EU Code of Conduct on Arms Exports was adopted by EU member states in December 2008. European Council Common Position 2008/494/CFSP is An Act under Title V of the EU Treaty. Called "The Common Rules Governing the Control of Exports of Military Technology and Equipment", these new Rules incorporated measures that increased the scope of the Code

[6] Aspects of export control legislation apply to persons of British nationality regardless of where they reside – that is, they are extraterritorial in character.

to include brokering, intangible technology transfers and licensed production in third countries. It also expanded and strengthened the criteria against which export licences are assessed. The EU publishes an annual "Common Military List of the European Union", which sets out equipment covered by the Common Position. EU Member States must publish annual reports on their implementation of the Common Position, which are drawn on in the EU's own annual reports. However, the licensing of defence exports remains at the discretion of Member States and the Rules do not prevent EU Member States from adopting more restrictive national policies should they so wish.[7]

Finally, in 2009, the European Council also adopted Regulation 428/2009, which is now the basis for the EU Dual-Use List, which includes brokering and transit controls for dual-use items, as well as end-use controls in relation to certain items or technology.

2 Main developments under the current Government (2010 – present)

On taking office in May 2010, the Government signaled that promoting arms exports would be a high priority. Peter Luff, Minister for Defence Equipment, Support and Technology said in June 2010: "There will be a very, very, very heavy ministerial commitment to the process. There's a sense that in the past we were rather embarrassed about exporting defence products. There's no such embarrassment in this Government."[8]

2.1 Controversy over arms exports to the Middle East and North Africa

During the first half of 2011 there was enormous controversy over UK arms exports to Middle Eastern and North African countries caught up in the Arab Spring, including Bahrain and Libya.

This led to an urgent internal review of those exports and a large number of revocations of licences. There was also a broader internal review of the rules relating to the export of goods that might be used for internal repression.

On 18 July 2011, the Foreign Secretary, William Hague, announced that, "while there was no evidence of any misuse of controlled military goods exported from the United Kingdom", the broader review had concluded "that further work is needed on how we operate certain aspects of the controls".

The outcomes of this 'further work' were subsequently announced by Mr Hague on 13 October 2011:

. Mr Hague said that the Government would introduce

> [...] a mechanism to allow immediate licensing suspension to countries experiencing a sharp deterioration in security or stability. Applications in the pipeline would be stopped and no further licences issued, pending ministerial or departmental review.
>
> [...] a revised risk categorisation, based on objective indicators and reviewed regularly, that keeps pace with changing circumstances; enhances our assessment against all export control criteria, including human rights violations; and allows specifically for ministerial scrutiny of open licences to ensure that the benefits of open licensing can be maintained while keeping the associated risks to acceptable levels. This will increase oversight by Ministers, including of individual licence applications.

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7 In 2012 the European Council began a review of the Common Position and concluded in November of the same year that it "still serves the objectives set in 2008".

8 "Coalition is not 'embarrassed' to sell defence industry abroad", *Times*, 24 June 2010

In addition:

> [...] guidance will be issued for all HMG officials on assessing the human rights implications of our overseas security and justice assistance. We will make this guidance public later this year.

Mr Hague concluded:

> We are committed to robust and effective national and global controls to help prevent exports that could undermine our own security or core values of human rights and democracy; to protect our security through strategic defence relationships; and to promote our prosperity by allowing British defence and security industries to operate effectively in the global defence market.
>
> The Government are determined to learn the wider lessons of events in the Middle East and north Africa. I believe that this package of improvements is the proper response to the lessons of this year. This does not preclude additional measures or further strengthening of the system.

On 7 February 2012, the Secretary of State for Business, Innovation and Skills, Vince Cable, provided further details about the suspension mechanism announced in October 2011, which was now in place, as well as setting out steps that would be taken to increase the overall transparency of the export licensing system:

