



Reports from the Business and Enterprise,
Defence, Foreign Affairs and International
Development Committees

Session 2007-08

**Strategic Export Controls: HMG's Annual Report
for 2006, Quarterly Reports for 2007, Licencing
Policy and Parliamentary Scrutiny**

Response of the Secretaries of State for
Defence, Foreign and Commonwealth Affairs,
International Development and Business,
Enterprise and Regulatory Reform

*Presented to Parliament by the Secretaries of State for Defence, Foreign and Commonwealth
Affairs, International Development and Business, Enterprise and Regulatory Reform
by Command of Her Majesty
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**REPORTS FROM THE BUSINESS AND ENTERPRISE,
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**STRATEGIC EXPORT CONTROLS: HMG'S ANNUAL REPORT
FOR 2006, QUARTERLY REPORTS FOR 2007, LICENCING
POLICY AND PARLIAMENTARY SCRUTINY**

**RESPONSE OF THE SECRETARIES OF STATE FOR
DEFENCE, FOREIGN AND COMMONWEALTH AFFAIRS,
INTERNATIONAL DEVELOPMENT AND BUSINESS,
ENTERPRISE AND REGULATORY REFORM¹**

This Command Paper sets out the Government's response to the Committees' on Arms Export Control report of 17 July 2008 "*Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, 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.

This Command Paper also includes at Annex One the responses to recommendations 12, 14, 15, 16, 45, 46, 47, 48 and 50 about the review of the Export Control Act 2002, made by the Committees in their report on 7 August 2007. The Government was unable to provide full responses to those recommendations at the time as the review was ongoing and in order not to pre-empt the outcome of the review.

¹ The Revenue and Customs Prosecutions Office (RCPO) has provided responses to the following conclusions and recommendations. RCPO is an independent prosecution authority. It is superintended by the Attorney General, who is answerable to Parliament.

Conclusions and recommendations

1. We conclude that the Government is to be commended for bringing forward the Export Control (Security and Para-military Goods) Order 2008, to prevent the export of, and trading in, sting sticks. (Paragraph 6)

The Government thanks the Committees for their comments.

2. We conclude that two weeks to comment on the draft Trade in Goods (Categories of Controlled Goods) Order 2008 was wholly inadequate. We recommend that the Government ensure that interested parties have at least two months to comment on the drafts of the third tranche of secondary legislation implementing the Government's conclusions on the outcome of its Review of Export Controls. (Paragraph 14)

The Government always seeks to provide the Committees and other interested parties with drafts with sufficient time to comment but this has to contend with the target deadlines which accompany the legislative process. In this case, the Government provided the draft Order and associated guidance to the Committees and other stakeholders as soon as it was able to do so. It would have given the Committees and other stakeholders longer to comment if this had been possible. However, the Government's wish to implement the tighter controls at the earliest possible date meant that the timetable for drafting, clearing and laying the legislation before Parliament was extremely tight. The Government wrote to the Chair of the Committees on 22 July 2008 in response to its recommendation in relation to the third tranche legislation; the content of that letter is set out below.

“In your letter to me of 12 June you asked for an assurance that BERR would provide at least two months for the Committees to consider the third tranche of changes for the Review of Export Controls. I am sorry not to have replied sooner, but as you know we have been finalising the second tranche changes and preparing for publication of our further response.

I am very grateful for the Committee's input into the Review process so far, and am keen to give it as much time as possible to provide input into the next stages. However, as you will appreciate, preparing and introducing new legislation is no easy task, and can be time consuming, partly because of the process that needs to be followed. We are also producing the third tranche order as a consolidation order, which we think will be helpful for users, but is not without complication because it involves more detailed consideration of the whole of the existing legislation rather than the particular areas of policy where amendment is required. We also need to make sure that we allow enough time after consulting the Committees to consider any comments it has on the drafts before finalising them.

With that in mind, we calculate that we will be able to get the final draft orders and guidance to the Committees in order to give it one month to comment on them. Any more than this might jeopardise our very tight timetable for laying them before Parliament in time for them to come into effect in April 2009 as planned. In order to enable the Committees to plan its meetings and discussions in advance, we estimate that this will fall in the period mid September to mid October. We would however provide the drafts earlier if at all possible. We would also aim to give the Committees preliminary drafts earlier; this might involve providing various elements of the orders and guidance on a piecemeal basis as and when they can be produced if the Committees would find this helpful. We would give this material to other external stakeholders at the same time as the Committees.

I hope that the Committees can accept this arrangement, so that we can bring the next set of changes into effect at the earliest possible date. We would of course keep the Committees closely in touch with any developments on the timetable during the drafting process.”

The Government would also like the Committees to be aware that if the outstanding policy issues still being considered as part of the Review of Strategic Export Controls, cannot be resolved in time for the third tranche legislation, further legislation may be necessary at a later date.

- 3. We recommend that the Government take steps to demonstrate the effectiveness of the export control system. (Paragraph 23)**

The Government has this year (2007-08) had to give priority to the Review of export control legislation. The public consultation, the Government’s own analysis, responses from COARM Member States to a UK questionnaire (we will send the Committees a copy separately) and consultation with Non-Governmental Organisations (NGOs), industry and the Committees are all relevant to the effectiveness of the system, and have all fed in to the Review.

Once the Review has been concluded the Government will take a closer look at the issue of the extent to which industry is aware of, and complies with, export controls, which is at the core of the Committees’ recommendation. The Government is still considering commissioning a study but needs first to be sure that this would add value to existing analysis, and would represent value for money. Our focus is on how to best implement and enforce strategic export controls and raise industry’s compliance and awareness, so as to provide a basis upon which to review, and potentially re-focus, our awareness activities. Any study would therefore not be primarily about quantification of levels of non-compliance with strategic export controls. The Government is actively taking steps to tackle non-compliance. The Secretary of State for Business, Enterprise and Regulatory Reform may revoke or suspend the right of any entity to use an Open General Export or Trade Control Licence, or an Open Individual Export or Trade Control Licence, where the terms

of that licence have not been reached, or where other actions, such as conviction for an export control related offence, make revocation or suspension necessary. The use of civil penalties for the breach of export controls is also being considered. (see also answer to Recommendation 21).

