



House of Commons

Defence, Foreign Affairs,  
International Development and  
Trade and Industry Committees

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## **Strategic Export Controls**

**Annual Report for 2001,  
Licensing Policy and  
Parliamentary Scrutiny**

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**Second Joint Report of Session 2002–03**





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# Strategic Export Controls

## Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny

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### Second Joint Report of Session 2002–03

Fifth Report from the Defence Committee of Session 2002–03

Seventh Report from the Foreign Affairs Committee of Session 2002–03

Sixth Report from the International Development Committee of Session 2002–03

Eighth Report from the Trade and Industry Committee of Session 2002–03

*Report, together with formal minutes, oral and  
written evidence*

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## The Committees on Strategic Export Controls (Quadripartite Committee)

The Defence, Foreign Affairs, International Development and Trade and Industry Committees are appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Defence, the Foreign and Commonwealth Office, the Department for International Development, the Department of Trade and Industry, and any associated public bodies .

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\* Member who participated in the inquiry leading to this Report  
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## Summary

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Since 1999, the Defence, Foreign Affairs, International Development and Trade and Industry Committees have worked together to scrutinise how the Government regulates the export of military equipment. We focus in this inquiry on a number of issues including specific licensing decisions taken during 2001.

For the most part the Government has interpreted the criteria against which it assesses licence applications fairly, appropriately and consistently. We look closely, however, at:

- how stringently the Government judges whether proposed exports of conventional weapons to India and Pakistan are likely to impact on regional stability,
- how committed it is to implementing its ban on torture equipment, and
- the export of small arms to countries which the Government rightly supports in their attempts to preserve law and order, but which have flawed human rights records.

We continue to press for a more consistent policy on monitoring how defence exports are used *after* they have been delivered, while recognising that this is no substitute for considering export applications as fully as possible *before* deciding whether to allow them to take place.

The Government's announcement of additional policy criteria for the export of components in multilateral manufacturing projects recognises that defence manufacturing is an increasingly international business. We commend the Government for tackling this issue, and for being open about doing so, but we still have a number of doubts about the implications of the Government's chosen solution, which we explore in detail.

We investigate the implications of the Government's involvement in both the promotion and the regulation of defence sales by British industry, and we suggest how transparency could be improved when military equipment is sold or given away by the Government. In this area, as in a number of others, there is room for further openness in the Government's Annual Reports on Strategic Export Controls, although we acknowledge that they remain among the most informative in the world.

We look again at the administration of the Government's licensing system. Although the performance of the Export Control Organisation appears slowly to be improving, the system overall remains below an acceptable standard. We also question whether the Government's information systems are adequate to permit full and accurate knowledge of previous licensing decisions. Information is crucial to our scrutiny of Government. We investigate several cases in which the information provided to us and to the House of Commons has been delayed or inaccurate. Our scrutiny of the Government continues to evolve, within the constraints of the information that the Government allows us to see.

# 1 Introduction

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1. An effective arms export control regime can make an important contribution to the security of the United Kingdom and the world. States have a right to defend themselves against external threats and to prevent domestic insecurity. But the weapons and equipment which enable national defence and internal security can also be used aggressively against other states, and for internal repression. Yesterday's ally of convenience can become today's enemy. Future generations must not have cause to regret equipment supplied today to allies in the war against terror.

2. Materials and technologies which can be used to manufacture weapons of mass destruction must be kept out of the hands of states and potential terrorist groups seeking to develop capabilities in this area. But at the same time, many of these materials and technologies have legitimate civilian uses, which it is not always reasonable or practical to restrict. The defence industries have an important role in the prosperity and security of the country which the Government is right to promote. But strong and effective regulation is necessary to ensure that they remain a force for security, not a cause of instability.

3. The purpose of a strategic export control regime is to steer a course between these often conflicting considerations.

4. Since April 1999, the Defence, Foreign Affairs, International Development and Trade and Industry Committees have regularly met together to consider the arms export control regime—an arrangement which has become known as the “Quadripartite Committee”. Our first joint Report in the current Parliament was published in July 2001.<sup>1</sup> That Report contains detailed background information on the history of the “Quadripartite Committee”, explains the mechanics of the Government's licensing process for strategic exports and describes the Consolidated Criteria against which the Government assesses licence applications.<sup>2</sup>

5. The Government's Annual Reports on Strategic Export Controls have been the focus of much of the Committees' work. The first Annual Report (for 1997) was published in March 1999. The most recently published Annual Report, that for 2001, was published in July 2002.<sup>3</sup> Although this inquiry has centred around the 2001 Annual Report, we have also taken more recent developments into account.

6. In the course of this inquiry, we have sought extensive written clarification from the Government (much of it classified) on information in the 2001 Annual Report. Although we are constrained in how we can use classified information in a public document, our aim is to be as open as possible. The unclassified information we have received from the Government is published as evidence with this Report.<sup>4</sup> We are also publishing written

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1 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2001–02, Strategic Export Controls: Annual Report for 2000, Licensing Policy and Prior Parliamentary Scrutiny, HC 718

2 HC (2001–02) 718, paras 5–31

3 Ministry of Defence, Foreign and Commonwealth Office, Department of Trade and Industry, Strategic Export Controls: Annual Report 2001, Cm 5559, July 2002 (henceforth, “2001 Annual Report”)

4 Ev 21–35

submissions that we have received from a variety of sources.<sup>5</sup> We are grateful to those who have supplied this material.

7. On 27 February we took oral evidence from the Foreign Secretary, some of it in private. We are publishing with this Report the transcript of the public session, and most of the transcript of the private session, leaving out only those sections which the Government has asked us not to publish for reasons of confidentiality.<sup>6</sup>

8. This Report follows fairly closely the template set by previous inquiries. We look in turn at:

- the conduct of the inquiry itself, and its implications for our scrutiny of the Government,
- individual cases arising from the 2001 Annual Report, both where we can give reassurance that licences have been properly granted and where we continue to have concerns,
- more general policy issues,
- the format and content of the Government's Annual Reports, and
- the administration of the licensing system.

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5 Ev 17–20, 38–47

6 Ev 1–16

## 2 Conduct of the inquiry

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9. We have consistently urged the Government to introduce a system for the prior parliamentary scrutiny of export licence applications, which would enable Members of Parliament to make recommendations to the Government on individual licence applications before a final decision had been taken on whether to allow or refuse them. The Government has equally consistently argued against the introduction of such a system. In the face of this opposition, we decided in this inquiry to take our existing system of retrospective scrutiny further, to see to what extent it was possible to make more rigorous our system for holding the Government to account for its decisions on licence applications, after these had been reached.

### Access to information

10. As in previous inquiries, we have asked the Government to supply us in confidence with information on individual licence applications. The information that we have asked for and received on individual licence applications is relatively perfunctory: a brief description of the nature of the goods, an indication of volume and value, and the identity of the end-user. We should stress, as our predecessor Committee also made clear, that we have not seen the detailed assessments available to Ministers on which they base decisions to permit or deny an export licence in cases presenting real difficulty—for example, of the integrity of a purported end-user, or the risk of diversion of goods for internal repression.<sup>7</sup> We have, however, asked for and received explanations, mostly in confidence, of the Government's rationale in allowing or refusing licences where the factual information supplied to us seemed to warrant further clarification.

11. In this inquiry we expanded the scope of our requests, seeking information on a larger number of licence applications than in previous years. We did not intend that this should impose a significantly greater burden on Government. The majority of our requests were for factual information about licence applications, which we expected that Government would be able to retrieve relatively simply from its computer systems, particularly as much of it was information which the Government would need to be able to retrieve in the course of its routine licensing work.

12. Somewhat to our surprise, the Government has found it both difficult and time-consuming to respond to our requests. We learnt in oral evidence from the Foreign Secretary that the Government had spent “900 person hours” in answering our questions and that the ability of the Government “to deal with export licences was having to be put on hold”.<sup>8</sup> In this context, we note the comment from one of our witnesses that:

the alternative to putting licensing on hold is to employ another competent individual ... if the same importance were attached to export scrutiny as there is to export promotion, physical capacity would not be an issue.<sup>9</sup>

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7 HC (1999–2000) 225, para 7

8 Ev 1, Q 1

9 Ev 45 (Sybille Bauer)

13. Tim Dowse, the Head of the Non-Proliferation Department in the Foreign and Commonwealth Office, gave us a more nuanced explanation of the Government's predicament:

the data is available but it is not available readily in the format that the Committee was requesting. It required us to interrogate a number of databases and in some respects go to individual case files to look at why decisions were taken. This is the problem that we had. It was not a matter simply of pressing a button and drawing the information electronically.<sup>10</sup>

14. If there were not a relatively straightforward way of retrieving the data that we were requesting, this would have worrying implications for the efficiency of the Government's information systems and the licensing process as a whole. If the problem from the Government's point of view was the format in which we were requesting the data rather than the data itself, we are somewhat disappointed that the Government did not simply ask to supply the data in a less burdensome format.

15. We appreciate the Foreign Secretary's offer to talk to us "on an informal basis to ensure we arrive at a balance".<sup>11</sup> We are hopeful that this balance can be found before we come to consider the next Annual Report on Strategic Export Controls. **We recommend that the Government should suggest how it might provide information to us on licence applications in ways that would reduce the administrative burden of doing so.**

16. The Code of Practice on Access to Government Information is the reference point for Government decisions on whether to publish information.<sup>12</sup> During our last inquiry, the Government declined to provide us with information that we had requested *in confidence* on the grounds that to do so would be contrary to the Code of Practice.<sup>13</sup> We noted in our Report that we failed "to see the relevance of the Code of Practice to the provision of information *in confidence* to select committees" of the House of Commons.<sup>14</sup> In its reply to our Report, the Government continued to call in aid the terms of the Code of Practice to defend several decisions not to provide information to us in confidence.<sup>15</sup> The Chairman wrote on our behalf to the Secretary of State in November 2002, asking for "an assurance that the Code of Practice on Access to Government Information will not be treated as relevant to the provision of information in confidence to select committees".<sup>16</sup>

17. The issue is important because we are only able to carry out our retrospective scrutiny of export licensing policy because we have access to sensitive Government information, which under the terms of the Code of Practice we would not be allowed to see. Our concern is that if the Government considers that the Code of Practice applies to information provided in confidence to select committees, committees' access to sensitive information may be curtailed. This would impact severely on the ability of committees to

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10 Ev 1, Q 2

11 Ev 2, Q 5

12 Cm 5629, p 9

13 HC (2001-02) 718, Ev 44

14 *Ibid*, p 47

15 Cm 5629, pp 1, 5-6 and 9

16 Ev 20

scrutinise Government effectively. We do not expect the Government to grant us unlimited access to sensitive information, but it is self-evident that certain sensitive information will be supplied to select committees in confidence which would rightly not be supplied if it were to be published.

18. In a belated response to our letter, the Foreign Secretary continues to insist that the Code of Practice is applicable to our requests for confidential information. He does, however, acknowledge that “select committees will receive, on a confidential basis, information that under the Code would not be disclosed to the public”.<sup>17</sup> This is welcome. We cannot accept, however, the decision to continue to explain refusals to supply information in confidence merely by reference to the Code of Practice. The circumstances under which the Government would refuse to supply information to us are not the same as those under which they would refuse to supply information to the public. The justification of any such refusal cannot therefore rely on the terms of the Code, since the harms identified by the Code are ones which would arise from public disclosure of the information. **We welcome the Government’s acknowledgment that it is appropriate to supply information in confidence to select committees which would not be disclosed to the public. We would expect the Government to refuse to supply information to us only where there are very strong reasons for doing so. We recommend that where the Government refuses to make information available to us in confidence, it should provide a clear explanation of the reasons for that decision rather than rely on effectively meaningless references to the Code of Practice on Access to Government Information. We recommend that the Liaison Committee should take this matter further.**

### Benefits of scrutiny

19. We do not have the information or resources to assess licence applications to the same degree as the Government. But parliamentary scrutiny of licence applications nonetheless brings a number of important benefits, to the Government, to the public, and indeed to us:

- We bring a degree of transparency to the licensing process—without jeopardising the confidentiality of commercially and politically sensitive information.
- We act as a cross-party political sounding board for the decisions the Government has made, and how it has made them.
- We can confirm, where the information provided in the Annual Report may give rise to concern among the public and non-governmental organisations, whether, on the basis of what we know, the Government has acted properly in granting a licence.
- We are able to test whether the Government’s consideration of particular licence applications has been sufficiently thorough, and sufficiently expeditious, and whether decisions have been consistent with the Government’s own policy criteria.

