



**Reports from the Business, Innovation and Skills, Defence,
Foreign Affairs and International Development Committees**

Session 2009-10

**Strategic Export Control: Her Majesty's Government's Annual
Report for 2008, Quarterly Reports for 2009, Licensing Policy
and Parliamentary Scrutiny**

**Response of the Secretaries of State for Defence, Foreign and
Commonwealth Affairs, International Development and Business,
Innovation and Skills**

Presented to Parliament by the Secretaries of State for Defence,
Foreign and Commonwealth Affairs, International Development and
Business, Innovation and Skills by Command of Her Majesty
October 2010

Cm 7938

£5.75

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This publication is also available on <http://www.official-documents.gov.uk/>

ISBN: 9780101793827

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID P002392745 10/10 5536 19585

Printed on paper containing 75% recycled fibre content minimum.

**REPORTS FROM THE BUSINESS, INNOVATION AND SKILLS, DEFENCE,
FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT COMMITTEES**

SESSION 2009 - 10

**STRATEGIC EXPORT CONTROLS: HER MAJESTY'S GOVERNMENT ANNUAL
REPORT FOR 2008, QUARTERLY REPORTS FOR 2009, LICENSING POLICY
AND PARLIAMENTARY SCRUTINY**

**RESPONSE OF THE SECRETARIES OF STATE FOR DEFENCE, FOREIGN AND
COMMONWEALTH AFFAIRS, INTERNATIONAL DEVELOPMENT AND
BUSINESS, INNOVATION AND SKILLS¹**

This Command Paper sets out the Government's response to the Committees on Arms Export Control report of 16 March 2010 "*Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of control legislation*". The Government's response to the Committees' recommendation is set out in bold. Unless indicated otherwise, references are to paragraphs in the Committees' report.

¹ The Revenue and Customs Division (RCD) within the Central Fraud Group CPS (CFG CPS) has provided responses to the following conclusions and recommendations. RCD is an independent prosecution authority. It is superintended by the Attorney General, who is answerable to Parliament.

Conclusions and recommendations

1. Whilst we recognise the additional strain on Government's resources as a result of our requests for information, we recommend that Government informs our successor Committees of any delay in providing information requested by the due date. (Paragraph 8)

We will continue to make every effort to provide the Committees with timely and comprehensive responses to their requests for information, and inform the Committees of any delay in so doing as soon as possible.

2. We recommend that the Business, Innovation and Skills, Defence, Foreign Affairs and International Development Committees continue their work as the Committees on Arms Export Controls in the new Parliament. (Paragraph 11)

We welcome the formation of the new Committees and recognise the important role that the Committees play in scrutinising the UK's strategic export controls policy and practice. We look forward to working closely and constructively with the new Committees.

3. We conclude that it is disappointing that the Government chose to reject the joint proposal prepared by industry and NGOs on the extension of extra-territorial controls on the trade of strategic exports. However, we welcome the steps that the Government is taking to investigate where it is appropriate to extend extra-territorial controls. We recommend that the Government reports back to our successor Committees on progress on this work by the end of October 2010. At the same time we adhere to our previous recommendation that extra-territorial controls should be extended to all items on the Military List. We conclude that we see no justification for allowing a UK person to conduct arms exports overseas that would be prohibited if made from the UK. (Paragraph 23)

The Government believes that extra-territorial controls should be the exception not the rule. It is right that we should control the activities of UK nationals worldwide when they are, for example, dealing in Weapons of Mass Destruction or breaching international arms embargoes. But it would be disproportionate to try to control all trade in military goods by UK nationals around the world.

We are aware that this issue was the subject of long and detailed discussion involving the previous Government, business and interested NGOs. We will keep an open mind, in the light of emerging evidence, on whether the scope of UK extra-territorial trade controls should be amended. At present, however, we do not see a case for wholesale expansion.

4. We conclude that the Government should be commended for listening to the concerns of industry and non-governmental organisations and then adding anti-vehicle landmines to the list of Category B goods. We recommend that the Government inform the Committees in its Response to this Report when it intends to introduce the necessary changes to legislation to bring this into effect. (Paragraph 26)

Anti-vehicle mines were added to Category B with the entry into force of the Export Control (Amendment) (No. 2) Order 2010 on 31 August 2010.