4. We conclude that it is necessary to extend extra-territorial controls to cover the export of, and trading in, small arms, MANPADS and cluster bombs and we welcome the Government's decision to do this in the Trade in Goods (Categories of Controlled Goods) Order 2008. (Paragraph 27)

The Government shares the Committees' conclusion that it was necessary to extend extra-territorial controls to cover the overseas trading by United Kingdom persons in small arms, MANPADS and cluster munitions. The Trade in Goods (Categories of Controlled Goods) Order 2008 came into force on 1 October 2008 and will control for the first time the extra-territorial trading of these goods which, through international consensus, have been identified as being of heightened concern.

5. In the absence of a wide-ranging and enforceable international arms trade treaty we conclude that there is an overwhelming case for the UK to extend its extra-territorial controls further. (Paragraph 30)

The Government notes the Committees' conclusion. As noted in the Government's further response on the Review, further extension of the trade controls on activities by United Kingdom persons anywhere in the world to cover other weapons (i.e. beyond torture equipment, cluster munitions, small arms, light weapons, long range missiles, unmanned aerial vehicles and man-portable air defence systems) is an issue that is still being considered by NGO and industry stakeholders, with the aim of making a joint proposal for the Government to consider further. The Government will report back on the outcome of this work by the end of 2008, but it will not be possible to implement any changes arising from this by 6 April 2009. If changes are decided upon, further legislation will be necessary at a later stage.

In reality, there is a limit to what the UK can achieve in the absence of effective controls overseas, and outside its jurisdiction. The Government does not accept that the absence of an Arms Trade Treaty is in itself a justification for extending the UK's trade controls. The UK Government fully recognises the importance of an ATT and remains engaged internationally to promote the UN process. The Foreign Secretary launched a new phase of the UK's campaign towards an ATT by hosting a meeting of key potential stakeholders in London on 9 September 2008.

6. We reiterate the recommendation we made last year that the Government bring forward proposals to extend the extra-territorial provisions of the export control legislation to encompass trade in all items on the Military List and that all residents in the UK and British citizens overseas be required to obtain trade control licences, or be covered by a general licence, before engaging in any trade in the goods on the Military List. In order not to undermine the employment prospects of British citizens working for reputable organisations, we further recommend that the Government issue general licences covering British citizens working overseas and engaged in categories of trade between specified countries or in certain activities such as advertising. (Paragraph 31)

As stated in the response to Recommendation 5 above, NGO and industry stakeholders are looking at whether they can jointly agree a proposal for further examination by Government, under which any further extensions of extra-territorial trade controls would be balanced by compensating measures to avoid placing unreasonable burdens on legitimate business. The Government will report back on this work by the end of 2008.

7. We conclude that the Government should make its decision whether or not to include the control of transport and ancillary services within new Category B provided by the Trade in Goods (Categories of Controlled Goods) Order 2008 on the basis of evidence made available to the Committees, including any practical experience in other countries of implementing such provisions. In addition, the Government should consider not only the services to include but the nature of the control and the duties and liabilities that can reasonably be placed on those providing ancillary services. (Paragraph 33)

The Government notes the Committees' conclusion.

As noted in its further response on the Review, the Government has, based on the further work it has carried out in this area, concluded that the sole provision of finance or insurance services in support of the movement of Category B goods should not be controlled, on the basis that they are not linked closely enough to core trading activities, and that to introduce controls on these activities in relation to goods in which there is significant legitimate trade would be a disproportionate burden for industry.

In relation to advertising and promotion, the Government has concluded that general advertising and promotion should not be controlled for Category B goods, but that active or targeted promotional activities aimed at securing a particular business deal should.

In relation to the provision of transport services, the Government has decided on balance not to introduce a requirement for transport providers who transport Category B goods between countries overseas to provide documentary evidence

that those goods had been appropriately licensed by the overseas authorities, which it has concluded would be burdensome and difficult for them to do in practice. However, the Government accepts that it is right to control the provision of transport where the circumstances and risk justify doing so, bearing in mind that the provision of transport is more closely connected to trading than other ancillary activities, in that it is essential in order for the trade to take place. Because Category B goods are traded legitimately, but are of heightened concern, the trade controls for Category B goods will cover certain activities of transport providers when carried out by UK persons anywhere in the world. In order to keep the burden proportionate to the risk, further work with stakeholders is needed to ensure those activities that are of no concern are kept outside the scope of the control. In broad terms, the intention is to catch those who have direct involvement in transferring or arranging the transfer of Category B goods between two countries overseas where they know or have reason to believe that they are Category B goods.

The Government will of course consider all evidence made available to it, including evidence made available to the Committees and any practical experience in other countries of implementing such provisions.

Changes arising from these discussions will be implemented by 6 April 2009. The Government will provide an update by the end of 2008.

8. We reiterate our recommendation made previously that the Government establish a register of arms brokers. (Paragraph 36)

As noted in its further response on the Review, the Government is not yet fully convinced at this stage that the benefits of a pre-licensing registration system would justify the burden it could impose on legitimate business, particularly in view of other steps it is taking in this area.

The Secretary of State for Business, Enterprise and Regulatory Reform may now revoke or suspend the right of any entity to use an Open General Export or Trade Control Licence, or an Open Individual Export or Trade Control Licence, where the terms of that licence have not been adhered to, or where other actions, such as conviction for an export control related offence, make revocation or suspension necessary. The Government is now concentrating its compliance effort on open general or open individual licence users whose compliance is not satisfactory, and has powers to revoke and suspend OGLs in cases where the necessary improvements are not made. The Government is also committed to refocusing its awareness effort to give priority to those using Open General and Open Individual Trade Control Licences, and will be working with industry to develop a new Open Trade Licence awareness strategy throughout 2009.

The Government believes that these actions, taken together, may achieve similar benefits. On that basis, the Government proposes not to proceed directly to the implementation of a pre-licensing registration system for arms traders at this stage, but to assess first whether the new administrative measures that it has introduced achieve the desired result. However, in practice SPIRE, the Government's fully electronic IT system for processing export licences, introduced in September 2007, is a register of exporters and traders. Companies applying for new export or trade licences must first set up an account on, and then submit their licence applications or registrations through SPIRE. This provides a full register of all those who have applied for trade and export licences, but does not currently involve a pre-licensing vetting procedure as proposed for the registration system.

9. We conclude that the Government is right to seek to introduce an end-use control on torture equipment through the EU. If this is not possible, we recommend that such a control should be introduced by the UK. (Paragraph 38)

The Government shares the Committees' conclusion that it is right to seek to introduce an end-use control on torture equipment through the EU. It has already made good progress in taking this forward with the Commission and other Member States, and will provide a further update on this work by the end of 2008. If however it is not possible to achieve this through the EU, the Government will consider introducing such a control unilaterally.