— We gain a fuller understanding of the variety and complexity of the goods subject to licensing requirements, and of the often conflicting considerations that the Government has to balance in deciding whether to allow a licence application.

20. The Government benefits from our scrutiny: on the one hand, the knowledge that decisions may have to be justified to us increases the likelihood that they will be properly taken; on the other hand, we can also help to provide impartial confirmation where licence applications do seem to have been properly granted or refused—sometimes despite appearances. The public benefits from our scrutiny: it knows that an independent group of parliamentarians is able to hold the Government to account for its decisions in a policy area in which comparatively little information is in the public domain.

21. Retrospective scrutiny of Government decisions has its limitations. Our predecessors in the last Parliament supported a system of prior scrutiny of the most sensitive export licence applications, precisely because it would allow us to feed into the licensing process at a point which would be most *effective*. The advice that we are currently able to give, on exports that have already taken place, can only confirm where mistakes have been made, not prevent mistakes from being made. **We conclude that although retrospective scrutiny occurs too late to prevent a particular export from taking place, it can and should inform future decisions by the Government.**

22. In the next section of our Report, we comment on the individual licence applications that we considered in the course of our inquiry.

### 3 Export licence decisions during 2001

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23. At the beginning of this inquiry, we made 57 requests for further information on licences to individual countries listed in the 2001 Annual Report. Most of our requests related to specific licence applications, where the information in the 2001 Annual Report was in our view insufficient to assess whether a licence had been properly granted or refused. A number of the licences we chose to examine had also been identified by non-governmental organisations as potentially of concern. We followed up the information initially provided by the Government with more than 30 requests for further clarification.

24. We also requested information about all refusals of licence applications, revocations of licences, and appeals during 2001. This information has been a vital benchmark. A knowledge of where and why the Government has *refused* to issue licences helps us to judge whether its policy in *issuing* licences is sensible or consistent.

25. We are grateful to the Government for the further information that it has provided: it has shown to our satisfaction that most of the licence decisions we decided to investigate appear to have been properly taken, although the judgements in some cases were more finely balanced than in others.

26. We discuss first those licensing decisions on which the further information we have received has been largely reassuring. We group these by the export licensing criterion that we were primarily seeking to ensure had been properly considered in each case. We then turn to the small number of exports which give us cause for concern.

#### Licence decisions giving little or no cause for concern

##### *Criterion 1: International obligations*

27. We have sought reassurance that a number of licences reported in the 2001 Annual Report were compatible with existing national and international embargos. The licences in all of these cases appear to have been properly granted. In many cases, the end users of the goods licensed for export were international and non-governmental organisations involved in humanitarian and peacekeeping tasks.

28. All items for **Angola** were for export only through permitted named entry points. The Government also assessed that there was “no clear risk” that the goods would be used in the Democratic Republic of the Congo, contrary to the UN embargo.<sup>18</sup> Much of the equipment was for use by the oil industry.<sup>19</sup> Body armour permitted for export to **Burundi** was for use “by UN personnel in Burundi for personal protection”.<sup>20</sup> Components for body armour allowed for export to **China** were “for bomb suits specially designed for bomb disposal purposes only”.<sup>21</sup> Licences for body armour and military cargo vehicles to **Eritrea** were granted “after the UN and EU embargoes on the export of arms to Eritrea (and

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18 Ev 21

19 Ev 29

20 Ev 22

21 *Ibid*

Ethiopia) were lifted in May 2001".<sup>22</sup> The end users of the licences give us no cause for concern.<sup>23</sup>

29. The Government "maintain confidence" in **Hong Kong's** export control regime.<sup>24</sup> We are reassured—as were our predecessor Committees<sup>25</sup>—by the steps that the Government is taking to ensure that goods licensed for export to Hong Kong are not diverted to mainland China. A British export control team recently visited Hong Kong, and the Government monitors the use "of certain goods that would not be approved for export to mainland China".<sup>26</sup>

30. The Government has no concerns that fragmentation hand grenades licensed for export to the **Maldives** might be used as a component in land mines. The grenades are for use "for security purposes".<sup>27</sup> Although it is hard to imagine for what legitimate security purposes the Maldives might require such grenades, we have no concerns over end-user diversion, and are therefore not unduly alarmed that the export of the grenades was permitted.

31. Goods permitted for export to **Sierra Leone** were intended only for end-users not covered by the UN arms embargo.<sup>28</sup> Those for export to **Somalia** were for use in demining operations by the Halo Trust, and were humanitarian exemptions to the UN embargo.<sup>29</sup> A licence was issued for the export to **Sudan** of "a military listed tanker for use in the refuelling of light civilian aircraft at Khartoum airport".<sup>30</sup> The Government has explained to our satisfaction its rationale for refusing a licence application for the export to **Uganda** of equipment with the military list rating ML6,<sup>31</sup> while permitting an apparently similar licence (for armoured all wheel drive vehicles).<sup>32</sup>

## **Criterion 2: Human rights and internal repression**

32. We have sought further information about licences granted where the potential might have existed for the use of the equipment in human rights abuses or internal repression.

33. Licences were granted for export to **Bahrain** of body armour, components for assault rifles, components for submachine guns, general purpose machine guns, semi-automatic pistols, small arms ammunition and weapon sights.<sup>33</sup> We followed up the information on one of the licences where it was unclear who the end-user was.<sup>34</sup> All of the licences appear to have been properly granted. We have received information about an open licence for the

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22 *Ibid*

23 Classified information (not printed)

24 Ev 26

25 HC (1999–2000) 467, para 50

26 Ev 26

27 Ev 23

28 Ev 24

29 *Ibid*

30 Ev 25

31 Rating ML6 covers ground vehicles and components thereof specifically designed or modified for military use.

32 Ev 25

33 2001 Annual Report, pp 37–38

34 Classified information (not printed)

export to **Cambodia** of body armour and military helmets, but this has not been sufficient for us to judge whether there is a risk that the equipment might be improperly used.<sup>35</sup> We have no concerns about the licences granted for the export to **Colombia** of body armour, military helmets and smoke hand grenades.<sup>36</sup> The Government has explained its decision to grant a licence for the export of anti-riot shields to **El Salvador** on the grounds that “there is no longer any systemic abuse of human rights”,<sup>37</sup> and this assessment is supported by the US State Department.<sup>38</sup> Ballistic protection vests and helmets for export to **Guatemala** were “for use in demining programmes”.<sup>39</sup> We have no concerns about the licence granted for the export of armoured all-wheel drive vehicles to **Indonesia**.<sup>40</sup>

### Criterion 3: Internal situation

34. Saferworld, an NGO “working to identify, develop and publicise more effective approaches to preventing armed conflict”,<sup>41</sup> has expressed concern about the increase in the value of Standard Individual Export Licences (SIELs) to **Israel** from £12.5 million in 2000 to £22.5 million in 2001.<sup>42</sup> But the value figures provided for SIELs are rather misleading, because no comparable value figures are provided for exports under open licences. This increase in SIELs may well therefore be a consequence of the removal of Israel as a permitted destination from a number of open licences. This would be consistent with information provided by the then Foreign Secretary to our predecessor Committees in March 2001.<sup>43</sup> Paradoxically, a *stricter* policy on strategic exports to a country can lead to an *increase* in the value of SIELs issued for that country, as the Government ceases to allow the export of the same goods under open licences.<sup>44</sup>

35. The Government has reiterated to us its “commitment to take account of the risk that exports might be used for internal repression or affect regional stability”.<sup>45</sup> With reference specifically to Israel, the Government has told us that:

The outbreak of the intifada, continued Israeli incursions in the Occupied Territories and the Israeli breach of its assurance that UK originated equipment would not be used in the Occupied Territories have all been factored in to the Government's current export licensing policy. Since the outbreak of violence in the Occupied Territories in September 2000, HMG has taken account of Israeli military tactics in its licensing decisions and continues to keep the situation under close review.<sup>46</sup>

We are largely reassured that the Government is assessing properly against the consolidated criteria licence applications for export direct to Israel. A separate issue,

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35 Ev 22

36 *Ibid*

37 *Ibid*

38 US State Department, Country Report on Human Rights Practices in El Salvador for 2001, published online at [www.state.gov](http://www.state.gov)

39 Ev 22

40 Ev 23

41 [www.saferworld.co.uk](http://www.saferworld.co.uk)

42 Press release, 19 July 2002

43 HC (2000–01) 212, para 27

44 Ev 27

45 *Ibid*

46 *Ibid*

however, which we consider in more detail below,<sup>47</sup> is the more relaxed policy towards the export of components for incorporation into military equipment abroad prior to onward export to Israel.

36. We also asked for details of licences issued for the export to the **Philippines** of, among other equipment, 100 assault rifles, 40 general purpose machine guns and 100 submachine guns.<sup>48</sup> Following further clarification from the Government, it appears that these licences were properly granted for use by appropriate end-users.<sup>49</sup>

#### **Criterion 4: Regional peace and stability**

37. Commentators as disparate as Salman Rushdie and US Deputy Secretary of State Richard Armitage have described Kashmir as “the most dangerous place in the world”, particularly in view of the ongoing nuclear arms race between **India and Pakistan**.<sup>50</sup> With this in mind, we asked the Government for information on all SIELs granted to India and Pakistan for equipment on the military list, ranging from combat aircraft to semiconductor wafers.<sup>51</sup> We also asked for information on all licence applications refused by the Government.<sup>52</sup>

**38. From the information we have received, including responses to our further written questions,<sup>53</sup> we conclude that the Government operates a highly specialised and focused licensing system which ensures, probably as well as any licensing system could, that equipment at risk of being used in India or Pakistan (or indeed anywhere else in the world) for the development of weapons of mass destruction does not receive an export licence.** This includes a wide range of goods with legitimate civilian uses as well as more suspect military purposes.

39. We are less persuaded of the stringency of the Government’s system when it comes to the export of conventional weapons to India and Pakistan, including combat aircraft. We discuss this in greater detail below.<sup>54</sup>

40. Answers that we have received in respect of licences for beryllium, furnaces and maraging steel to **Iran** and furnaces to **Kazakhstan** have given us no reason to doubt the Government’s assurances that it has taken every possible step to ensure that there is no risk of the equipment in question being diverted to weapons of mass destruction programmes.<sup>55</sup>

41. Saferworld raised concerns in its evidence about the implications for human rights and regional stability of the issue in 2001 of:

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47 See paras 130–154

48 Ev 24

49 Classified information (not printed)

50 “Kashmir most dangerous place on earth, says US official”, Agence France-Presse, 12 October 2001; “The most dangerous place in the world”, New York Times, 30 May 2002

51 Ev 23, 24

52 Ev 26

53 Classified information (not printed)

54 See paras 51–62

55 Ev 23

Open Individual Export Licences for unlimited exports of an extremely wide range of equipment including small arms and light weapons, light and heavy artillery, armoured vehicles including main battle tanks, combat aircraft, helicopters and selected rocket systems and missiles ... to Tajikistan, Turkmenistan and Uzbekistan ... Bahrain, Jordan, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia and UAE.<sup>56</sup>

These are good examples of licences which, as they appear in the 2001 Annual Report, give a misleading impression: that the Government has opened the door to arms sales across a wide swathe of central Asia and the Middle East.