5. We conclude that it is welcome that the Government is reviewing the existing guidance for the transport of goods through and from the UK. We recommend that the Government inform our successor Committees of the outcome of this review and of any further work that has been undertaken to raise awareness of the export control regulations among transport providers and parties to shipments. (Paragraph 35)

We have taken a number of measures to raise awareness of the controls in this important area. ECO has recently been in discussions with the British International Freight Association (BIFA). We are pleased that BIFA will be represented on the Export Control Advisory Committee (the Government-Industry liaison group which meets twice-yearly). Our preliminary discussions have revealed willingness within the Association to inform BIFA members of their responsibilities in terms of export control. We have been asked to provide input to their newsletters to the freight industry and are in discussions about an ECO organised training event for the freight and transport sector. ECO has also been invited to speak at a Chartered Institute of Logistics and Transport (CILT) event in October 2010 and ECO's Director, Tom Smith, will be addressing the 23rd Annual Global Trade Controls event in London in November.

6. We repeat our previous conclusion that the justification remains for the need for an additional element of vetting, whether through a separate system, or by some modification of the electronic export licence processing system. We repeat our recommendation made previously that the Government establish a pre-licensing Scrutiny of Arms Export Controls (2010) register of brokers in order to reduce the possibility of undesirable entities trading in arms overseas. (Paragraph 42)

As things stand, the Government does not believe that the case for a pre-licensing register has been made. It is not clear that the extra layer of bureaucracy involved in a registration system would add to the effectiveness of the UK's trade controls. However, we will keep this under review in the light of any emerging evidence.

7. We conclude that it is of great concern that brass plate companies registered in the UK are able to trade in controlled goods without the necessary licence as the UK authorities have no meaningful way of taking enforcement action against them. We recognise that the problem of regulating brass plate companies is not confined to

strategic exports control. We recommend that the Government explore ways in which it would be possible to take enforcement action against brass plate companies, including consulting enforcement agencies in other countries on their approach to this problem. (Paragraph 47)

The Government notes the Committees' concern with regard to the enforceability of trafficking and brokering controls against "brass plate" companies. We agree that the problem is not specifically an export control issue but of course we are considering all the options. It should be noted that while "brass plate" companies will not require UK trafficking and brokering licences unless they undertake controlled activities in the UK, they, and/or any company shipping goods on their behalf from another country, will of course be subject to other countries' national export controls.

8. We conclude that preventing undesirable entities, for example brass plate companies, from joining a pre-licensing register of brokers, and encouraging overseas governments to only license UK brokers registered on the UK list would complement the existing controls on UK brokers. (Paragraph 51)

The Government does not believe such a prohibition would have any real impact on "brass plate" companies which are British in name only. They have no presence in the UK other than the brass plate, employ no UK nationals and no part of their activity is actually conducted within the UK. A prohibition from registering as a UK broker would not make enforcement any easier. Also, if someone is not based in the UK, and is either not undertaking any controlled activity in the UK, or is prepared to trade without a UK licence, it is hard to see why they would apply to be on a UK register. As noted above we are considering the options but there is unlikely to be an easy answer on the way forward.

9. We conclude that it is welcome that the Government continues to discuss the proposal for an amended EU Military End-Use Control behind the scenes. However, it has been over eighteen months since the Government announced that it intended to seek an expansion of the control. We recommend that the Government report back to our successor Committees by October 2010 on the proposal for an amended Control that has been agreed within Government and with an update on discussions with industry and EU partners. (Paragraph 59)

The new Government is still considering the options and will provide a further response to the Committees by the end of the year. As the Committees will be aware, any change to the Military End-Use Control would require amendment to the EU Dual-Use Regulation - the Regulation was amended in 2009 and is not due to be reviewed until 2012 and so any EU proposal would be unlikely to be adopted quickly.

10. We recommend that the Government provide the Committees in its Response to this Report with an update on its progress in pursuing an amendment to the existing EU Torture Regulation. (Paragraph 65)

We have sought and obtained comments from the EU Commission Legal Service in respect of the proposed Torture End-Use Control. The comments raised a number of legal difficulties around such a new control; specifically the compatibility with WTO regulations and the new twin track approach to the legislative process post-Lisbon. Subsequent to these comments the European Parliament has debated the implementation of the Torture Regulation and in conclusion has urged the Commission to take forward action on a Torture End-Use Control. We are currently awaiting a response from the Commission as to how they plan to take this forward and specifically whether this will require a complete re-draft of the Regulation.