10. We reiterate our recommendation that it should become a standard requirement of licensing that export contracts for goods on the Military List contain a clause preventing re-export to a destination subject to UN or EU embargo. In addition, we recommend that the contracts include a subrogation clause allowing the UK Government to stand in the place of the exporter to enforce the contract in British or foreign courts. (Paragraph 40)

See answer to Recommendation 11.

11. We recommend that the Government make export licences for supplies to licensed production facilities or subsidiaries subject to a condition in the export contract preventing re-export to a destination subject to UN or EU embargo. (Paragraph 42)

The Government considers all export licence applications rigorously, against the Consolidated EU and National Arms Export Licensing Criteria, taking full account of the prevailing circumstances at the time of application and other announced Government policies. This consideration takes account of the risk of diversion to undesirable end users, including the risk of diversion to countries subject to EU or UN embargoes, and also consideration of the recipient countries' attitude towards international agreements/commitments.

As noted in its initial response on the Review, the Government concluded that there is no convincing case for enhancing controls on the exports of controlled goods specifically in relation to licensed production.

The Government is still considering whether including conditions relating to contracts on the licence would add anything to the Military End Use Control approach. Further information on the EU Military End Use Control is supplied in the answer to Recommendation 13.

The Government is not however, attracted by the idea of using subrogation clauses in the way in which the Committees suggest. There are legal difficulties in doing so because of the limits of UK jurisdiction, as well as difficulties in enforcement. It is also difficult to see what a subrogation clause achieves that cannot be achieved by other means – for example, by refusing applications from the exporter to the end user in question on the grounds of risk of diversion (Criterion 7).

12. We conclude that we should return to the issue of the “single action” clause – empowering the Government to refuse the transfer of an unlisted item – once the Government has pursued the matter through the EU and we recommend that in its response to this Report the Government state its current position in negotiations with the EU. (Paragraph 44)

See answer to Recommendation 13.

13. We conclude that a military end-use control applying to non-controlled goods is evolving. We welcome this development. We recommend that the Government bring forward proposals for a systematic military end-use control regime. (Paragraph 46)

As noted in its initial response on the Review, the Government did accept in principle that there was a case for tightening controls on the export of non-controlled goods.

The Government’s aim is to achieve this through an expanded EU Military End Use Control, which we believe will allow the Government to licence non-controlled goods in much the same way as a “single action” clause would.

The current Military End Use Control does not control complete items that, whilst not strategically controlled, could nevertheless be of significant use to the military in an embargoed destination; neither does it control any exports to non-embargoed destinations, some of which might be of considerable concern.

As noted in its further response on the Review, the Government has decided that it will aim to negotiate an enhanced EU Military End Use Control under which licences will be required for export from the EU of any non-controlled goods which

the exporter knows are intended for use in listed destinations by the military, police or security forces, or has been informed by the Government that the goods are or may be so used, where there is a clear risk that the goods might be used for internal repression, breaches of human rights, or against UK forces or those of allies.

Certain routine goods (food, clothing etc) would not, by their nature, fall within this definition (i.e. they could not be used for internal repression, breaches of human rights, or against UK or other forces) and therefore would not be caught by the control.

More detailed work is needed on the exact wording and coverage of the control. Further consultation on the new control is continuing with industry and NGOs, and the Government will report back to the Committees before the end of the year. The Government will then aim to negotiate the changes at EU level in order to avoid both putting UK exporters at a competitive disadvantage to those in other Member States, and the risk of unscrupulous exporters circumventing UK controls by exporting from other Member States. The Government will aim to link this control to the new torture end use control in the interests of clarity for exporters.

14. We recommend that the Government consider as part of a package of proposals for a military end-use control regime whether (i) the ML6 category of the Military List should be amended to cover utility and transport vehicles supplied for military, security or police use, including those supplied as complete items or in kit form, and (ii) the ML10 category should be amended to cover utility and transport aircraft supplied for military, security or police use. (Paragraph 47)

The Government is grateful for the Committees' recommendation. However, as the Committees point out, the concerns relate to the end use of the equipment described above i.e. for military, security or police use, rather than to the equipment in general. The control lists do not operate on an "end use" basis, but require exporters to apply for a licence in all circumstances regardless of the end use. The Government will therefore attempt to address these concerns by trying to negotiate an enhanced EU Military End Use Control, rather than amending the control lists themselves. Negotiating at EU level will ensure that other Member States also operate the same level of control.

15. We conclude that we should continue to monitor the number of seizures made annually by HM Revenue and Customs and we recommend that the Government continue to supply this information in annual reports on strategic export controls along with an explanation for the trend in seizures. (Paragraph 50)

The Government welcomes the Committees' continued interest in the number of HMRC seizures. HMRC defines seizures under strategic export controls as including:

- **Items on the UK's Military List;**
- **Dual-Use goods that require export licences;**
- **Goods controlled under Regulation (EC) No 1236/2005 (Goods that can be used for torture or capital punishment); and**
- **Other controlled goods exported in breach of UN, EU, OSCE and UK sanctions and arms embargoes.**

The Government will continue to publish figures in the Government's Annual Report on Strategic Export Controls. In order to make these figures more meaningful, the Government will undertake to provide additional commentary on seizures figures in future reports.

16. We reiterate our recommendation made previously on two occasions that the Sentencing Guidelines Council conduct a review of the guidelines on sentences for breaches of export control and we press the Council as a matter of urgency to include the review in its programme for 2008-09. We are deeply dismayed to have to make this recommendation again. (Paragraph 52)

While a limited number of prosecutions have been brought to date under The Export Control Act 2002, it is anticipated this number will increase over the coming years. The Court of Appeal, in the case of the British arms dealer, John Knight, provided some guidance on sentencing in cases of conviction under the arms control legislation. This guidance has served to underscore that serious penalties can be meted out to those convicted of such offences. The Committees' recommendations and the disappointment that they have expressed, that once more the Sentencing Guidelines Council has declined to issue guidance, is noted and will be brought to the attention of the Sentencing Guidelines Council. RCPO will support any work that the Sentencing Guidelines Council seeks to carry out.