42. The reality is rather different. The OIEL was issued to the United States Government, and the equipment was for use in support of US military operations overseas. The licence was “not to be used for foreign military sales”.<sup>57</sup> We welcome the fact that the Government has allowed us to publish this information. We are not surprised that observers with access only to the information in the 2001 Annual Report have expressed concern in the way that they have.

43. Having seen details of the open licence, we believe that the Government was right to grant it, and to support US forces in the war against terror. We are, however, concerned that such transfers could be seen to be in breach of criterion four, under which the Government “will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country”. There was clearly an expectation that the equipment permitted for export under the open licence would be used in US military operations overseas, such as those that have taken place in Afghanistan and Iraq. Criterion four cannot have been intended to act as a constraint on the ability of our closest military ally to conduct operations in which our armed forces have played a key role. **We recommend that the Government should explain in its response to this Report how the supply of military equipment to the United Kingdom’s allies conducting military operations overseas can be supported without conflicting with the terms of the consolidated criteria.**

### ***Criterion 6: Regard of the buyer country for international law***

44. We asked the Government for information about an open licence for the export to **Syria** of equipment for submachine guns and for other small arms. While the equipment does not appear to be in itself of much concern, we are surprised that an open licence is considered appropriate for the export of any equipment for the use of small arms to Syria, a country which has recently been associated by the US Administration with the illicit supply of military equipment to Iraq.<sup>58</sup>

### ***Criterion 7: Risk of diversion***

45. When deciding whether to grant a licence application, the Government assesses the risk that the equipment proposed for export will find its way into the hands of undesirable end-users. Saferworld has raised concerns “regarding possible diversion” about licences granted

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56 Ev 19

57 Ev 52

58 Eg. “Rumsfeld: Syria should halt supplies for Iraq”, Associated Press, 28 March 2003

for the export to the **Bahamas** of components for machine guns and small arms, and to the **Channel Islands** for equipment described in the 2001 Annual Report as armoured fighting vehicles, components for combat helicopters, components for sub-machine guns, rifles, semi-automatic pistols, shotguns and submachine guns.<sup>59</sup> Concerns about licences issued to the Channel Islands were also investigated by our predecessors in the last Parliament, and they were able at the time to answer their own rhetorical question “Were the Islands becoming a major offshore arsenal—or a conduit for arming less desirable regimes?” resoundingly in the negative.<sup>60</sup>

46. The further information that we have received from the Government on this occasion has once again been reassuring. There is no reason to fear that the equipment licensed for export to the Bahamas risks being diverted. Details of the licences for the Channel Islands also give no indication of any involvement by the islands, as suggested by Saferworld, in “the illicit trade in arms”. Many of the exports permitted are only barely capable of being described as military in nature, tyres and collectors’ items, for example. We are less certain, judging from the information that the Government has provided to us in confidence, that it was right to license the export of 11 sub-machine guns to the Channel Islands.<sup>61</sup>

47. We have also received information from the Government about measures to ensure that military equipment was not being diverted to **Iraq** from other countries in the region, nor to **Zimbabwe** from other countries in southern Africa.<sup>62</sup>

### **Criterion 8: Sustainable Development**

48. A licence was granted for the export to **Bolivia** of “equipment employing cryptography”, at a value of £11.5 million. Bolivia qualifies for debt relief under the Highly Indebted Poor Country (HIPC) initiative, and the value of this equipment was greater than that of the total bilateral aid from the United Kingdom to Bolivia during financial year 2000/01.<sup>63</sup> We therefore wished to reassure ourselves that this licence did not present any sustainable development concerns. The Government’s response, that the export was for the use of a privately owned “major Bolivian telephone company”, has provided this reassurance.<sup>64</sup>

49. We comment further below on licences for the export of air traffic control equipment to **Tanzania**, and on the sustainable development criterion in general.<sup>65</sup>

### **Licence decisions of concern**

50. As we have already made clear, our impression is that in most cases the right decisions are being taken on export licence applications, within the terms of the consolidated criteria.

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59 Saferworld, *An Independent Audit of the 2001 UK Annual Report on Strategic Export Controls*, p 65; 2001 Annual Report, pp 36 and 72

60 HC (1999–2000) 225, paras 42–43

61 Classified information (not printed)

62 Ev 27, 28

63 £9,837,000. See HC Deb 9 January 2003, Col 296W

64 Ev 21

65 See paras 72–76 and 107–115

We do, however, have concerns about several specific licensing decisions. Our first area of concern is the Government's policy and administration on the export of military equipment to India and Pakistan, and on the export of Hawk aircraft. While the Government's policy on the export of oversized handcuffs is clear, we have uncovered inconsistencies in its application. We commented at length in our last Report on the Government's decision to license the export of a military air traffic control system to Tanzania—the relevant licence decisions appear in the 2001 Annual Report, and we have some brief further comments to make in this Report. Finally, we look at the Government's policy on the export of military equipment to Sri Lanka and Nepal.

### **India and Pakistan**

51. India and Pakistan made up more than half of all licence refusals in 2001. For India, 89 SIEL applications were refused and one transshipment licence was refused.<sup>66</sup> One application for an open licence was also refused, while two open licences were revoked.<sup>67</sup> For Pakistan, 36 SIEL applications were refused.<sup>68</sup> Almost all (76) of the applications refused to India and a third of those refused to Pakistan were for the export of goods not on the military list, but of potential use in weapons of mass destruction programmes.<sup>69</sup> As we have mentioned above, we believe that the Government is doing all it can to ensure that India and Pakistan are unable to acquire goods from the United Kingdom which are capable of contributing to their nuclear weapons programmes.<sup>70</sup>

52. We have some concerns, however, about whether the Government is taking sufficiently into account the risk of regional instability on the sub-continent when making licensing decisions relating to the export of conventional military equipment.

53. Previous Committee Reports have commented on the export of Hawk training jets to Zimbabwe and Indonesia, and on their proposed export to India.<sup>71</sup> While the Hawk aircraft's main role is in operational combat training and in training pilots to fly fast jets, it also has, in the Government's words, "a limited ground attack capability".<sup>72</sup> Saferworld has expressed concerns that Hawk will "be used to train pilots to fly the (potentially nuclear-capable) Jaguars" and that it can "also easily be reconfigured to be ideal ground-attack jets for use in Kashmir".<sup>73</sup>

54. BAE Systems is known to be negotiating for the sale of Hawk to India, with a number of the aircraft to be produced under licence in that country. The Government has supported this sale.<sup>74</sup>

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66 2001 Annual Report, pp 153–154

67 *Ibid*, p 157

68 *Ibid*, p 251

69 Identified in the 2001 Annual Report by the rating 'End Use'.

70 See paras 37–38

71 HC (2001–02) 718, para 58

72 HC Deb 10 April 2002, col 19W

73 Saferworld, 2001 Audit, p 87

74 See paras 105–106 below for comment on the involvement of the Government in both the promotion and regulation of arms exports.

55. The Government's decision to support the sale of Hawk to India seems to be based in part on the presumption that it is for use as a training aircraft. In parliamentary questions on 16 May 2000, Peter Hain MP, then Minister of State in the FCO, when asked whether a contract for the sale of Hawk to India would be "compatible with an ethical foreign policy", replied: "Indeed it would be compatible, because those Hawk jets are for training purposes".<sup>75</sup> In its memorandum to us, the Government has stated that it is "satisfied that India would deploy Hawk in its intended role as a training aircraft".<sup>76</sup> However, we understand that the Government has issued licences for weapons and weapon parts known to be fit for use on Hawk, where these were for export to countries to which the jet was originally sold on the basis that it was for training purposes.

56. While Hawk is primarily a training aircraft, it also has a combat capability. One of the "principal features" of Hawk as marketed by BAE Systems is its "heavy and varied weapons load".<sup>77</sup> We have seen no information to indicate that Hawk is being exported to India unweaponised or with limited combat capability, nor that undertakings have been sought from the Indian Government that Hawk will not be used in combat. In assessing licences for the export of military equipment, the Government is obliged to refuse a licence under Criterion 4 of the consolidated criteria "if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim". **Given the ongoing tension between India and Pakistan over Kashmir, we recommend that the Government judge with great rigour whether a proposed export is likely to be used aggressively. Without seeking to reach a judgement ourselves on whether it would be right or not to allow the export of Hawk aircraft to India, we recommend that decisions on whether to allow or refuse licence applications in the case of Hawk and other designated training equipment should take into account the actual and potential capabilities of the equipment, as well as their intended role.**

57. We also investigated in the course of our inquiry licences granted to Pakistan during 2001 for production equipment and components for large-calibre artillery. The Government has written that it "assessed there to be no clear risk of aggressive use" of the equipment,<sup>78</sup> and it has supplied us in confidence with further information about the equipment. In private session the Foreign Secretary told us that in his judgement "approving these exports was not going to make any difference at all to the degree of tension or the resolution of dispute" between India and Pakistan.<sup>79</sup> Mr Dowse also pointed out that exchanges of fire across the line of control "were involving at that time small arms rather than artillery",<sup>80</sup> but we note that artillery exchanges across the line of control were widely reported in both 2000 and 2002.<sup>81</sup>

58. We are not convinced that the export of such artillery in finished form would or should have been permitted by the Government. We therefore have our doubts about whether it was right for the Government to license the export of production equipment. **We**

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75 HC Deb 16 May 2000, Col 141

76 Ev 23

77 <http://www.baesystems.com/programmes/airsystems/hawk2.htm>

78 Ev 24

79 Ev 14, Q 85

80 Ev 14, Q 87

81 Eg. Voice of America, 11 February 2000, BBC News, 4 January 2002, The Guardian, 31 May 2002

**recommend that the Government clarify in its response to this Report under what circumstances it permits the export of production equipment where it would not be prepared to license the export of the end product.**

59. On 19 September 2002, the Foreign Secretary wrote “to clarify the Government’s position on the possible export of Hawk aircraft to India”.<sup>82</sup> In evidence to us on 21 March 2002, the Foreign Secretary had indicated “that no export licence application for the export of Hawk aircraft to India had yet been received”. It emerged, however, from this letter that an open licence for Hawk components and production equipment had in fact been “recommended for approval by Ministers at the Foreign Office” in the previous Parliament in late Spring 2001, and that the licence had been formally issued on 6 September 2001, following approval by DTI Ministers.

60. The Foreign Secretary has apologised to us for this oversight, and we accept this apology. We also accept that it was not his “intention to give an inaccurate answer to the Committee, nor ... was that the intention of officials”.

61. Nonetheless, we are dismayed that this oversight was possible. The proposed sale of Hawk to India had had a high political profile for a number of years. While it is understandable that ministers newly arrived in office were personally unaware of what their predecessors had approved in a previous Parliament, it is disturbing that officials were unable to brief them on the fact that an open licence had been granted for the export of components and production equipment which, were it not for commercial constraints, would have enabled the production of Hawk in India under licence. It is astonishing that officials failed to inform ministers that a licence had been granted, apparently for a full year, during which ministers were making inaccurate statements both to us and to the House and were promoting the sale of Hawk in India.