> [...] The new suspension mechanism will allow the Government to quickly suspend the processing of pending licence applications to countries experiencing a sharp deterioration in security or stability. Suspension will not be invoked automatically or lightly, but triggered for example when conflict or crisis conditions change the risk suddenly, or make conducting a proper risk assessment difficult. A case-by-case assessment of a particular situation will be necessary to determine whether a licensing suspension is appropriate.
>
> Any decision to suspend will be taken by the Licensing Authority based on advice from relevant Government Departments and reporting from our diplomatic posts. Parliament, industry and the media will be informed of any suspension.
>
> Suspension will be tailored to the circumstances in play and will not necessarily apply to all export licence applications to a country, but may instead be for applications for particular equipment (for example crowd control goods), or for applications for equipment going to a particular end-user.
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> If a decision to suspend is made, work on licence applications in the pipeline will be stopped and no further licences issued pending ministerial review. Once the suspension is lifted, applications will not be required to be resubmitted.
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> The Ministry of Defence will apply any licensing suspension decision to MOD Form 680 applications, for which it is the Government authority, and to the assessment against the consolidated criteria of gifting cases, which it co-ordinates on behalf of the Government.
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> Suspension will be lifted (or partially lifted) where the Licensing Authority considers it appropriate to do so.
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> Transparency is also crucial because confidence in the workings of the export licensing system needs to be shared by Parliament and by the public. The system should not just be working properly; it should also be seen to do so.

> I am therefore announcing today a number of proposals to improve the transparency of the export licensing system. These proposals build on my right hon. Friend's review, and we intend to seek the views of interested parties, including the representatives of exporters and non-governmental organisations, on how they will work.
>
> The first proposal is to insert into all open export licences a provision requiring the exporter to report periodically on transactions undertaken under these licences. The Government will then publish this information.
>
> The second proposal concerns information contained in standard export licence applications. Currently all such applications are made in confidence, which makes it difficult to make public any more information than is already disclosed in the Government's annual and quarterly reports. The Export Control Organisation considers that certain additional information contained in licence applications could be made public without causing concern to exporters. I will explore ways of making this additional information public while protecting any sensitive material.
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> The third proposal is to appoint an independent person to scrutinise the operation of the Export Control Organisation's licensing process. The role of this independent person would be to confirm that the process is indeed being followed correctly and report on their work [...]

The Government also clarified that none of these changes should be taken to mean that its overall policy on arms exports had changed.

On 13 July 2012, Mr Cable provided further information regarding the proposals on transparency that he had set out in February. He said:

> Taking each proposal in turn:
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> A facility will be provided on Spire, the export licensing database, for exporters to upload data on their usage of open-general and open-individual export licences. The data will include a description of the items exported or transferred, the destination, value and/or quantity, and some information about the end-user. This data will be published in aggregated form, by destination, in the Government's quarterly and annual reports on strategic export controls, and will be searchable through the strategic export control: reports and statistics website.
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> When submitting a licence application, applicants will be required to indicate whether any information in their applications is sensitive and should not be made public, and give reasons why. In considering whether to release this information the Government will take the applicant's wishes into account but will not be bound by them. I envisage that certain information will always be considered sensitive, such as a product's unit price and its technical specifications, and in some circumstances the name of the exporter and end-user might also be considered sensitive. The mechanism by which we make this additional information public is still to be decided.
>
> There was less of an understanding of how an independent reviewer would operate and the benefits that this role would bring. We will therefore return to this issue at a later date.
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> Work will proceed between now and the end of the financial year on making the necessary technical changes to Spire and the reports and statistics website, and in preparing guidance for exporters. We will of course aim to keep any additional administrative burden on exporters to a minimum.

Since 2011, the Committees on Arms Export Control has been highly critical of the UK's record on arms exports to the Middle East and North Africa and has pursued the issue energetically. It has been primarily concerned about insufficiently cautious and "flawed judgments within the system" and the fact that decisions made through the mechanism to suspend licences may come into effect only after "the bullets have bolted and are in the hands of an authoritarian regime."[9] There was further controversy during August-September 2013 over the approval of export licences to Syria by British companies of chemicals that might be used in the production of chemical weapons.

More broadly, the Committees has expressed concern about the extent and nature of arms exports approved to countries that are on the FCO's list of "Countries of Concern" – that is where the Government has expressed concern about the human rights situation in that country. Whereas the Committees argue that there is an "inherent conflict" between promoting arms exports to authoritarian regimes while criticising their human rights records, the Government has rejected this view.