17. We recommend that the Government suspend as a matter of course any person or company convicted of breach of export controls from the use of the Open General Trade Control Licence for a period no less than the length of their sentence and, if the Government establishes a register of brokers, he or she be struck off the register. We also recommend that those who have committed minor breaches have this recorded against their names in the register. (Paragraph 55)

The Committees are aware that suspension from the Open General Trade Control Licence has already happened in one instance and it is right that we should take the same action in similar circumstances. The Government is in sympathy with the Committees' recommendation, and finds it difficult to envisage circumstances in which it would not suspend a person or company convicted of a criminal breach

of export controls from the use of the Open General Trade Control Licence for a period of at least the length of their sentence. This would ensure they were not able to declare goods for export using this form of licence. In practice we would need to take such decisions on the merits of the individual case, but if any exceptional case were to arise where we decided not to suspend, we would write to the Committees to explain why.

As already stated in the answer to Recommendation 8 the Government proposes not to proceed directly to the implementation of a pre-licensing registration system at this stage. Given that the SPIRE register is simply a record of licence applicants, it is not possible to strike traders off. However, the fact that someone is on the register does not prevent our refusing their licence applications. If it does introduce a pre-licensing registration system, the Government will reconsider the recommendation relating to registration.

18. We conclude that we should monitor the trend and type (in particular, intent, lack of awareness or neglect of duty of care) in the number of misuses of open general licences next year. We recommend that this information should be included in the Government's annual reports on strategic export controls. (Paragraph 57)

We agree. The Export Control Organisation's (ECO's) Compliance Unit collects information on the misuse of open general licences. This information will be put into the Government's next Annual Report on strategic export controls.

19. Where breaches of the requirements to use open general licences are persistent and an exporter shows no inclination to bring his or her administrative arrangements up to the required level, we recommend that the Export Control Organisation automatically remove the exporter's entitlement to use open general licences. (Paragraph 58)

The ECO sends out Notices to Exporters on an ad hoc basis to publicise any new developments in the area of export controls. Notice to Exporters 12 of 2008 (available at <http://www.berr.gov.uk/europeandtrade/strategic-export-control/licences/ogels/page46237.html>) explained the circumstances where a company's ability to use open general licences would be suspended and the procedure for doing so. Where breaches of the terms of the licences are found which appear to be systemic rather than an isolated incident of human error, the company will receive a warning letter from ECO. This letter will set out the issues found at the Compliance visit, what must be done about them, and the timescale for improvements to be made. Arrangements will also be made for a revisit by the target date for improvements. As of 19 August 2008, 13 such letters had been sent in one year.

At the time of the revisit the Government would expect the company to have made considerable efforts to correct the faults identified. If little or no attempt has been made to do so, ECO will consider suspending the company's use of the open general licences where faults are still occurring.

20. In responding to this Report we recommend that the Government set out the arrangements and programme for reviewing and updating open general licences. (Paragraph 59)

Changing geopolitical circumstances, country embargoes and changes to the controls effectively mean that the terms of Open General Licences are constantly under review. The Government believes this approach is more appropriate than having set review periods.

21. We conclude that the use of civil penalties for the breach of export controls appears to offer a method of strengthening the UK's export controls. We conclude that we should consider this matter further when the Government has completed its consideration of the use of civil penalties for the breach of export controls. We recommend that the Government inform the Committees and the House of the outcome of its deliberations at an early date. (Paragraph 63)

The Government notes the Committees' recommendation. HMRC and ECO are working together to study the use of civil penalties for the breach of export controls. The Government aims to finalise its policy on this issue by the end of year and will inform the Committees and the House at that time. (See also answer to Recommendation 3).

22. In responding to this Report we recommend that the Government provide an assessment of the effects on the integrity of the UK's export control system of waiving the requirement on exporters applying for OGELs to wait for an acknowledgment of their applications from the Export Control Organisation before exporting goods under the licence. We further recommend that the Government take steps to ensure that the integrity of no part of the UK's export control system is jeopardised by the illness or unavailability of staff. (Paragraph 67)

We understand that this recommendation refers to a misunderstanding about a particular notice on the BERR website, so we have responded in some length to clarify the position. There was no impact on the integrity of the UK's export control system as a result of waiving the requirement on exporters applying for Open General Licences (OGLs) to wait for an acknowledgement of their applications from the Export Control Organisation before exporting goods under the licence. There are different types of OGL's including Open General Export Licences (OGELs) and Open General Trade Control Licences (OGTCLs).

Companies and individuals register to use OGLs either before, or within 30 days of, their first use (a few OGLs do not require registration because they are for very specific purposes such as exporting goods after exhibiting them in the UK). However, the purpose of registration is not to check the company or individual with a view to approving their suitability to use the licence; it is simply a means of recording who is using the licence, so that the ECO can arrange future compliance visits to check that the terms and conditions of the licence are being met. This approach is consistent with the fact that OGLs only permit very low risk exports or trade (i.e. those for which we would never refuse a licence) where there is a real business need. To date the Government has never refused a request for registration. However, in view of the arrangements it has introduced for de-registration, the ECO will in future assess any requests to re-register against the list of those who have had their ability to use an OGL withdrawn.

Therefore, waiving the requirement to await an acknowledgement had no adverse impact at the registration stage, and neither did it have any impact upon the subsequent compliance visiting programme. Compliance visits do not take place immediately following registration, but, necessarily, after a period of using the OGL so the company's ability to comply with the terms and conditions can be effectively tested. The ECO had all the information it needed to carry out a compliance visit. The notice placed on BERR's website simply acknowledged these registrations en masse, rather than individually.

It is also worth noting that many of the registrations received were not from new users, but from companies already receiving compliance visits but who were simply registering for another OGL or amending their contact details.

23. We conclude that there is no overwhelming case in favour of creating an export enforcement agency in the short term. (Paragraph 70)

The Government notes the Committees' conclusion, as does RCPO.

24. We conclude that the transfer of some functions of the Defence Export Sales Organisation (DESO) from the Ministry of Defence to The Department for Business, Enterprise and Regulatory Reform provides an opportunity to separate the functions of promoting defence sales from that of licensing exports in both departments. (Paragraph 74)

As has been made clear in announcements to Parliament, the advisory function on licensing undertaken by the Ministry of Defence has remained in that Department. In BERR the defence sales promotion and export licensing functions will continue to be separate; export licensing was until recently the responsibility of the Minister of State for Energy. It has now passed to the Economic and Business Minister, but responsibility for trade promotion remains with the Minister of State for Trade and Investment.