We will continue to engage with the Commission with regard to the drafting and adoption of a new Regulation.

11. We welcome the Minister's decision to introduce a no re-export provision to the undertakings which exporters are required to obtain from end users prior to export. Whilst this falls short of the no re-export clause that we have previously recommended, we conclude that the Government has accepted that it is useful to send a message that the UK considers re-export of goods to certain countries unacceptable. We recommend that our successor Committees monitor the effectiveness of the measure introduced by the Government as a deterrent against re-export in contravention of a UN, OSCE or EU embargo, to assess whether no-re export clauses remain desirable. (Paragraph 74)

We acknowledge the Committees' conclusion and look forward to working with the successor committee on this and other issues.

12. We conclude that the Government's decision to act on our recommendation to conduct a survey into dual-use non-compliance is welcome. We recommend that the Government takes note of the concerns raised by both industry and NGOs about the methodology of the survey, and ensure that more robust data gathering measures are deployed in any future studies. We conclude that simply asking companies whether they are compliant seems a poor way of measuring whether the system is being followed, as some organisations may be non-compliant through ignorance and deliberately non-compliant entities would have no reason to admit to failing to comply with regulations. (Paragraph 83)

There is no easy way to measure non-compliance and while we are aware of the limitations of the study we do not accept that they invalidate the results. The study did not simply ask a company whether they were compliant, but was constructed so as to produce the most honest and meaningful results in the context of the inevitable constraints. It was carried out in complete confidence by an experienced market research company with a very strong track record. In our view the fact that some companies did admit to non-compliance gives credibility to the results. In addition, the levels of reported non-compliance are not inconsistent with the results of targeted checks by UKBA/HMRC at the frontier, other Local Compliance assurance risk-testing exercises undertaken by HMRC, and our own compliance checks. The study also sought to determine the level of the respondents' knowledge and understanding, and in particular to explore the reasons given by those who did not have, or claimed not to need, licences in order to determine whether those reasons were valid.

13. Whilst we remain supportive of SPIRE, we conclude that more needs to be done to raise awareness of both SPIRE and the wealth of information that is available to the strategic export industry, including producers of dual-use items, through the Export Control Organisation website and the events that the Organisation holds around the country. (Paragraph 86)

We continue to assist companies in gaining a better understanding of SPIRE through the ECO's "Making Better Licence Applications" training, although we recognise there is always more we can do in raising awareness of SPIRE. Since the start of 2009 a total of 132 delegates have attended this specialised type of training course, which is limited to a total of 10 delegates per event. We also incorporate SPIRE training into on-site company training activities and raise awareness of SPIRE as part of all of our general and sector-specific courses. During the course of our discussions with other government departments and trade associations, we ensure that relevant hyper-links to the Export Control Organisation pages are accessible from partner sites. Notification about the ECO's forthcoming awareness courses are now advertised via both UK Trade & Investment's and Businesslink's events databases as well as issued to relevant trade associations ensuring wider publicity of our training and guidance material.

14. We welcome the decision that the Export Control Organisation pages of the Department of Business, Innovation and Skills website will converge with Business Link in March 2010. We recommend that the Department for Business, Innovation and Skills should continue to explore ways in which it can increase awareness amongst businesses of the dual-use system. (Paragraph 91)

We are in discussions with a range of intermediaries and business partners including relevant Trade Associations whose members are involved in the manufacture or supply of dual-use goods. Our awareness activities centre around ensuring exporters are aware of the control lists and can easily access further information and guidance about export control procedures. We are also in discussion with partners about organising a range of sector specific training events in the New Year.

15. We conclude that the provision of information on enforcement actions taken by HM Revenue and Customs, seizures and misuses of open licences was a welcome addition to the 2008 Annual Report on United Kingdom Strategic Export Controls and we recommend that this information be included in future reports. (Paragraph 92)

It is our intention to continue to include information on enforcement actions in future reports. HMRC data and information is on pages 7 to 9 of the 2009 Annual Report on United Kingdom Strategic Export Controls (HC182).