62. We must assume that, at the very least, this represents a fundamental failure of the Government’s information systems. The apparent inability of officials to access accurate information about licensing decisions has much wider ramifications than this one licence. In considering current licence applications, the Government needs know what previous relevant decisions have already been taken. **We conclude that the failure of officials to identify for a period of more than a year the fact that an open licence had been issued for the export to India of Hawk components and production equipment suggests that the information systems used for retrieving licensing information are inadequate. We recommend that the Government investigate how this oversight was possible, and that it report back to us on what steps have been taken to ensure that such an error cannot recur.**

### *Handcuffs*

63. In a written answer of 28 July 1997, the Government announced that it “would take the necessary measures to prevent the export or transshipment from the UK” of various equipment designed primarily for torture, including “leg-irons, gang-chains, shackles—

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82 A letter to the Chairman of the Quadripartite Committee is classified, but an unclassified letter in very similar terms was written on the same day to Mr Michael Ancram MP and Mr Menzies Campbell MP. Citations are from this letter, House of Commons Library Deposited Paper 02/1972.

excluding normal handcuffs—and electric-shock belts designed for the restraint of a human being”. It also announced that it was examining how to take forward its commitment to ban the manufacture and possession of such goods.<sup>83</sup>

64. In a letter to the Committee Clerk of 20 February 2003, the Government explained that it had implemented the undertakings regarding export and transshipment, and that:

the necessary amendment to the Export of Goods Control Order came into force in December 1997 ... Since the relevant amendments to the Export Control Act, HM Customs and Excise have discovered no evidence of attempts to illegally export instruments of torture from the UK.

It added that:

having further considered the issue of the manufacture of the specified items it has been decided that there would be little reason to ban the manufacture or sale of equipment covered by the ban. There is no market for leg irons and shackles. British police do not use them and their export is banned. Any misuse would give rise to a separate offence such as assault.<sup>84</sup>

65. Over-sized handcuffs, defined as handcuffs with a locking circumference of 240mm or greater, require a licence to be exported from the UK.<sup>85</sup> There is a legitimate need for such handcuffs in escorting and transporting prisoners with particularly large wrists. But there is also a risk that such cuffs could be used as leg irons. In answer to a written question from the Committee, the Government explained that it “carefully assess[es] the risk of such handcuffs being used as manacles, in contravention of the Government’s ban on the export of such items. We would not grant a licence if there were a clear risk of such misuse”.<sup>86</sup>

66. In 2001, handcuffs were licensed for export to Australia, Canada, Hong Kong, New Zealand, Sweden and the USA. We have no concerns about the majority of the licences granted. In these cases, we can accept the Government’s assurances that “the handcuffs were for use either in escorting or transporting prisoners” and that “there was no clear risk of use for internal repression”.<sup>87</sup>

67. In one case, we questioned the Foreign Secretary in private session as to why a particular licence for handcuffs had been granted, in the light of other applications which had previously been refused. When questioned on this point in private evidence, Mr Dowse told us that “these involved different types of handcuffs in each case”. The approved licence involved “normal over-sized handcuffs”. The Government “did not believe that there was a clear risk” that they would be used “in any way other than as over-sized handcuffs”. In the case of another licence the Government had “no particular grounds for concern” that the equipment would be misused, but “did nevertheless judge that there was a clear risk that it could clearly easily be disassembled and re-assembled in the form of leg-irons and therefore was covered by the scope of our export ban”. In the view of Mr Dowse,

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83 HC Deb 28 July 1997, Cols 65–66W

84 Ev 38

85 Ev 25

86 *Ibid*

87 *Ibid*

this “is an example ... of the really rather detailed care that we do give in assessing individual licences case by case”.<sup>88</sup> Although it seems unlikely that the handcuffs licensed for export in this case will have been used as leg irons, we are concerned that they may nonetheless be used in other ways which are contrary to the Government’s policy statement of 28 July 1997. **We conclude that it is doubtful whether the Government should have granted a licence for oversized handcuffs in one particular case, given the nature of licence applications which the Government had previously refused. We do, however, accept that in this case a judgement was reached after detailed and proper consideration. We have been asked by the Government not to identify the destination of the cuffs.**

68. In the case of another destination, Mr Dowse’s claim that the Government exercises “rather detailed care” to its consideration of licence applications is less convincing. We have examined easily accessible official information published by the end-user of the handcuffs. This reveals that the end-user employs this specific make of over-sized handcuff in a way which is clearly contrary to the Government’s ban.<sup>89</sup> However, the Government “did not seek assurances” about the use of the handcuffs, because it “had no end-user concerns”.<sup>90</sup>

69. As the Secretary of State for Trade and Industry told us as recently as 3 April:

We take a view on oversized handcuffs that we would not want them to be used for the purpose of leg irons, we regard that as an unacceptable practice, certainly when we look at export controls for oversized handcuffs or export licences we look very closely at whether there is a risk they would be used for the purpose of leg irons ... we will continue to enforce our view of those oversized handcuffs.<sup>91</sup>

70. We would not expect oversized handcuffs to be the Government’s top priority among military exports of potential concern. Nonetheless, they have the potential for being used in ways which the Government has explicitly condemned. A political ban on the export of equipment deserves to be properly implemented, even where the end user, as in this case, is reputable and properly regulated.

**71. In another case, we conclude that oversized handcuffs should not have been licensed during 2001 for export to a particular destination (which we have been asked by the Government not to identify). Basic checks on the end-user of this equipment from information easily accessible in the public domain would have revealed concerns about how the oversized cuffs might be used. We therefore conclude that basic checks were not conducted. We regard this as an administrative failure that should be investigated.**

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88 Ev 14, Q 88

89 Ev 15, Q 89

90 *Ibid*

91 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2002–2003, The Government’s Proposals for Secondary Legislation under the Export Control Act, HC 620, Ev 21, Q 126.

## **Tanzania**

72. We commented at some length in our last Report on the Government's decision to grant licences for the export of a military air traffic control system to Tanzania.<sup>92</sup> The main concern about the export was whether it would "seriously undermine the economy or seriously hamper the sustainable development" of Tanzania. The Government is required to take these considerations into account when considering export licence applications.

73. The licences for the air traffic control system were granted in December 2001, and therefore are listed in the 2001 Annual Report.<sup>93</sup> Although the total value of the system as widely reported in the media was £28 million, the total value of individual export licences granted for Tanzania in 2001 was only £19.5 million. This discrepancy may be explained by an error in the value of the equipment as reported in the media, or it may be that parts of the system were not subject to the export licensing regime. The actual cost of an export is central to whether it would hamper the sustainable development of a country. **We recommend that the Government explain in its response to this Report the apparent discrepancy between the value of the licences issued in 2001 for export to Tanzania, and the reported total value of the air traffic control system being sold to the Tanzanian Government.**

74. We asked the Government in writing, and then in oral evidence, whether the export of the system had yet taken place. We were told by Mr Dowse on 27 February that:

when an export has been completed, the licence is then exhausted and is returned to the DTI. To date, I understand the DTI has not received the exhausted licences for the air traffic control system.<sup>94</sup>

75. We are surprised that the Government has no other means of identifying whether an export has occurred. In the case of Tanzania, the proposed export had gathered an enormous amount of public attention, and we would expect the Government to be keeping a close eye on developments. The Government must also have ways of ensuring that exports are halted where, exceptionally, it has cause to revoke a licence. Customs and Excise are presumably an important part of this process. **In its response to this Report, the Government should explain what links exist between Customs and Excise concerning the actual export of military equipment, and other Government departments concerning the legality of their export.**

76. In our first Report of this Parliament, we stated that we expected "to receive shortly the summary of the cost-benefit analyses prepared within Government before the decision on the application to export an air traffic control system to Tanzania was determined". In its response to our Report, the Government stated that it was "still considering", in line with an undertaking from the Foreign Secretary of 21 March 2002, whether "detailed calculations about the licensing decision could be released to the Committee". **It is unacceptable that it has taken the Government well over a year to decide whether to**

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92 HC (2001–02) 718, paras 119 to 135

93 2001 Annual Report, p 321

94 Ev 10, Q 50

**provide us with analytical information about the application to export an air traffic control system to Tanzania.**

### **Sri Lanka**

77. Sri Lanka has been prey to a long-running internal conflict between the Sri Lankan forces and a rebel group, the Liberation Tigers of Tamil Eelam (LTTE). Licences for Sri Lanka in 2001 included grenade launchers, 75 sniper rifles, small arms ammunition, special forces craft, and weapon night sights.<sup>95</sup> We recognise that there is a strong case to be made for assisting a Government to use force to preserve law and order, as long as that force is used in accordance with international human rights standards. However, according to the US State Department, in 2001 the Sri Lankan security forces committed “serious human rights abuses” in areas affected by the internal conflict, including “numerous extrajudicial killings”, disappearances, the torture of detainees and the rape of women in custody.<sup>96</sup>

78. In our last Report, we recommended that the Government undertake end-use monitoring of the use of similar equipment licensed for export during 2000, to ensure that “undertakings are being honoured and human rights violations are not occurring”.<sup>97</sup> In its response, the Government stated that:

Our post in Sri Lanka has reported a number of recent incidents involving the Sri Lankan armed forces. We cannot at this stage say whether British equipment was used, nor if it were, whether it was misused.<sup>98</sup>

79. At the time, the Government undertook to “write to the Committee again with further details”.<sup>99</sup> We have now belatedly learned from the Government that it has “concluded that there has been no misuse” of British equipment by the Sri Lankan armed forces.<sup>100</sup> **We recommend that the Government should continue to take measures to minimise the risk that military equipment supplied to the Sri Lankan armed forces from the United Kingdom will be misused.**

### **Nepal**

80. Since 1996 the Nepalese Government has been fighting a Maoist insurgency, which has led to thousands of deaths. In this section, we look at the Government’s policy in relation to two types of export to Nepal: the licensing of small arms in 2000 and 2001, and the more recent presentation of military helicopters and other equipment as a gift from the British Government.

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95 2001 Annual Report, p 301

96 US Department of State, Bureau of Democracy, Human Rights and Labor, Country Report on Human Rights Practices for Sri Lanka for 2001. Published online at [www.state.gov](http://www.state.gov)

97 HC (2001–02) 718, para 50

98 Cm 5629, p 2

99 *Ibid*

100 Ev 52

### *Small arms*

81. In 2001, the Government licensed the export of 6,780 assault rifles and other small arms including grenade launchers to Nepal.<sup>101</sup> This followed the licensing in 2000 of the export of 320 semi-automatic pistols.<sup>102</sup> In his evidence to us, the Foreign Secretary gave a forthright defence of the Government's policy on exporting military equipment to Nepal:

you have there a very, very serious terrorist insurgency. You also have a fragile government which is the subject of considerable criticism. We have had to take a strategic decision about how best we can support Nepal, against a background, number one, that it is important that we should not allow countries, where we can, to descend into insurgency and terrorism—and we all know what can happen there—but number two, that if we do, the consequences are not only pretty grave for that country, but also for surrounding countries, including in this case India which has a very natural regional interest in the stability of its neighbours ... in order sometimes to prevent wider conflict, you have to arm armed forces and make sure they are effective, because one of the major problems leading to the insurgency has been the lack of equipment, some lost through accident and others through lack of training by the Royal Nepalese Army.<sup>103</sup>

82. We have no hesitation in agreeing with the Foreign Secretary that the Maoist rebels fighting in Nepal are “vicious beyond belief”.<sup>104</sup> We also consider the Government to be right in stating in its interpretation of the consolidated criteria that “in some cases the use of force by a Government within its own borders, for example to preserve law and order against terrorists or other criminals, is legitimate”. We note, however, that this is only so “as long as force is used in accordance with ... international human rights standards”.