25. We conclude that all of the departments concerned with the scrutiny of export licences need to keep under review whether the cutbacks in defence attaché posts is having a detrimental effect on the UK's export controls. (Paragraph 76)

The MOD's recent reviews of the Defence Attaché network will not lead to a reduction in the application of the necessary scrutiny required from posts abroad in relation to the export licensing process. Defence Attachés do not have a formal role in export licensing issues. Advice on license applications is given to the Department for Business, Enterprise and Regulatory Reform, by MOD staff in London and by the FCO. Any monitoring activity after sales have taken place is the responsibility of the FCO, who may ask the relevant Head of Mission or their designated staff to ensure the task is carried out. Where there are staff reductions in overseas Posts from any Department. HMG ensures that priority tasks continue to be met. This

includes the Government's obligations under the EU Code of Conduct on Arms Exports and other regulatory requirements.

26. We recommend that within six weeks of the publication of this Report, the Home Office supply a memorandum responding to the matters we raised on the import of arms in our Report last year. (Paragraph 78)

The Home Office reported back to the Committee separately on 27 August 2008.

27. We recommend that the Government publish future annual reports on strategic export controls by the end of March of the following calendar each year. (Paragraph 80)

We agree that we should try to get the publication of reports and scrutiny aligned to each other. However, we are unable to produce a report by the end of March, as the final annual collation of data from the various points across Government cannot take place until April. Planning and preparation has already started on the 2008 Annual Report which we will aim to publish as soon as possible after April 2009.

28. We recommend that the Government include monetary information on the management and enforcement of export controls in future annual reports on strategic export controls. (Paragraph 83)

The Government notes the Committees' recommendation and will look to include monetary information on the management and enforcement of export controls in future annual reports.

29. We recommend that the Government in responding to this Report set out any conclusions it has reached arising from its examination of the practices followed in annual reports issued by other EU Member States and provide an indication of the timetable for the completion of the work. (Paragraph 84)

The Government is committed to producing a high quality annual report that contains comprehensive information on UK export control policy. The Government is in the process of reviewing the practices followed by other EU Member States and states elsewhere in their recent annual reports in order to develop best practice and will report by the end of the year its findings on areas that could be adopted by the UK in future annual reports on Strategic Export Controls to the Committees.

30. We recommend that the Government in responding to this Report set out the timetable for bringing a fully searchable and regularly updated database of all licensing decisions into operation and publish details of its functionality and operating arrangements. (Paragraph 85)

The Government is committed to introducing a fully searchable, publicly available database, and has written to the Committees with regard to the current position and timetable for its introduction. For the record the content of that letter of 15 September 2008 is set out below.

“The Committees have, in their latest Report, asked us to set out the timetable, functionality and operating arrangements for the searchable database.

I am pleased to be able to tell the Committees that we have now started development work on the database. Because it will link to the SPIRE licence processing system, this needed to await SPIRE development and implementation, as well as allowing SPIRE to bed in. The concept has proved more complex technically than initially envisaged and it is not yet possible to confirm exactly when the database will be launched, but we hope this will be in the first half of next year.

Full details of the functionality and operation of the database will emerge in the development process, and I will update the Committees on this early in 2009. However, I would like to reassure the Committees that, as stated in the Government’s response to its 2007 recommendation, there will be no loss of functionality or data: the searchable database will provide licensing information to the same degree of detail as currently provided in the Quarterly Reports, but will allow users to produce bespoke reports to meet their needs, for example to produce reports of aggregated details of licensing activity for non-standard time periods, or to sort data by categories of equipment to see destinations to which that category had been licensed.

I hope you will agree that this is a very significant step forward in transparency. Closer to the date of launch, my officials would be pleased to demonstrate the searchable database to the Committees.’

31. In responding to this Report we recommend that the Government explain whether in issuing export licences for armoured personnel carriers and water cannons to Libya it made an exception to its policy to refuse an export licence if the issue of a licence is assessed to be inconsistent with the Consolidated Criteria and whether it will carry out end-use monitoring in the case of these exports to Libya. (Paragraph 90)

The Government notes the Committees’ recommendation and will report back separately.

32. In responding to this Report we recommend that the Government explain whether it carries out any Criterion 8 assessment of the impact of exports to private companies in countries on the Department for International Development’s list of countries where sustainable development is most likely to be an important factor and whether it checks that an application made by a private company from a country on the list is unconnected with the government of the country. (Paragraph 91)

The Government assesses all licence applications against all the Consolidated EU and National Arms Export Licensing Criteria, including Criterion 8, using the Criterion 8 Methodology. Where an application’s monetary value exceeds the Criterion 8 threshold for a particular country, as set out in the Department for International Development’s Criterion 8 Methodology, that department carries out a detailed assessment. However, there are certain circumstances under which DFID does not do this detailed assessment; namely:

- **applications that are for the use of a private individual in the destination country and are, in terms of volume and type, consistent with the declared end use (e.g. sporting guns, old military vehicles for collectors).**
- **applications that are not funded from government resources in the destination country (e.g. a UK exporter needing to send goods to a subsidiary to undertake oil exploration).**
- **applications that are for the use of, and purchased by, UK or international bodies working in the destination country (e.g. armoured Land Rovers for the protection of UK Embassy staff; body armour for the use of UN troops on peacekeeping duties).**

Under these circumstances DFID does not see the licence applications and therefore makes no further checks.

33. We have concluded that in the case we raised about the Open Individual Trade Control Licence which appeared to cover exports to Ivory Coast we should accept the Government’s offer of a confidential briefing. (Paragraph 93)

The Government notes the Committees’ conclusion and we will arrange a briefing on this issue on a suitable date during the next session of Parliament.

34. We recommend that the Government send us a “Restricted” report on outreach no later than its response to this Report and clarify the timetable for the production of future reports. (Paragraph 94)

The Government will send to the Committees a “Restricted” report on our Outreach activities in the area of Strategic Export Controls, which includes a timetable for the production of future reports to the Committees, at the same time as this response to your Report.

35. We recommend that when it produces guidance for those handling or dealing with exports-both for civil servants and British citizens or companies-the Government set out concisely and clearly the extra-territorial provisions in statute and common law on bribery and corruption as well as the penalties for breaching the law. (Paragraph 110)

Current guidance to overseas posts makes clear that any information relating to acts of bribery committed by UK-registered companies and UK nationals should be reported directly to the Serious Fraud Office. It also suggests ways in which posts may be able to help UK companies address concerns locally.