For more detailed background about the controversy over UK arms exports to the Middle East and North Africa since 2011, along with the many other issues that the Committees has been raising, see the Committees' reports of April 2011, July 2012 and July 2013 (Vol. 1 and Vol. 2), and the Government's responses of July 2011 and October 2012.

2.2 Changes to the legal and regulatory framework due to the Arms Trade Treaty

The Arms Trade Treaty (ATT), the final text of which was adopted by the UN General Assembly on 2 April 2013, represents an attempt to establish legally binding international standards for the regulation of the global conventional arms trade. The prolonged negotiating process that led to the ATT is described in Standard Note SN05802. The treaty will come into force once there have been 50 ratifications.

Both the previous Labour Government and the current Government have been strong supporters of the ATT.

The treaty was opened for signature on 3 June 2013. The UK signed on that day and ratified it on 2 April 2014, following a ten-month ratification process. The treaty was laid before the UK Parliament as Command Paper 8680 on 15 July 2013.

In the Explanatory Memorandum which accompanied the laying of the treaty before Parliament, the Government stated that no primary legislation was required for ratification but acknowledged that secondary legislation under the *Export Control Act 2002* would have to be amended "to ensure consistency between the treaty's scope and the UK's existing controls on brokering of conventional arms when carried out by UK persons located overseas (i.e. "extra-territorial" brokering controls)." This was done under the Export Control (Amendment) Order 2014, which was made on 18 March 2014, laid before Parliament on 19 March and which came into force on 9 April 2014.

The Government had also said that the Consolidated Criteria might require amendment in the light of the treaty. The Criteria have also been due for some time to be reviewed to ensure that they are fully consistent with the wording of the 2008 EU Common Rules Governing the Control of Exports of Military Technology and Equipment (usually described for short as the 'Common Position').

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[9] As argued by the current Chair of the Committees, Sir John Stanley, in a Westminster Hall debate on the Committees' 2011 report. HC Deb 20 October 2011 c341WH

The Government published the updated Consolidated Criteria on 25 March 2014. It takes the view that the amended version does not amount to a change in policy.

According to Notice to Exporters 2014/08:

> This statement of the Criteria replaces the original version which was announced to Parliament in October 2000. There have been many developments within export controls since then, most notably:
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> - entry into force of the Export Control Act 2002
> - extension of the controls to electronic transfers of software and technology and to trade (brokering) in military goods between overseas destinations
> - 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 adoption by the UN General Assembly on 2 April 2013 of an international Arms Trade Treaty, which the UK signed on 3 June 2013.
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> 4. The updated version reflects these developments and brings the Consolidated Criteria fully into line with the EU Common Position and the UN Arms Trade Treaty. The principal changes are:
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> - the list of international obligations and commitments in Criterion 1 has been updated
> - there is explicit reference to international humanitarian law in Criterion 2
> - the risk of reverse engineering or unintended technology transfer is now addressed under Criterion 7 rather than Criterion 5
> - minor changes to improve the clarity and consistency of the language used throughout the text.
>
> 5. None of these changes represents a substantive change in policy. We do not expect these changes to lead to any difference in the outcomes of licence applications. They are simply intended to bring the Criteria into line with our international obligations and to reflect developments in the 13 years since the original Criteria were announced.

3 Other relevant treaties, agreements and forums

A wide range of multilateral treaties, agreements and forums have significantly shaped, and will continue to shape in future, the UK's regulatory framework for arms exports. Several are UN-based; others are not. Below is a summary list.

In 1968, the *Nuclear Non-Proliferation Treaty* (NPT) was signed. The treaty came into force in 1970. The UK is a State Party.

In 1971, what came to be known as the Zangger Committee was established. The Zangger Committee, named after its first Chairman, Prof. Claude Zangger, was formed to serve as the 'faithful interpreter' of Article III, paragraph 2, of the NPT, which provides for the harmonisation of the interpretation of nuclear export control policies amongst NPT States Parties.

In 1972, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction was signed. It entered into force on 26 March 1975. The UK is a State Party.

In 1974, the *Nuclear Suppliers Group* was established. Closely co-ordinated with the NPT process, it is a group of nuclear supplier countries which seeks to contribute to the non-proliferation of nuclear weapons through the implementation of Guidelines for nuclear exports and nuclear related exports. The Guidelines are implemented by each Participating Government in accordance with its national laws and practices.