83. There have been numerous reports of human rights violations by the Nepalese authorities. Amnesty International, for example, has reported that since the deployment of the army in November 2001:

the people of Nepal have experienced unprecedented levels of political violence. By the end of October 2002, according to figures made public by the Ministry of Home Affairs and the Royal Nepal Army, the number of people killed in the conflict since November 2001 had reached 4,366 ... at least half of these killings may have been unlawful. The vast majority of the victims were civilians targeted for their real or perceived support to the CPN (Maoist); others were Maoists deliberately killed after they were taken prisoner or killed instead of being arrested. In addition, torture is widespread and at least 66 people are reported to have ‘disappeared’ since November 2001 after they were seen being taken into custody by the security forces. The total

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101 2001 Annual Report, p 222

102 Ministry of Defence, Foreign and Commonwealth Office, Department of Trade and Industry, Strategic Export Controls: Annual Report 2000, July 2001, p 187

103 Ev 11, Q 61

104 Ev 11, Q 64

number of 'disappearances' reported to Amnesty International in the context of the 'people's war' is over 200.<sup>105</sup>

In its own Annual Report on Human Rights for 2002, the Government has commented that "in addition to concerns about civilian casualties from crossfire, there is now widespread anxiety about the level and brutality of abuses and violations by both sides to the conflict".<sup>106</sup>

84. Another, more practical concern is the security arrangements for stocks of small arms held by the Nepalese authorities. Small arms are, by their nature, particularly easy to hide, transport and use. Maoist rebels have made army barracks a priority target, with the aim of seizing weapons during their attacks.<sup>107</sup> As the Foreign Secretary has told us, the Royal Nepalese Army has suffered from a "lack of equipment, some lost through accident and others through lack of training".<sup>108</sup> It would be unfortunate to say the least if small arms intended to support the Nepalese authorities ended up in the hands of rebel forces owing to inadequate security.

### *Gifts: military helicopters*

85. On 22 July 2002,<sup>109</sup> the Government presented to the House of Commons a Ministry of Defence Departmental Minute proposing to make a number of gifts to the Government of Nepal at a total cost of £4.077 million, including two MI 17 support helicopters at a cost of £2.6 million. All of the items were to be purchased using funds from the Global Conflict Prevention Pool.<sup>110</sup>

86. The normal practice when the Government proposes to make a gift of an unusual nature or of a value exceeding £100,000 is for a Minute to be presented to the House of Commons, and for the Government to wait 14 working days after the issue of the Minute before making the gift. In this case, however, owing to an oversight, a number of gifts described in the Minute—not including the helicopters—had already been made before the Minute was presented to Parliament. We asked the Government for an explanation of this oversight, and were told that it had "occurred because of confusion over whether equipment funded from the Global Conflict Prevention Pool needed to be treated as a gift".<sup>111</sup> **We regret that gifts of military equipment were made to Nepal without Parliament having been informed beforehand. We trust that procedures are now in place to ensure that this oversight does not recur.**

87. An unusual aspect of this gift is its source of funding: the Global Conflict Prevention Pool. This fund was established in April 2001 as a pooled resource between the FCO, Department for International Development and Ministry of Defence "to improve the

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105 Amnesty International, Press Notice IOR 41/025/2002, 1 December 2002. See also for example: Observer, 2 February 2003, Independent, 30 January 2003, Washington Post, 30 January 2003.

106 FCO Annual Report on Human Rights for 2002, Cm 5601, p 101

107 Ev 12, Q 66. See also Washington Post, 2 January 2003.

108 Ev 11, Q 61

109 A revised minute was presented to Parliament on 30 August 2002.

110 Revised Departmental Minute dated 30 August 2002 concerning the gifting of non-lethal military equipment to the Government of Nepal

111 Ev 31

effectiveness of the UK contribution to conflict prevention and management, leading to a reduction in the number of people whose lives are affected by violent conflict and a reduction in the potential sources of future conflict".<sup>112</sup> It funds projects across the world, except for sub-Saharan Africa, which is funded from a separate pool. Its stated goal for South Asia is "to contribute to the resolution of civil conflicts in the region and the prevention of international conflict by engaging with governments, the military and civil society".<sup>113</sup>

88. We do not object to the gifting of the helicopters and other equipment *per se*. An agreement "restricts the use of the helicopters exclusively to logistical, medical and ongoing humanitarian tasks" and "combat or attack roles are excluded for the lifetime of the aircraft, including the fitting of weapons, allowing soldiers to fire from the doorways whilst airborne or the dropping of ordnance".<sup>114</sup> The gifts seem to us to be an appropriate and useful token of the Government's support for the Nepalese authorities.

89. We are concerned, however, that the Conflict Prevention Pool was used to fund the purchase of the equipment. These are gifts which will, by the Foreign Secretary's own admission, assist the combat capabilities of an army which is currently involved in combat operations.<sup>115</sup> When we pressed the Foreign Secretary on this point, he told us that "in order to prevent conflict, you have to use force in many circumstances, and that is certainly true in Nepal".<sup>116</sup> Such an argument stretches the sense of the term "conflict prevention" to breaking point. Using the same logic, it could be argued that any justifiable arms sale is an exercise in conflict prevention. The fact that a gift of military equipment is desirable does not justify paying for it from a fund specifically devoted to conflict prevention, any more than building a new road should be paid for from a fund for the protection of the environment.

90. It is not in our view always unacceptable to fund the gifting of military equipment from the Conflict Prevention Pools. We believe that a recent gift to Kenya of de-mining equipment was a proper use of these funds,<sup>117</sup> as was the use of the Pools to supply explosive ordnance disposal equipment to Nepal. This is equipment which has a clear role in preventing death and injury, rather than equipment which is likely to be used in logistical support for combat operations, albeit in the pursuit of longer term stability and peace. **While we support the Government's decision to provide military support helicopters and other equipment to Nepal, and the conditions attached to the use of the helicopters, we conclude that the Global Conflict Prevention Pool should not have been used to fund the gifting of this equipment.**

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112 Cm 5601, p 89

113 Cm 5601, p 90

114 Ev 31

115 Ev 11, Q 62

116 Ev 11, Q 64

117 Departmental Minute dated 5 March 2003 concerning the gifting of de-mining equipment to the Government of Kenya

## 4 Policy issues

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91. A number of policy issues have arisen in the course of our inquiry which have not stemmed directly from licence decisions taken during 2001. In this section, we consider these. First, we look at the Government's involvement in the arms trade, and its role in promoting defence exports by British industry. We look at recent guidance that has been issued on the application of the sustainable development criterion. We continue a long-running debate with the Government on the value of monitoring what happens to defence exports after they have left the United Kingdom. Finally, we look briefly at the Government's approach to open licensing.

### Government sales and transfers

92. Uniquely, the Crown—in other words, the British Government—does not require an export licence to transfer military equipment abroad. In circumstances in which the equipment remains in the possession of the Crown, this is entirely sensible. No-one would expect the Government to need a licence to provide British armed forces abroad with military equipment. It would also be an unnecessary bureaucracy to monitor the export of equipment where this is in support of collaboration with allies on procurement programmes. Our concern is with the criteria used by the Government to decide whether to sell or give military equipment to others, and with the transparency of these sales and gifts.

### Criteria

93. The Foreign Secretary has told us that sales and gifts of military equipment by the Government are considered “on a case-by-case basis against the consolidated criteria”.<sup>118</sup> **We recommend that the Government confirm in its response to this Report whether all sales and gifts of military equipment by the Government are considered against the consolidated criteria before being made, and whether the same arrangements for interdepartmental consideration of such sales and gifts exist as for exports subject to the licensing procedure.**

94. In its reply to our last Report, the Government noted that the F680 form—usually used by defence exporters to seek Government advice on the marketing and promotion of their goods overseas—can “act in place of an export licence for sales of defence equipment by UK Government agencies to other Governments”.<sup>119</sup> Mr Dowse expanded on the circumstances in which the F680 procedure is used:

If there is a government-to-government transfer, which may be a sale or a gift in some cases, and the transfer of ownership from the British government to the recipient government takes place while the equipment is in the UK, then an export licence will still be required and it will feature in the Annual Report in the normal way because the recipient government will have to apply for a licence to export the

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118 Ev 3, Q 9

119 Cm 5629, p 1

equipment from the UK. If the transfer of ownership takes place outside the United Kingdom, then we may use the F680 procedure.<sup>120</sup>

95. It seems odd to us that the Government should use the F680 procedure as an alternative to the licensing process for its own exports, when it has been at such pains to make clear that for all other exporters F680 clearance is no substitute for an export licence. In its reply to our last Report, the Government told us that “The Ministry of Defence routinely makes clear to exporters that advice received as a result of a F680 application does not constitute an export licence, nor guarantee the approval of any future licence application for the export of goods and technology”.<sup>121</sup> **We conclude that the use of the F680 procedure as an alternative to an export licence for equipment owned by the Government risks muddying the Government’s message to industry that F680 clearance is no substitute for an export licence.**

96. The position is even more complicated because the Government does not always use the F680 procedure for transfers of its military equipment. Transfer of ownership may also take place by letter of Crown Immunity. Then there are gifts, which apparently follow neither procedure, but occur “following interdepartmental consideration”.<sup>122</sup> **We recommend that the Government explain in its response to this Report what considerations determine whether a transfer of ownership of military equipment in the possession of the Crown takes place under the F680 procedure or by letter of Crown Immunity, and what procedure is followed for gifts.**

97. Many of the Government’s statements to us about sales and gifts of military equipment imply that they only apply to sales and gifts to other Governments. It may be that other Governments are the only recipients of military equipment from the British Government. But for the sake of completeness, **we recommend that the Government explain under what circumstances it would sell or give military equipment for use abroad to an end-user other than another Government, and to explain what procedures are in place to ensure that any such transfers are consistent with the consolidated criteria.**

### **Transparency**

98. There is a public interest in knowing to what extent the Government is not only regulating the trade by others in military equipment, but actually participating in that trade itself. We asked the Government how sales and transfers of military equipment by the Government appear in the 2001 Annual Report and were told that “they are included in summary form”.<sup>123</sup> But what little information there is in the Annual Report on Government exports is partial, and often impossible to extract. Information on the value of goods exported in 2001 is extracted from customs data, and may therefore not include equipment transported abroad by the Government prior to transfer of ownership, if that equipment is not subject to customs clearance.<sup>124</sup> Some goods which require an export licence because they are on the UK military list are not listed in the EU Tariff Code as

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120 Ev 3, Q 10

121 Cm 5629, p 1

122 Ev 48

123 Ev 3, Q 7

124 2001 Annual Report, pp 369–370

military goods, or are not coded so as to be able to distinguish between civil and military items.<sup>125</sup> As a result the statistics on exports do not include a range of licensed military equipment. Furthermore it is impossible to tell from the summary totals what proportion *Government* sales represent of the value of exports to any one country.

99. More descriptive information is available in two other tables.<sup>126</sup>

100. One, on exports of military equipment in major categories, is drawn from the British submission to the United Nations arms register. It includes exports of equipment by the Government, for example the export of 88 Challenger 1 Main Battle Tanks to Jordan under the Al Hussein project.<sup>127</sup> But it is likely also to include transfers of equipment by other exporters, such as British companies. It would be useful to have an indication in the table of whether the export was a transfer by the British Government.

101. The other table, on Government to Government transfers and sales of surplus major equipment and small arms, contains only Government sales, but does not include minor Government to Government transfers of military equipment. The Government has supplied us with a list of Government to Government transfers not published in the 2001 Annual Report.<sup>128</sup> None of them give us any cause for concern.

102. It may be that many Government transfers already appear in the Annual Reports on Strategic Export Controls. In reply to a Quadripartite Committee Report in the last Parliament, the Government noted that exports of surplus military equipment normally are reported because “it is usual MOD practice to ask the recipient government to apply for an export licence”, and that “details of Government to Government new equipment programmes” are provided, “consistent with any confidentiality agreements that apply”.<sup>129</sup>

103. We remain uncertain, however, about the extent to which Government transfers of military equipment are reported; and whether the Government requires them to be reported. **We are concerned that Government transactions could go entirely unreported where they involve the transfer of military equipment to a third party, rather than being related either to the operations of the British armed forces overseas or to collaborative equipment procurement projects, and we recommend that the Government should consider amending its reporting procedures accordingly.**

104. We are also uncertain to what extent information on military equipment *given away* by the Government has been published in the 2001 Annual Report.<sup>130</sup> Information provided in answer to a recent parliamentary question revealed that gifts made by the Government during 2001 included 100 Paveway III precision-guided bombs to Saudi Arabia, at a value of £16 million, 1,650 rounds of Challenger 2 tank ammunition to Oman at a value of £1,375,930, light weapons and ammunition to Sierra Leone as part of a package worth more than £20 million, and mine detection and disposal equipment to

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125 See also HC (1999–2000) 225, para 75

126 2001 Annual Report, p 371

127 Ev 30. The Al Hussein project was formed within the Disposal Services Agency of the MoD to facilitate the transfer of surplus Challenger I Main Battle tanks, together with a support package of equipment, to the Jordanian armed forces.