Guidance for exporters on UK bribery and corruption law is available on the UK Trade and Investment website in the form of a question and answer leaflet (see <https://www.uktradeinvest.gov.uk/ukti/fileDownload/BriberyLeaflet0808.pdf?cid=421520>). This guidance clearly states that UK-registered companies and UK nationals can be prosecuted in the UK for an act of bribery committed wholly overseas, with maximum penalties on conviction of an unlimited fine and/or seven years in prison. Earlier in 2008 the Government updated this leaflet to note its intention to bring forward a draft bribery Bill during the 2008/9 Parliamentary session. The updated leaflet also notes a recent extension to Serious Fraud Office powers, through the Criminal Justice and Immigration Act 2008. Under these new powers the Serious Fraud Office can compel the production of documents in the early vetting stage of foreign bribery cases, to facilitate the sifting of allegations and enable swift action against well-founded cases.

The Government is in the process of reviewing anti-corruption guidance for exporters and civil servants, as part of our broader efforts to support business integrity. New guidance will include advice on how companies can resist bribe solicitation and will signpost practical tools and international best practice standards for anti-corruption procedures. Furthermore following the establishment of the UK Trade and Investment Defence and Security Organisation and in light of the Woolf Committee Report's observations for government, broader work on guidance for the Export Licensing community and defence sector ethics will be taken forward under the Defence Industrial Strategy.

36. We reiterate our recommendations that an assessment in the Criterion 8 methodology be applied by the Government to test whether the contract behind an application for an export licence is free from bribery and corruption, to maximise the integrity and accountability of the procurement process, and that the Government publish the methodology in the annual report on strategic export controls. (Paragraph 112)

The Criterion 8 methodology was published in the 2007 Annual Report on Strategic Export Controls. See answer to Recommendation 37 for the Government's position on using export controls to tackle corruption.

37. We recommend that as a first step the Export Control Organisation require those applying for export licences to provide a declaration that to the best of their knowledge the export contract has not been obtained through bribery or corruption and that where an agent has been used due diligence checks have been carried out. We recommend that those who knowingly make a false declaration be liable to prosecution and revocation of all export licences. In addition, we recommend

that in a case where subsequently an exporter is convicted of corruption the Government revoke all his or her export licences. We also recommend that the Government amend the National Export Licensing Criteria to make conviction for corruption by an exporter grounds for refusing an export licence. (Paragraph 117)

The Government is supporting wider initiatives to support defence sector integrity. The UK Trade and Investment Defence and Security Organisation is supporting the defence sector's Common Industry Standards initiative, as a contribution to the highest business standards in transparency and governance. The Export Credits Guarantee Department is due to report on their anti-bribery and corruption procedures during the course of 2009. The Government will wait until these broader initiatives have been introduced and reports have been issued, before considering recommendations 36 & 37 further.

38. We recommend that the UK Government consider how to improve the transparency of the Salam Project. We also recommend that the Public Accounts Committee gives consideration to publishing all reports to it from the National Audit Office in respect of the Salam Project. (Paragraph 121)

The Salam Project is subject to a strict agreement on confidentiality between the UK and Saudi Arabian Governments. Sharing sensitive information outside the current government-to-government channels would seriously jeopardise our bilateral relations with Saudi Arabia.

39. We recommend that the Government provide in its response to this Report a statement setting out the progress made by government departments and agencies investigating current allegations of bribery in relation to arms exports. (Paragraph 123)

To avoid the risk of prejudicing any future prosecution the Government does not comment on ongoing lines of enquiry. However, as previously confirmed in relation to the discontinuance of the BAE / Saudi investigation, the Serious Fraud Office is continuing to investigate allegations of bribery by BAE Systems in relation to defence contracts outside of Saudi Arabia.

Following an investigation by the City of London Police's Overseas Anti-Corruption Unit, on 22 August 2008 a director of CBRN Team Ltd, a UK-based security services and equipment company, pleaded guilty at Southwark Crown Court to making corrupt payments. On 27 September he received a five month jail sentence which was suspended for a year. This was the first successful prosecution of the foreign bribery offence, under Section 1 of the Prevention of Corruption Act 1906.

40. We recommend that the Government continue to press determinedly for the revised EU Code of Conduct on Arms Exports to be adopted as a legally binding Common Position under Article 18 of the Treaty of European Union. (Paragraph 126)

The Government remains strongly committed to seeing the Code of Conduct adopted as a Common Position, and have already subjected the text to parliamentary scrutiny, which will enable the UK to move quickly to adoption once consensus on adoption has been reached. To this end, we are currently in detailed discussions with the French Presidency and other member states to see if the concerns previously identified by some member states can be resolved. We are hopeful that progress will be possible.

41. We recommend that in responding to this Report, the Government explain whether the conclusions and recommendations from the peer review of the implementation of EU Council Regulation 1334/2000 on the control of dual-use items have led to changes in the operation of the export control system to improve its effectiveness. (Paragraph 127)

Work to implement the recommendations of the Peer Review continues. At an administrative level this has centred on making national systems more transparent and user-friendly for exporters. Facilitating and encouraging exchanges of information between Member States has also been tackled, most notably but not exclusively through the initial development and continuing enhancement of a Commission-run and Community wide denials database. The main focus of activity over the last two years has however been centred on consideration of the Commission's proposals to amend the Dual-Use Items Regulation (1334/2000). This includes a number of proposals motivated directly by the recommendations of the Peer Review. We hope that work on amendments to the Regulation will be completed by the end of 2008. Thereafter it will be possible to focus more attention on some of the other aspects of the Review's conclusions and recommendations.

42. On the basis of the evidence given by the Secretary of State for Defence and by the Foreign and Commonwealth Office we conclude that the Government has reached the view that neither the Defence and Security Procurement Directive nor the Intra-Community Transfers Directive as published on 5 December 2007 will lead to a weakening of the UK's export control system. This is an issue that we shall keep under review. (Paragraph 133)

The Government also continues to keep the matter under review as the Directives are discussed in both Council Working Groups and the European Parliament.

43. We recommend that the Government provide us with a report on the outcome of its contacts with the Slovenian Presidency and EU States within the Working Party on Conventional Arms Exports (COARM) to consider how best to ensure that the EU Code of Conduct is applied in a uniform manner across the all Member States. (Paragraph 135)

This question relates to paragraphs 134 and 135 of the Committee’s report which refers to previous correspondence on this subject. The following response set out the discussion that took place at COARM during the Slovenian Presidency and illustrates that COARM remains the best forum to ensure that the EU Code of Conduct is applied consistently by all Member States.