16. We recommend that the Government provide in its Response to this Report an update on progress towards primary legislation to bring in civil penalties for the breach of strategic export controls in addition to prosecution through the criminal law. (Paragraph 96)

On 31 March, the then Business Minister Ian Lucas wrote to the Committees announcing that, after further work by BIS and HMRC, the Government had decided to implement a revised policy for issuing compound penalties instead of introducing a civil penalty regime. As a result HMRC put in place a revised compounding policy expanding its use for minor breaches of export controls, in agreement with the Crown Prosecution Service, from 1 April 2010. We are satisfied this delivers the original objectives of a civil penalty regime with the advantages of not requiring new legislation and of being implemented immediately without significant additional resource.

The ECO, in co-ordination with HMRC, now publishes notifications of recent compound penalty offences on the Department for Business website. <http://www.bis.gov.uk/policies/export-control-organisation/eco-press-prosecutions/compound-penalties>

17. We repeat our recommendation that the Government aim to publish its 2009 Annual Report on UK Strategic Export Controls by the end of May 2010. (Paragraph 97)

The UK Annual Report on Strategic Export Controls 2009 (HC 182) was published on 27 July 2010, despite delays occasioned by electoral Purdah, the General Election, and the formation of the new Coalition Government. We will continue to publish future annual reports as close to the end of May as possible.

18. We recommend that the 2009 Annual Report on United Kingdom Strategic Export Controls include a further breakdown of the information on the resources for consideration of export licence applications, showing the resources allocated to the Ministry of Defence. (Paragraph 100)

Table 1.1 on page 5 of the 2009 Annual Report on United Kingdom Strategic Export Controls (HC 182) lists estimated resources for all government departments and agencies involved in strategic export controls including the Ministry of Defence.

19. We adhere to the recommendations on bribery and corruption made in our 2008 Report and we recommend that the Government consider them further with a view to implementing the recommendations or explaining why there is no need to do so. (Paragraph 111)

See our response at paragraph 20 below.

20. We conclude that the introduction of a Government strategy on UK Foreign Bribery is a welcome development. We recommend that the Government in its Response to this Report provide information on how the strategic export control system is working to support the new strategy. (Paragraph 113)

Following enactment of the Bribery Act 2010, the Government intends that the new offences will come into force in April 2011. This will follow public consultation on the guidance required under section 9 of the Act, which commenced in September. The Government is keen to draw on the defence sector's experience of developing and implementing an anti-corruption code of practice. The Export Control Organisation website includes a link to the consultation pages on the Ministry of Justice's website and the Government is encouraging those working in the sector to participate in the consultation so that the final guidance is informed by their knowledge, experience and expertise.

To support industry anti-corruption efforts, the Export Control Organisation wrote to all licence holders drawing attention to the OECD Working Group on Bribery's support for defence sector codes such as the Common Industry Standards and the Global Principles of Ethics.

The Export Control Organisation also supports SME efforts to develop appropriate anti-corruption systems by a link to the BIS Anti-Corruption Unit webpage. This provides exporters with a range of free anti-corruption resources including guidance on current bribery law, information on corruption issues in overseas markets, and international good practice on corporate anti-bribery systems by the OECD Working Group on Bribery.

21. We repeat our previous conclusion that the Government is to be commended for its continuing commitment to an international Arms Trade Treaty (ATT) and we recommend again that the Government continue to seek an ATT that is as strong as possible. We conclude that while consensus should be sought and strived for, a very small minority of dissenting States should not be allowed to endanger such an important international treaty. We further recommend that the Government ensure

that the UK negotiating team has sufficient resources and expertise to meet the tight timetable for agreeing the Treaty for the Diplomatic Conference in 2012. (Paragraph 122)

We thank the Committee for commending the Government's support for the Arms Trade Treaty (ATT) and note their recommendation that the Government seeks an ATT that is as strong as possible. As for the Committee's conclusion, the Government will continue to strive for consensus, to ensure that the correct balance is struck between the strongest possible treaty and the widest participation of states. The Government operates a cross-Whitehall team on ATT, with representatives from the FCO, MOD, DFID and BIS, and works closely with key stakeholders, including business, NGOs and faith groups. The team will continue to look for innovative ways of delivering their objectives, whilst working within resource constraints.