128 Ev 30

129 Cm 4872, p 9

130 Except for gifts which appear in the UN Arms Register

Macedonia at a value of £282,500.<sup>131</sup> We welcome the fact that the Government has placed this information in the public domain. **We recommend that, in the interests of transparency, future Annual Reports should include information on all sales, gifts and other transfers of military equipment by the Government to other end-users abroad.**

## Promotion of defence exports

105. As well as regulating defence exports, the Government is involved in their promotion. We asked the Foreign Secretary about this in the context of the export of Hawk aircraft to India. He told us that he was “totally unapologetic about [his] very active support for all British industries, including the British defence industry”.<sup>132</sup>

106. Clearly, there is a delicate balance to be struck here. It is totally proper and desirable that the Government should promote the sale of British products abroad. But the export of defence equipment is not always desirable, which is why the Government has a series of criteria which it uses at the licensing stage to determine whether a sale should take place. The Foreign Secretary has told us that: “I know what the criteria are, so do officials. I would not dream of canvassing for a sale if I thought the application for a licence was going to be refused”.<sup>133</sup> Our concern is that by canvassing for the sale, the Foreign Secretary could be seen as having pre-empted a licensing decision. It is highly unlikely that the Government would refuse a licence for equipment the sale of which a minister had been involved in promoting—barring a radical change in circumstances in the country buying the equipment. If the Government did refuse such a licence, it would presumably be open to legal challenge. **We recommend that before any minister becomes personally involved in promoting the sale of defence equipment abroad, the Government should consider the proposed export in question against the consolidated criteria with as much care as it would an export licence application.**

## Sustainable development

107. In considering an export licence application, one of the criteria that the Government must take into account is the sustainable development criterion—“whether the proposed export would seriously undermine the economy or seriously hamper the sustainable development of the recipient country”. We have sought during this inquiry to come to a clearer understanding of what this criterion means in practice. One of the difficulties in doing so is that no benchmark exists by which to measure it. Indeed, no export licence application has ever been refused by the British Government under the criterion.<sup>134</sup> In total, twenty seven licences have been refused across the EU under the criterion, but we have not been able to gain access to any further information on these.<sup>135</sup>

108. The Foreign Secretary has rightly pointed out that the fact that there have been no refusals under a criterion does not invalidate it:

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131 Letter from the Minister of State for the Armed Forces to Llew Smith MP, dated 15 January 2003

132 Ev 12, Q 71

133 *Ibid*, Q 72

134 Ev 9, Q 44

135 Ev 49.

It does not follow that a criterion is worthless, or that it has not been applied, just because we have not had applications where we have had to turn them down on that basis, because in all of this it is self-policing. There are plenty of criminal offences on the statute book which are very rarely subject to prosecution—in some cases not at all. That does not mean that we should remove the offence from the statute book. It may be that the law is working really rather well.<sup>136</sup>

The Foreign Secretary may be right that the existence of the sustainable development criterion has a deterrent effect. But it is difficult for us to assess whether the Government is committed to the sustainable development criterion while it has never been used as the reason for refusing a licence.

109. In our last Report we noted that a Cabinet Office review was taking place to improve and refine the processes for interpreting and applying the sustainable development criterion.<sup>137</sup> In a written answer of 26 September 2002, the Secretary of State for Trade and Industry described a new two-stage process which had been agreed between Government Departments for assessing the impact of proposed exports on sustainable development:

First a non-exhaustive list of countries identifies those where sustainable development is most likely to be an issue. Second, in cases involving exports to those countries, the Government will look in more detail at the possible impact of relevant proposed exports on the economy or the sustainable development of the recipient country.<sup>138</sup>

The Secretary of State makes clear that the guidance is not on the interpretation of policy, but on the procedures developed to assist in compiling the data necessary for the Government to make decisions.

110. The guidance is not entirely clear as to how the “list of countries” will be compiled. On the one hand it is stated that “those countries eligible for concessional loans from the World Bank’s International Development Association (IDA) have been chosen for these purposes as representing the world’s poorest”. This seems to imply that the list will consist only of countries eligible for such loans. But the guidance continues that “the Government will keep the list of countries under constant review to take account of changing circumstances” which suggests that countries may be included or excluded from the list on the basis of other criteria. The guidance promises that the list “will be published on the DTI website”, but this list is hard to find, and it is simply a list of countries eligible for concessional loans from the IDA. **We recommend that the Government should publish more prominently the list of countries in which it considers that sustainable development is most likely to be an issue, and that it should clarify both the basis on which the list is compiled and the basis on which it is subject to review.**

111. To assist in the second stage of the assessment of the impact of a proposed export on sustainable development, the Government has devised a series of indicators. These indicators are:

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136 Ev 9, Q 43

137 HC (2001–02) 718, para 133

138 HC Deb 26 September 2002, Col 309–310W

relative levels of military and social expenditure and level of military spending as a percentage of GNP; aid dependency compared with the regional average; state of public finances; balance of payments; external debt sustainability; economic and social development, i.e. GNP/capita and Human Development Index; the status of any IMF—or World Bank—sponsored economic reform programme.<sup>139</sup>

112. The Government has told us a little about how it intends to use these indicators:

The use of indicators is designed to help form a judgement on how to advise on a licence application in each case against Criterion 8. Indicative thresholds have been agreed for some indicators, in order to make them more useful in coming to a judgement. However, no number or combination of indicators, or their degree, will pre determine the judgement in a particular case. The Committee will understand that the sensitivity of these thresholds means that they cannot be published.<sup>140</sup>

113. The publication of guidance on the application of the sustainable development criterion is welcome, and brings a degree of openness to the processes used in determining whether a proposed export is of concern. But, to the outsider, it is by no means clear what the guidance means in practice.

114. The Government has told us that “the procedures provide officials with a clear and agreed framework for providing advice”.<sup>141</sup> The framework may be clear to officials, but it is hard to imagine how this guidance will be of much assistance to industry. Defence equipment exporters need to know whether there is any risk that a proposed export will be refused on sustainable development grounds. They cannot use a description of the Government’s procedures to achieve this. **We conclude that the guidance published by the Government on its application of the sustainable development criterion is a welcome step in the direction of greater openness, but that it is couched in such a way that it is unlikely on its own to be of much assistance to industry in judging whether a licence application is likely to be approved.**

115. The sustainable development impact of a proposed export can be only be assessed in the context of the purchasing country’s military procurement policy as a whole. We therefore welcome the Government’s statement that “the cumulative impact of all arms imports to the destination country, not just exports from the UK” will be captured by the Criteria as a whole and by the indicators to be used under the sustainable development criterion.<sup>142</sup>

## End-use monitoring

116. End use is perhaps the most important factor that the Government takes into account when deciding whether to grant a licence. The Government needs to reassure itself that the equipment is likely to be sent to the stated user and not elsewhere, that the stated user is likely to keep the equipment, not to pass it on, and that the stated user is likely to employ

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139 HC Deb 26 September 2002, Col 310W

140 Ev 37

141 Cm 5629, p 10

142 HC Deb 26 September 2002, Col 311W

the equipment responsibly. The Government “believes that the surest way to prevent UK arms ending up in the wrong hands is to examine export licences applications carefully at the pre licensing stage and to refuse an export licence when there is an unacceptable risk of diversion or misuse”. We agree. We also believe, however, that the Government should adopt a targeted system of end-use monitoring to verify the proper use of goods *after* they have been exported.

117. Saferworld, in its memorandum, makes a case for a system of end-use monitoring which is “prioritised to those countries and for those transfers that are in most danger of diversion or misuse, through a targeted use of limited resources against a matrix of likely risk factors, as is the case in the US”.<sup>143</sup> As Saferworld explains:

Since 1990, the US has had in place a systematic end use pre export screening and post export monitoring programme for commercial sales of controlled items. The Blue Lantern programme, administered by the Department of State, uses a system of 20 specific criteria or red flags (for example the requested equipment does not match the known requirements or inventory of the foreign end user) and reporting by embassies, intelligence and law enforcement agencies to highlight risks of diversion.<sup>144</sup>

We do not necessarily believe that the Blue Lantern Programme can or should be imported wholesale into the United Kingdom; but it does show that other countries operate targeted systems of end-use monitoring, and apparently believe them to be useful.

118. In our last Report, we recommended that “the Government should consider the production of clear guidelines for, and clarification of, the circumstances under which end use monitoring should be undertaken”.<sup>145</sup> The Government told us in response that “we do not consider that it is either practical or useful to monitor the end use of all military goods exported from the UK over their lifetime with the end user, particularly where we have already satisfied ourselves of the end user’s integrity before issuing a licence”.<sup>146</sup> This is to miss the point: we have never asked the Government to monitor the end use of *all* military goods, but rather to monitor in a targeted way the use of a small fraction of military exports.

119. In its response to our last Report, the Government also told us a little about the steps that it takes to monitor exports after they have been delivered:

Last year the Government examined its procedures on end-user verification and end-use monitoring. We assured ourselves that licensing officials systematically consider whether there is a need for Posts to carry out checks on end-users when considering Export Licence Applications (ELAs), and also consider whether follow-up monitoring would add value to our efforts to minimise the risk of diversion. We also ensured that procedures are in place to encourage best practice in this area of risk assessment, including taking into account or seeking information on these issues from civil society. In addition, our Posts overseas have standing instructions to watch

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143 Ev 41

144 Ev 45

145 HC (2001–02) 718, para 97

146 Cm 5629, p 8

out for and report on any misuse of UK-origin defence equipment in the countries that they cover, and to feed that information into the export licensing process. One of the results of this exercise was the refinement of internal guidance on the practicalities of end-use checks and end-use monitoring.<sup>147</sup>

120. While this tells us something about the procedures that the Government follows, it also suggests a rather haphazard approach to end-use monitoring. If civil society reports misuse of equipment, then news of it may get back to the British Government. Posts overseas may have standing instructions to watch out for misuse of UK-origin equipment, but a standing instruction suggests that it is not normal to ask posts to investigate how specific equipment is used.

121. When we asked the Foreign Secretary under what circumstances overseas posts are asked to carry out end-use monitoring, he told us “when we get information about this”, which also suggests a reactive rather than a proactive response.<sup>148</sup> Mr Dowse seemed to give a different answer:

There are specific circumstances. In some circumstances it is not unknown for a particular condition to be put onto a licence as to the circumstances in which the item can be used, and in those circumstances—I know they are fairly specialised—we do try to do what we can to ensure that the conditions are met.<sup>149</sup>

But this was again contradicted by more recent evidence, in which the Government writes that “there are no defined specific circumstances when end-use monitoring takes place”.<sup>150</sup>

122. We have discovered, however, that “guidance is issued to overseas posts and to the desk officers who consider approval of the licence application. This guidance sets out circumstances in which end-use monitoring should be considered”.<sup>151</sup> Even if there are no defined specific circumstances in which end use monitoring takes place, it seems that there are perhaps defined specific circumstances in which it is considered. **We recommend that the Government provide us, in confidence if necessary, with a copy of the guidance issued to overseas posts and desk officers on the circumstances in which end-use monitoring should be considered.** It may be that this guidance is evidence of precisely the sort of policy that we are asking the Government to implement.

123. It is true that end-use monitoring after an export has occurred is not the most effective way of preventing the misuse of equipment. It can, however, inform future licensing decisions, and decisions on whether to allow the export of spare parts. A recipient of defence exports is also perhaps more likely to use these exports responsibly if he knows that this use may be monitored.