Discussion of the Slovakian Government’s decision to allow the export of military missiles to Sri Lanka took place at the COARM meeting of 10th June 2008. The Slovakian Government representative explained that the decision had been taken by the Ministry of Economy. In reaching their decision, they had taken into account the fact that there were no sanctions in place against Sri Lanka, and it was not subject to any embargo. On this basis the Ministry had reached the conclusion that there were no grounds to refuse. A first shipment of 10,000 rockets had therefore been made, but following representations by other EU Member States including the UK, the Slovakian authorities had decided to revoke the licence and not supply the remaining 30,000 rockets.

Taking the floor on behalf of the UK, our representative set out HMG’s view with regard exports to Sri Lanka at the current time. Bearing in mind the deteriorating security situation in the country, the UK would have been extremely unlikely to approve a licence application for these rockets, as we believed that such equipment should be refused under Criterion 3 of the Code of Conduct. In the following “round-table” a number of other Member States confirmed that this was also their position. Summing up the discussion, the Slovenian Presidency concluded that it was vitally important that all Member States tried to interpret the Code of Conduct consistently, and that discussions within COARM such as this one, were a vital tool in establishing this consistency.

Every Member State is committed to interpreting the Code in a similar way. In the UK, the Code of Conduct has been subsumed into the Consolidated Criteria – the statutory guidance under which export licence applications are assessed. Each licence is considered case-by-case on its merits, and as a result, there is scope for the possibility that licensing decisions for exports to the same destination will vary over time. The interpretation of the Code may vary between Member States, and this appears to be what happened when the Slovaks made their decision to export. When it was pointed out to them that their interpretation was at odds with other Member States’ understanding, they revoked the licence in question. By pursuing these issues through COARM, Member States continue to work together towards an increasingly uniform interpretation of the Code.

44. We conclude that the Government is to be commended and supported in its efforts to achieve a comprehensive and effective international arms trade treaty. (Paragraph 137)

We thank the Committees for their continued support on this Government's efforts to take forward the UN process towards an international Arms Trade Treaty (ATT). The Foreign Secretary launched the current phase of our campaign towards an ATT on 9 September when he hosted a meeting for a wide group of stakeholders, including: industry, NGO's, academia and the media. He also published an article in the Independent on 9 September setting out his personal support for an ATT. We intend to press the UN in the coming weeks for a resolution to take forward the process in 2009.

We will keep the Committees informed of progress.

45. We recommend that the Government bring forward legislation in the next session to ratify the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Protocol). (Paragraph 140)

The Government plans to bring forward legislation in the next session of this Parliament which will enable the UK to ratify the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Protocol). The necessary legislation is contained in the Transport Security Bill. The Department for Transport is leading on preparation of the Bill: drafting is now almost complete.

46. We conclude that the British Government and the EU should maintain their arms embargo on China. (Paragraph 146)

The Government notes the Committees' views.

47. We recommend that the Government adopt a policy that, where a country is subject to an international arms embargo, the UK Government does not provide official sponsorship for the representatives of the State under embargo to attend arms fairs in the UK. (Paragraph 148)

The government notes and agrees with the principle conveyed in the Committee's recommendation about official government sponsorship of invitations for representatives from countries subject to international arms embargoes to attend certain major defence exhibitions held in the UK.

The government reviews carefully all proposals for state sponsored invitations and takes into account a range of factors, including whether a full or partial embargo is in place. In some cases it is considered important for wider political reasons that we should maintain a defence or security relationship, without actually providing equipment. The objective in all cases is not simply to sustain the embargo, but to use the embargo to influence a State to change its behaviour or practice. An invitation to a defence exhibition could be part of this wider strategy, but we agree

with the Committee that a decision on this matter should be very carefully weighed against the fact that an embargo is in place. The government stands ready to provide further information and maintain discussions with the Committees about invitations if required.

48. We recommend that in responding to this Report the Government explain whether it pressed for a restriction in the Convention on Cluster Munitions agreed in Dublin in 2008 that would allow it to develop a new generation of anti-tank cluster shell. (Paragraph 152)

The Government did not press for such a restriction in the negotiations that took place in Dublin in May. Prior to Dublin there was no internationally agreed definition. A key task at Dublin therefore was to define cluster munitions and thereby what was to be prohibited; this was based on stringent physical and technical criteria.

As Lord Malloch Brown made clear in the House on 3 June, the Ballistic Sensor Fuzed Munition (BSFM) that has been procured by the Armed Forces is not a cluster munition as defined by the Convention. Dublin participants were satisfied that the BSFM, and other similar munitions, do not contribute to the post-conflict humanitarian problems that the Convention seeks to address, and thereby fall outside the scope of the Convention.

49. We conclude that the Government is to be commended for its support for, and agreement to enter into, the Convention on Cluster Munitions agreed in Dublin in 2008, which bans all types of cluster munitions, including so-called “smart” cluster munitions. (Paragraph 153)

On 28 May 2008 the Prime Minister announced the Government’s support for a ban on cluster munitions, including UK cluster munitions currently in service. This bold step confirmed the Government’s commitment to address the humanitarian concerns that cluster munitions raise, and helped to ensure the successful conclusion of the Oslo Process in Dublin.

The Government is delighted at the outcome of the Dublin Diplomatic conference and proud of the leading role the UK played in bringing about the new Convention on cluster munitions that was adopted by over 100 countries in Dublin on 30 May. The Government believes the new Convention is strong and will help to make the world a safer place. The Government plans to sign the Convention when it opens for signature on 3 December 2008 in Oslo. Legislative arrangements will then need to be put in place before we can ratify.

In the meantime we have taken a significant step towards implementing the Convention’s norms. The UK Armed Forces have withdrawn from service their two remaining cluster munitions, the M85 and CRV-7 Multi Purpose Sub Munition/M73, and have started their disposal process.

The Government has also taken prompt action in applying the “spirit” of the Dublin Convention by classifying all Cluster Munitions as Category “A” goods, thereby making them subject to the most stringent level of trade controls, with effect from 1 October 2008.