In 1980, a *UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects* (henceforth, the Convention on Certain Conventional Weapons) was adopted. It is legally binding. There are currently five Protocols to the Convention on Certain Conventional Weapons (the UK has signed but not ratified the Protocol V on explosive remnants of war, which has not yet come into force).

In 1985, the Australia Group was established. It is an informal forum of countries which, through the harmonisation of export controls, seeks to ensure that exports do not contribute to the development of chemical or biological weapons. Coordination of national export control measures assists Australia Group participants to fulfil their obligations under the Chemical Weapons Convention and the Biological and Toxin Weapons Convention to the fullest extent possible.

In 1987, the Missile Technology and Control Regime (MTCR) was established. It is an informal and voluntary association of countries which share the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction, and which seek to coordinate national export licensing efforts aimed at preventing their proliferation. The UK is a founding partner of the MTCR.

In 1991, the Guidelines for Conventional Arms Transfers agreed by the Permanent Five Members of the UN Security Council and other UN Security Council Resolutions were agreed. These began a process of establishing a set of criteria for assessing whether to approve arms exports. They are not legally binding.

In 1992, the UN General Assembly agreed to establish the *UN Register on Conventional Arms*, a voluntary reporting mechanism for participating states which covers seven categories of major conventional arms.

In 1993, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) was signed. It came into force in 1997. The Convention aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties. States Parties, in turn, must take the steps necessary to enforce that prohibition in respect of persons (natural or legal) within their jurisdiction. The UK is a State Party.[10]

In 1996, the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies* was established by a group of States which included most of

[10] The Chemical Weapons Convention builds upon and extends the provisions of the 1925 Geneva Protocol, which banned the use of chemical and biological weapons in war. However, some States that signed the 1925 Protocol have not signed or ratified the Convention – including Syria.

the world's major conventional arms exporters and importers. A voluntary arrangement, 40 countries currently participate, including the US and Russia, which have often been sceptical about or hostile to legally binding agreements. There is a strong correspondence between the EU's regulatory framework (see above) and the voluntary arrangements that apply under the Wassenaar Arrangement.

In 1997, the *Convention on the Prohibition of Anti-Personnel Mines* (Mine Ban Treaty) was signed in Ottawa, Canada. It has been in force since 1999. It is legally binding. The UK has been a strong supporter and in 1998 the *Landmines Act* was passed, incorporating the Convention's provisions into national law.

In 2001, at a UN Conference, Member States agreed a *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects*. It is not legally binding. The Programme of Action is a non-legally binding political agreement that proceeds on the basis of consensus.

In 2005, the UN *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition* entered into force. It was the first legally binding instrument on small arms adopted at the global level

Also in 2005, the UN General Assembly agreed an *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons*. It is not legally binding. There have also been discussions about a similar instrument that would cover illicit brokering.

In December 2008 a new *Convention on Cluster Munitions* was signed in Oslo, Norway. It bans the production, use, stockpiling or trade in cluster munitions. In 2010 the *Cluster Munitions (Prohibitions) Act* was passed, incorporating the Convention's provisions into national law. The Convention came into force in 2010.

In April 2013, the final text of the Arms Trade Treaty was adopted by the UN General Assembly in April 2013. It is yet to come into force (see also section 2.2 of this note).

As the example of the EU demonstrates (see section 1.3), there are also an expanding number of regional frameworks intended to counter the proliferation of conventional weapons. Another with direct implications for the UK is the 1993 Principles Governing Arms Transfers agreed by the Forum for Security Co-operation of the Conference for Security and Co-operation in Europe.[11]

Finally, it is important to note that there are also arms export restrictions imposed as a result of sanctions or embargoes. Under the Consolidated Criteria the UK has an obligation to enforce country embargoes imposed by the UN, the Organisation for Security and Co-operation in Europe (OSCE) or the EU. The Government provides a list of sanctions and embargoes to which the UK conforms on its website. Click this link to go to the list.

[11] The Conference for Security and Co-operation in Europe is now called the Organisation for Security and Co-operation in Europe (OSCE)

Appendix – The Consolidated Criteria (updated 25 March 2014)

HC Deb 25 March 2014 c9-14WS

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.