124. The Government has provided us in confidence with information on a few instances of end-use monitoring that have been carried out by British posts overseas. It points out that “there is no database of end-use monitoring and so it is impossible to say in how many

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147 Cm 5629, p 7

148 Ev 8, Q 39

149 *Ibid*

150 Ev 49

151 *Ibid*

countries end-use monitoring occurred in 2001". It also claims that "most end-use monitoring shows that UK arms exports are not being misused, and as such this goes unreported".<sup>152</sup>

125. In every case but one that the Government has been able to identify, end-use monitoring has investigated whether the use of equipment supplied from the UK has been consistent with international human rights standards. This suggests that end-use monitoring, in so far as it takes place, is largely incorporated into the responsibility of diplomatic posts for general human rights monitoring. While this is clearly an important consideration, posts overseas should also be used to ensure not only that military equipment is being used as intended, but also that it is being used by those who were intended to use it. **We recommend that one of the central purposes of end-use monitoring should be to ensure that the Government is made aware when military goods exported from the United Kingdom have been diverted to unintended third parties.**

## Open licensing

126. Our predecessor Committees examined suspicions that the Government was using open licensing (OIELs) in an increasing range of circumstances as an alternative to single licences (SIELs)—which are inherently more transparent and a stricter form of regulation.<sup>153</sup> The Government denied that any policy shift had occurred,<sup>154</sup> and the Committees concluded that the statistics did not suggest any evidence of such a change.<sup>155</sup> In its reply, the Government stated that it "welcomes the Committee's assessment that there is no evidence of a change in policy on the use of OIELs and reiterates its repudiation of such allegations".<sup>156</sup>

127. Although the number of OIELs issued in 2001 showed a slight increase on the previous year, both in real terms, and as a percentage of all licences issued, this was not statistically significant enough to indicate any change in policy.<sup>157</sup> However, evidence to us from a major group representing British defence exporters has cast doubt on the Government's claims that there has been no change in policy on the use of OIELs. The British Defence Manufacturers' Export Licensing Group has:

welcomed the efforts at improved efficiency that the Government has made in recent years to reduce the bureaucratic burden associated with export controls, both on itself and Industry, whilst in no way undermining the effectiveness of the UK's export control system, mainly through increasing the scope of open licensing.<sup>158</sup>

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152 *Ibid*

153 HC (2001–02) 718, paras 99–101

154 *Ibid*, para 100

155 *Ibid*, para 101

156 Cm 5629, p 8

157 1998: 566 OIELs, 9869 SIELs (5.73%); 1999: 449 OIELs, 8967 SIELs (5.01%); 2000: 419 OIELs, 8371 SIELs (5.01%); 2001: 511 OIELs, 8105 SIELs (6.30%).

158 HC (2002–2003) 620, Ev 33

**128. We conclude that it is curious that industry recognises that there has been an increase in the scope of open licensing, given that the Government has consistently denied that this is the case.**

## 5 Collaborative defence manufacturing

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129. British arms export policy does not exist in a vacuum. Many defence manufacturing projects are carried out in more than one country: policy needs to take account of this, and define whose rules apply in collaborative projects. This section considers the British Government's policy response to such situations.

### Incorporation

130. In our last Report,<sup>159</sup> we commented on new guidelines which the Foreign Secretary had recently announced would be taken into account in considering applications for a very particular category of export: equipment for export to a second country, to be incorporated into equipment being manufactured in that second country for onward export to a third country.<sup>160</sup> That Report quotes extensively from the Foreign Secretary's written answer, but it is worth restating the guidelines themselves:

The Government will continue to assess such applications on a case by case basis against the Consolidated Criteria, while at the same time having regard to, inter alia, the following factors:

- (a) the export control policies and effectiveness of the export control system of the incorporating country;
- (b) the importance of the UK's defence and security relationship with the incorporating country;
- (c) the materiality and significance of the UK-origin goods in relation to the goods into which they are to be incorporated, and in relation to any end-use of the finished products which might give rise to concern;
- (d) the ease with which the UK-origin goods, or significant parts of them, could be removed from the goods into which they are to be incorporated; and
- (e) the standing of the entity to which the goods are to be exported.<sup>161</sup>

131. The Government replied to our Report in October 2002,<sup>162</sup> but the evidence session on 27 February 2003 was our first opportunity to question the Foreign Secretary in person on these new guidelines.

132. The guidelines seem to have been introduced in response to a specific licence application, for the export of Head-Up Display (HUD) Units to the USA for incorporation into F-16 aircraft for onward export to Israel.<sup>163</sup> According to a letter from the FCO to the Committee of 21 March 2002, "the UK has not licensed for export main equipment such as

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159 HC (2001–02) 718, paras 136–147

160 For the sake of succinctness, we will refer to such cases as "incorporation" cases in this Report—even though this terminology may not strictly speaking be accurate.

161 HC Deb 8 July 2002, cols 650W–652W

162 Cm 5629

163 Ev 5, Q 21

tanks, aircraft, warships or artillery to Israel since May 1997”, and British policy is not to approve licence applications for equipment which is at risk of being used by the Israeli Defence Force in the Occupied Territories. A HUD is a display of flight, navigation, attack, or other information superimposed upon the pilot's forward field of view. While not directly aggressive in nature, it greatly facilitates targeting by fighter aircraft. Presumably, under the Government's guidelines, the application for HUDs would not have been approved if the licence sought had been for export direct to Israel.

133. One of the concerns that we raised in our last Report was the question of whether the Foreign Secretary's new guidelines were compatible with the existing Consolidated Criteria.<sup>164</sup> The Foreign Secretary has now made it clear that in his view, the new guidelines are a “gloss on the criteria”, rather than a departure from them:

I came to the view in the end that I did not need to change the criteria but I did need to make public how I was going to interpret those criteria ... I could have simply said, if having judged that other things being equal within the criteria, we should license this application rather than not and to say we did it within Criterion 7 and leave it at that, but I thought it better to be explicit about the principles involved because that seemed to me to be a new circumstance because of the changing nature of the defence industry, and therefore required a new statement.<sup>165</sup>

Essentially, the Foreign Secretary's argument is that the guidelines were announced for the sake of transparency, not because of any change of policy.

134. It is at least arguable that the guidelines fall within the scope of the criteria. However, as a gloss on the criteria, they are presumably intended to make the Government's interpretation of the criteria easier to understand. It is by no means clear that they succeed in doing so. Moreover, they appear to have unintended implications for policy more widely.

### **Transparency**

135. There is little doubt about the general intent of the guidelines: the Government will approve some licences for the export of military goods for end-use in particular destinations (such as Israel) if they are to be incorporated in a second country, which it would not approve if they were for export direct to those destinations. But this emerges from the context of the Government's announcement, the fact that it has licensed HUDs for eventual export to Israel, rather than from the announcement itself.

136. We are unconvinced that the Government's new guidelines will help exporters to assess whether a particular proposed export will be likely to receive a licence. For all its crudeness, the guideline issued by another EU member state that it will issue licences in all incorporation cases where the value of the components for export are “less than 20 per cent of final product” has the notable advantage that it leaves exporters and others outside Government knowing exactly where they stand.<sup>166</sup> **While we applaud the principle of**

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164 HC (2001–02) 718, para 144

165 Ev 6, Qq 22–24

166 Ev 7, Q 28

transparency which led the Government to issue guidelines on incorporation in July 2002, we conclude that the guidelines themselves do little to increase the ability of those outside Government to predict whether particular licence applications are likely to be approved.

137. One of the uncertainties about the new guidelines regards additional factor (c): “the materiality and significance of the UK-origin goods in relation to the goods into which they are to be incorporated, and in relation to any end-use of the finished products which might give rise to concern”. There is no clear indication from the guidelines themselves whether UK-origin goods are more or less likely to be permitted for export if they are more or less material or significant in relation to the goods in which they are to be incorporated. An insignificant component, a motor part, for example, might well be considered of little relation to any end-use of concern, and therefore more likely to be licensed. A component might also be more likely to be permitted for export if it is more significant, because, for example, of the impact that refusing the licence might have on the defence relationship between the United Kingdom and the incorporating country. **We recommend that the Government clarify whether UK-origin goods in incorporation cases are more likely to be licensed for export if they are *more* material and significant to the goods in which they are to be incorporated, or if they are *less* material and significant to these goods.**

138. Evidence from Sibylle Bauer, who has conducted research on transparency in export controls across the EU, has pointed out the importance of transparent reporting on incorporation cases:

indirect exports have largely been ignored in parliamentary and public scrutiny, partly because of the lack of transparency. No country currently reports explicitly on indirect exports, although a sufficient level of detail about direct exports can permit conclusions about the final destination ... Export figures are ... considerably distorted if indirect exports are not considered.<sup>167</sup>

139. The Government has given out conflicting messages about how it will identify licences which have been granted under the additional considerations for incorporation cases in future Annual Reports on Strategic Export Controls. In our last Report, we recommended that “the Government’s Annual Report for 2002 identify the number, destination and types of goods covered by licences where, in decisions to allow the export, the additional factors announced on 8 July played a part”.<sup>168</sup> The Government’s response, in October 2002, was positive:

The Government accepts the basis of the Quadripartite Committee’s recommendation, and intends to publish in future Annual Reports information on cases where incorporation is involved. However, given that the Foreign Secretary’s statement on incorporation is very recent, the Government is currently considering what additional data might be required and how that data might be collected and presented in the Annual Report. Whilst every effort will be made to ensure that this

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167 Ev 47

168 HC (2001–02) 718, para 146

is done quickly, the Committee will recognise that it will take some time for this data to feed through into the reports themselves.<sup>169</sup>

**We recommend that the Government should set out in its response to this Report the results of its consideration of how to present information on incorporation cases in future Annual Reports.**

140. However, the Government's response to us appears to be contradicted by a previous written answer:

export licences approved or refused on the basis of the [incorporation] factors ... will not be highlighted as such in the annual reports. Nor does the Government intend to provide in the reports information as to end-use and ultimate destination of finished products produced overseas incorporating UK components.<sup>170</sup>

141. We accept that the Government does not currently provide information on the end use of licences in its Annual Reports: there is no obvious reason why it should supply such information only in relation to incorporation cases. It is impossible, however, to assess how the Government is applying its criteria in relation to an incorporation case without knowing: first, that a particular licence relates to an incorporation case; and, second, the ultimate destination of the finished product. To state in an Annual Report, in the case of the HUDs to Israel, merely that the HUDs had been permitted for export to the United States, would be utterly inadequate information.

**142. We recommend that the Government should identify in future Annual Reports those licences for which the additional factors of 8 July 2002 were a consideration. The final destination of the equipment licensed for export should be identified in such cases as well as the incorporating country.**

### ***Policy implications***

143. The licence for HUDs for onward export to Israel is also problematic in policy terms. An export to Israel which transits the USA is *more* likely to be used for internal repression than an export direct from the United Kingdom. Israel has given assurances that equipment exported from the United Kingdom will not be used aggressively in the Occupied Territories. There has been a breach of these assurances, and the Government has announced that, as a result, it will no longer be taking the assurances into account when assessing licence applications.<sup>171</sup> But the assurances, however flawed, still stand—except, as we have learnt from the Government, that they do not apply to incorporation cases.<sup>172</sup> **We recommend that the Government explain in its response to this Report why it did not seek to ensure that Israeli assurances—that British exports of military equipment direct to Israel would not be used aggressively in the Occupied Territories—did not also apply to components permitted for export to Israel via the United States.**

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169 Cm 5629, p 13

170 HC Deb 17 July 2002, Col 385W

171 HC (2001–02) 718, Ev 48

172 HC Deb 28 February 2003, Col 64WS

144. Were the Government to license the export of HUDs to Israel direct from the United Kingdom, it would have the assurance, however unreliable, that they would not be used aggressively in the Occupied Territories. Its current policy is not to license such exports. It is, however, prepared to license for export to the United States HUDs which it knows are for eventual use in Israel, where it has no assurance that the equipment in question will not be used aggressively in the Occupied Territories.