ANNEX ONE

RESPONSES TO RECOMMENDATIONS 12, 14, 15, 16, 45, 46, 47, 48 AND 50 MADE BY COMMITTEES ON ARMS EXPORT CONTROL IN THEIR REPORT ON SESSION 2006-07

ABOUT

THE REVIEW OF THE EXPORT CONTROL ACT 2002

12. Where a British citizen working overseas for a reputable and responsible organisation applies for a trade control licence we recommend that there be a presumption that a licence will be granted. We conclude that to do otherwise may penalise the responsible British citizen and may undermine the UK's extra-territorial controls on brokering and trafficking. (Paragraph 60)

As stated in its response to the Committees' 2007 Annual Report the Government is grateful for the Committees' recommendation. However, export licence assessments focus primarily on the end-user and recipient country rather than the exporter. The Government finds it difficult to envisage a system in which the reputation of the applicant becomes a prime or major consideration for determining whether a licence is granted, regardless of the risk assessment in relation to end-use. That said, to minimise the burden on British citizens working overseas and their employers, the Government made changes to the Open General Trade Control Licence to take account of the new structure for trade controls and to include extra-territorial trading activities that relate to destinations that are of little or no concern.

14. We conclude that the Government should bring forward proposals to extend the extra-territorial provisions of the export control legislation to encompass trade in all items on the Military List. In our view the experience of the past three years has shown that the current arrangements have failed and that the extension of the extra-territorial provisions is overdue. We therefore recommend that the Government require all residents in the UK and British citizens overseas to obtain trade control licences, or be covered by a general licence, before engaging in any trade in the goods on the Military List. In order not to undermine the employment prospects of British citizens working for reputable organisations, we further recommend that the Government issue general licences covering British citizens working overseas and engaged in categories of trade between specified countries or in certain activities such as advertising. (Paragraph 76)

See answer to Recommendation 6 of the 2008 Report.

15. We conclude that the EU Common Position on the control of arms brokering sets the best practice and we recommend that the Government follow best practice to establish a register of arms brokers. We conclude that a register will help to ensure that brokers meet defined standards, requirements and checks as well as deterring those-for example, with a relevant criminal conviction-for applying for registration. We also recommend that any brokering or trafficking in arms by a person in the UK or a British citizen abroad who is not registered be made a criminal offence. (Paragraph 82)

See answer to Recommendation 8 of the 2008 Report.

16. We recommend that the Government obtain and publish in its reply to our Report definitive legal advice setting out whether primary legislation is required to publish a register of brokers and, if the conclusion is reached that primary legislation is required, that the Government bring forward an amendment to the Export Control Act 2002 to permit publication. (Paragraph 83)

See answer to Recommendation 8 of the 2008 Report.

45. While we accept that little can now be done in respect of the proposed export of British-made maritime-patrol aircraft from India to Burma, we recommend that it should become a standard requirement of licensing that export contracts for goods on the Military List contain a clause preventing re-export to a destination subject to UN or EU embargo. In addition, the contracts should include a subrogation clause allowing the UK Government to stand in the place of the exporter to enforce the contract in British or foreign courts. We also recommend that the Government require as a condition of licensing that all export contracts make provision to allow for end-use inspections. (Paragraph 217)

Where the Government carries out end use monitoring, it does so through UK embassies, who look at a certain type of equipment to see how the country in question is using or misusing it. If concerns are registered these are factored in to consideration of all future licence applications to supply the same type of equipment to that destination. The Government is of the view that this system is more effective than trying to trace individual items, which would probably need visits to be set up in advance, thus providing the unscrupulous end user with an opportunity to move the equipment or arrange to use the equipment in a benign way on the day of the inspection. Putting too much stress on end use inspection also risks prejudicing the rigour of the original assessment process.

For the Government's response on re-export and subrogation clauses see answer to Recommendation 11 of the 2008 Report.

46. We recommend that the Government bring forward proposals for an end-use control on equipment used for torture or to inflict inhuman or degrading treatment. We conclude that given the range of items that could potentially be caught it would be unreasonable to impose a requirement of due diligence on all exporters for all goods. There are, however, two less stringent obligations we recommend the Government impose on exporters. First, there be a requirement to withhold an export where an exporter has reason to believe that the goods are to be used for torture or degrading treatment. Second, there be an obligation on exporters to inform the Government if they know or have reason to believe that an export is to be used for torture or degrading treatment. Irrespective of the duty on the exporter, we recommend that there should be an obligation on the Government to investigate reports that exports from the UK are being used for torture or to inflict cruel, inhumane or degrading treatment. We recommend that, where the Government establishes a reasonable suspicion of abuse, it be under an obligation to inform exporters who would then be in breach of export control if they exported the goods to the destinations or end users notified by the Government. (Paragraph 225)

See answer to Recommendation 9 of the 2008 Report.

47. On the basis of the evidence we have received this year and the work done by our predecessor Committees we conclude that the current controls over licensed production overseas are inadequate and need to be extended. We conclude that there are advantages in pursuing the third option put forward by the Government in the 2007 Consultation Document: the Government make export licences for supplies to licensed production facilities or subsidiaries subject to conditions relating to the relevant commercial contracts. (Paragraph 238)

See answer to Recommendation 11 of the 2008 Report.

48. In addition, we recommend that where licences encompass overseas production the Government make it a condition of the license that the contract underpinning the agreement prevent exports from the overseas facilities in breach of EU and UN embargoes and allow inspection. In addition, the contract should include a subrogation clause allowing the UK Government to stand in the place of the exporter to enforce the contract in British or foreign courts. (Paragraph 238)

See answer to Recommendation 11 of the 2008 Report.

50. We recommend that the Government extend export controls to encompass exports of goods and destinations subject to EU or UN embargo by overseas subsidiary companies, in which a majority shareholding is held by a UK parent or where UK beneficial ownership can be established. In such cases the parent company would be required to obtain a UK export licence or, in the absence of a licence, would be in breach of the Export Control Act 2002. (Paragraph 242)

The Government is not convinced that special measures are necessary to control overseas subsidiaries. As noted in the Government’s initial response on the Review, it is difficult to envisage many situations in which overseas subsidiaries who need to manufacture military equipment can survive without being supplied with goods or technology from the UK parent, either initially or on an on-going basis. Where the UK parent exports controlled goods or technology, the Government’s view is that current controls are adequate. Where the UK parent exports non-controlled goods, the Government is actively investigating the case for tightening controls under the military end use control in a way that would apply on the basis of the risk generated in each case.

Directly extending UK export controls to businesses which operate in other countries, under different legal jurisdictions, and often predominantly or entirely employing overseas nationals – as suggested by the Committees – is not legally viable and would be virtually impossible to enforce. In addition, in practical terms, following the Committees’ suggested yardstick for judging whether a company was an “overseas subsidiary” would also be fraught with difficulties, could produce perverse results, and would be easy for the unscrupulous to avoid – for example by using other non-UK concerns to appoint directors, negotiate contracts etc; or by divesting themselves of shareholdings but maintaining control by more discreet means.



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