22. We conclude that the arms embargo against China is of political importance in that it provides a strong message in relation to the inadequate protection and promotion of human rights in China. We recommend that the arms embargo against China continues to be maintained whilst its human rights performance remains so poor. (Paragraph 132)

There is a broad consensus within the EU that the time is not right to lift the EU Arms Embargo on China. The Government agrees that the EU needs to see clear progress on the issue that necessitated the Embargo in the first place, namely civil and political rights.

23. We repeat our conclusion that it is regrettable that arms exports to Israel were almost certainly used in Operation Cast Lead. This is in direct contravention to the UK Government's policy that UK arms exports to Israel should not be used in the Occupied Territories. We further conclude that the revoking of five UK arms exports licences to Israel since Cast Lead is welcome, but that broader lessons must be learned from the post conflict review to ensure that UK arms exports to Israel are not used in the Occupied Territories in future. (Paragraph 141)

All applications are considered on a case by case basis against the Consolidated EU and National Export Licensing Criteria. The UK Government does not have a policy that UK arms exports to Israel should not be used in the OPTs. Although end use in the OPTs could increase the likelihood that future applications may contravene the Criteria, this is not reason alone for a refusal. Israel faces a number of security threats and has a legitimate right to purchase arms for self defence.

24. We recommend that the Government, in its Response to this Report, sets out clearly the longer term lessons learnt post Operation Cast Lead and how they will impact in practice on the issuing of future licences for arms exports to Israel. (Paragraph 142)

It is inherent in the UK's strategic export control systems that case-by case assessment of arms export licence applications take account of how exports to the same end user were used in the past; evidence from Operation Cast Lead has, and will continue to be, factored into our assessment of subsequent arms export applications for Israel.

We continue to learn lessons from the recent conflicts in Israel, Georgia and Sri Lanka. We have already further strengthened our internal information systems to help with the application of export controls immediately following a conflict, and we will continue to review our internal information systems to ensure they are as effective as possible.

25. We conclude that the review and subsequent revocation of nine extant licences for exports to Sri Lanka is to be welcomed. We further conclude that the Government should take a longer term view about unstable countries, and further appraisal is required where the peace is fragile. UK arms exports have ended up in places that were contrary to UK policy in the case of Israel, and in the case of Sri Lanka, arms were exported during ceasefire periods, which, in retrospect was regrettable. While we do not question the criteria or the goodwill of those who apply the criteria, it is the outcome of where weapons end up and the use that is made of them that is important. (Paragraph 150)

With regard to the Committees' concerns that export licences were approved for Sri Lanka during ceasefire periods, we would emphasise that all export licence applications were carefully considered on a case by case basis against the Consolidated EU and National Arms Export Licensing Criteria, and based on all relevant information available at the time. Any export licence applications that were considered to be inconsistent with the criteria, taking into account the information available at the time of the application, were refused.

We would refer the Committees to our answer at paragraph 24 above which explains how we ensure conflict situations are factored in to our post-conflict licensing decisions. And we would stress that no exports have been made to either Israel or Sri Lanka in contravention of UK arms export policy.

26. We recommend, that in order to minimize the risks of UK arms exports ending up in places contrary to UK policy, and to maximise the benefit of lessons learned, that the Government review the efficacy of the criteria in assessing the suitability of exports to less stable countries and regions. (Paragraph 151)

We seek to minimise the risk of UK arms exports ending up in the hands of undesirable end users by means of a front end, case-by-case risk assessment based on all relevant information available at the time the license application assessment takes place; this is a fundamental corner-stone of our strategic arms export control system. We would again refer the Committees to our answer at paragraph 24 regarding post-conflict risk assessments.

27. We conclude that in its Response to this Report the Government should provide our successor Committees with the result of discussions on the use of Criterion 8 amongst EU Member States. (Paragraph 160)

At the UK's request, EU Member States have exchanged detailed information on their application of Criteria 8 through the EU Working Group on Conventional Arms Exports (COARM). Subsequent to this exchange, the Netherlands has decided to host a seminar on the application of Criteria 8 within the EU. It is hoped this will take place in November 2010; the UK will attend and participate in the seminar, and brief the Committees on the outcomes.



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ISBN 978-0-10-179382-7



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