145. Evidently, the licence for the export of HUDs to the United States was granted on the basis of other considerations than the risk of aggressive use in the Occupied Territories. The Government has clearly come to the conclusion that the threat to the defence relationship between the United Kingdom and United States that would be caused by refusing this particular licence for HUDs outweighs the risk that the equipment in question will be used for internal repression:

what it means is if in the case of our largest defence contractor BAES they have a huge long-term relationship with defence industries in the United States, then no sensible government can ignore the implications for that relationship of decisions on one individual application. That does not mean that you automatically go along with the application, but it does mean you need to take account of it.<sup>173</sup>

146. We stated in our last Report that “we recognise [the need to address] the challenge faced by the UK defence manufacturing industry in securing participation in and sustaining collaborative procurement projects, particularly those involving the USA”.<sup>174</sup> It is a particularly sensitive and difficult task for the Government to seek to balance the country’s defence interests generally against the risk that particular equipment will be used for internal repression or international aggression. But **we conclude that it is hard to comprehend the ethical basis for a policy which allows the export of certain military goods for end-use in Israel only via the United States with no assurance that they will not be used aggressively in the Occupied Territories.**

147. It is also instructive to consider how the policy on the export of components incorporated abroad into main equipment will affect the supply of spares for these parts. If the end-user requires spare parts which are manufactured in the United Kingdom, the Government might find itself in a position in which its criteria only allow it to license such parts if they are incorporated into the end product in a second country. Taking the HUDs as an example—and ignoring for a moment the practical considerations that may apply to their installation and repair—the British Government would not, under its own rules, license the export of spare HUDs direct to Israel for incorporation to take place in Israel. Nor would it license the export of spare HUDs to the United States for onward export to Israel and incorporation in Israel. If, on the other hand, the Israeli authorities transported their aircraft to the USA, the British Government presumably would license the export of spare HUDs to the USA for incorporation into the aircraft there prior to onward export back to Israel. This is an absurd outcome of a policy introduced for sensible reasons.

148. In practice, the Government might well recognise this absurdity and permit the export of spare HUDs direct to Israel. It might also face legal challenge if it refused to supply

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173 Ev 7, Q 28

174 HC (2001–02) 718, para 145

spares for equipment that it had allowed to be exported in the first place. But this would only further undermine the Government's policy not to export such goods to Israel. **We conclude that the new policy on incorporation cases risks undermining other aspects of export policy. We recommend that the Government explain in its response to this Report how it will treat licence applications for the export of spare parts to the end user direct, or indirect but unincorporated, where the original licence was granted for incorporation in one country prior to onward export to an end user in another country.**

### *The international policy dimension*

149. We have also tried to discover whether there is a common EU-wide policy on incorporation.<sup>175</sup> From our questioning of the Foreign Secretary, it has emerged that there is no such common policy,<sup>176</sup> and that, even for the Government, it has proved “quite difficult to unearth other countries’ practices”.<sup>177</sup> This gives rise to concerns about undercutting within the EU. If countries within the EU have different criteria for considering incorporation cases, it is inevitable that some components will be allowed for export which other countries would refuse. A refusal by an EU member state would trigger a denial notice, informing other member states that a licence application had been refused, but if a supplier knows in advance how different countries apply the criteria, it can avoid denial notices by seeking licences only in countries where the likelihood of such licences being granted is high.

150. We remain concerned that national and EU export control policies may be eroded by the new guidelines on incorporation cases. It is true that the guidelines make clear that the “export control policies and effectiveness of the export control system of the incorporating country” are to be taken into account. This would allow an incorporation licence to be refused if the incorporating country had a lax export control system, or if its export control policies were unacceptable to the British Government. The United States has an effective export control system, and export control policies with similar aims to those of the United Kingdom.

151. The United States does not, however, apply its policies in the same way as the United Kingdom. The United States permits, as a matter of policy, the export to Israel of military goods which the United Kingdom would not be prepared to license. Because of the importance of the defence relationship between the United States and United Kingdom, British policy (not to export HUDs to Israel) has in this case effectively been subordinated to US policy (to export such goods).

152. In our last Report, we concluded “that the Government’s announcement of 8 July has made it more urgent that efforts be redoubled to seek to secure harmonisation of EU and US policies on arms exports”.<sup>178</sup> The Government’s response to this conclusion failed to address this concern:

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175 *Ibid*, para 144

176 Ev 6–7, Qq 24 and 28

177 Ev 6, Q 24

178 HC (2001–02) 718, para 143

The UK continues to engage fully with EU Partners, with the USA and with other key arms exporting states, through multilateral fora, such as the EU Code of Conduct on Arms Exports and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, and on a bilateral basis, in order to secure the widest possible acceptance for responsible and practical arms export controls.<sup>179</sup>

153. While we are fully supportive of the Government's engagement in these valuable fora, the problems raised by incorporation cases cannot be solved by "responsible and practical arms export controls" alone, where these controls are applied very differently by different countries. **We recommend that the Government set out in its response to this Report the steps that it is taking to harmonise the policies of countries which have responsible and practical arms export controls (such as the United Kingdom and United States) on the export of defence equipment to third countries (such as Israel), particularly in cases of collaborative defence manufacture.**

### ***Incorporation: Conclusion***

154. **On incorporation, we conclude that the export of components in collaborative defence manufacturing projects only involves a different balance of considerations from other defence exports because different countries operate different licensing regimes. When considering the question of the export of Head-Up Displays to Israel via the United States, the Government faced a dilemma: it could allow the export and risk undermining national policy, or it could refuse the export and risk undermining the United Kingdom's defence relationship with the United States. The Government was right to attempt to find a solution to this dilemma, and right to be open about its position. But, as we have shown, the Government's solution raises as many issues as it addresses. In our view, it also had a third choice: it could have allowed the export, but attached conditions to its end use. The United States regularly imposes end-use conditions on its defence exports; it does not seem unreasonable that the British Government should do the same.**

### **US Controls on Imports (ITAR)**

155. The USA's International Trade in Arms Regulations (ITAR) currently constitute an unfair barrier to British industry's engagement in the US market. Negotiations began in July 2000 on a potential British ITAR waiver. This would permit the transfer without a US export licence of most unclassified defence items, technology, and services to the British Government and qualified companies in the United Kingdom. In the Government's view a waiver "would make a significant contribution to transatlantic defence industry co-operation and promote Alliance interoperability. At the same time it would ensure that comparable export controls were maintained on US and UK defence items".<sup>180</sup> We concluded in our last Report that the conclusion of negotiations on an ITAR waiver was "a

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179 Cm 5629, p 12

180 2001 Annual Report, p 7

matter of urgency” and “vital to ensuring that the UK defence manufacturing industry is operating in a fair international environment”.<sup>181</sup>

156. According to the Government, progress was made during 2002 on the negotiation of an ITAR waiver, but “a number of complex issues” remain to be resolved, including “differences to achieving the same non-proliferation and export control objectives within the legislative framework of the two negotiating partners”.<sup>182</sup> Differences between US and British policies on incorporation cases are one of the matters still under negotiation. The US, for example, “does not have publicly announced incorporation criteria.”<sup>183</sup>

157. Negotiations with Australia on an ITAR waiver have now been completed. There have been unconfirmed reports in the specialist press that negotiations on a UK waiver will follow shortly, with an agreement to be in place by 2004.<sup>184</sup> **We hope that reports are accurate that agreement is imminent on a British waiver from the International Trade in Arms Regulations. We recommend that the 2002 Annual Report should include a progress report on negotiations towards this waiver.**

## Global Project Licences

158. We commented in our last Report on the reporting implications of the Six-Nation Framework Agreement on European Defence Industrial Restructuring.<sup>185</sup> The agreement has created a new instrument, the Global Project Licence (GPL), which will be used to permit the export of the end product of collaborative programmes by any of the partners<sup>186</sup> to any country on a list of permitted destinations. This means that UK-manufactured products could be exported from any of the other five partner countries without this being recorded in UK Annual Reports. In its response to our last Report, the Government stated that:

The Government gave assurances in the 2001 and 2000 Annual Reports on Strategic Export Controls that Global Project Licences will be included in future editions of the Report. We estimate that such licences will be reported for the first time in the 2003 Annual Report.<sup>187</sup>

159. We asked the Government in writing whether any further thought had been given to how Global Project Licences would be reported in future Annual Reports. The Government has told us that they “expect that Global Project Licences will be reported in a similar manner in which we report on OIELs in the Annual Report. There will be an equivalent level of transparency”. We note also that “it is anticipated that a GPL will be issued in the near future”.<sup>188</sup>

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181 HC (2001–02) 718, para 77

182 Ev 33

183 Ev 48

184 National Defense, April 2003

185 HC (2001–02) 718, paras 81–83

186 France, Germany, Italy, Spain, Sweden, and the UK

187 Cm 5629, p 5

188 Ev 34

160. When the Government reports on OIELs, it publishes the broad categories of equipment permitted for export and the destinations to which the export is permitted. This allows the public to see that the Government is prepared to license the export under open licences of, for example, components for combat aircraft to India. Publishing equivalent information on Global Project Licences would not necessarily reveal this fact, because the initial destinations of components under the licences will be other partner countries. If these components were manufactured into finished aircraft in Italy, for example, for onward export to India, the British Government's Annual Report might reveal only that aircraft components were permitted for export to Italy under a Global Project Licence. This would in fact be notably less transparent than the information currently provided on OIELs in the Government's Annual Reports.

161. During our inquiry on the 2000 Annual Report the Government wrote to tell us that lists of permitted export destinations for products jointly produced by the Agreement signatories will be classified as commercial in confidence because "they could alert international competitors to market opportunities".<sup>189</sup> Only companies and partner countries involved in the particular projects will have access to the relevant lists.

162. The obvious question is why information about the permitted destinations for products manufactured under Global Project Licences is more sensitive than information about the permitted destinations of exports under SIELs and OIELs—which the Government is prepared to publish. It could be argued that information published in current Annual Reports on OIELs also alerts international competitors to market opportunities.

163. One possible difference between Global Project Licences and other types of licence is that the latter are generally granted when the export is ready or nearly ready to take place. Global Project Licences, on the other hand, will be granted before manufacturing has even started. What this suggests is that the *list of permitted destinations* under a Global Project Licence might reasonably be withheld, but that once an agreement has been reached to supply a destination with equipment produced under such a licence, *this destination* should be published. This would provide an equivalent level of transparency to that provided about other types of licence. **We recommend that, as a minimum, information should be published in future Annual Reports showing that a country is a permitted destination under a Global Project Licence as soon as the Government is aware that agreement has been reached with an end-user in that country for supply of equipment produced under such a licence.**

164. We are reassured by the Government's comments in the 2001 Annual Report that:

For individual collaborative projects permitted export destinations for exports of finished products would be agreed by the authorities of the participating countries in a particular project. These would be based on the destinations proposed by industry where they believe there are likely prospects for exports of the finished products. The treaty makes clear that where circumstances have changed significantly for the worse, a permitted export destination could be removed. In the majority of such cases, it is unlikely that EU (and therefore Framework Agreement) countries' policies

on military exports to that destination would differ. If, however, consensus is not possible, and if even one participating state objects to a proposed export destination, the treaty states that caution would prevail and the destination would be removed.<sup>190</sup>

**We note that the Government has the power under the Six Nation Framework Agreement to refuse unilaterally to allow the export to a particular destination of equipment produced collaboratively under the agreement. We conclude that this element of the agreement is essential to secure public confidence in the continuing robustness of strategic export controls.**

## 6 Format of Annual Reports on Strategic Export Controls

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165. The Government's Annual Reports on Strategic Export Controls have been widely recognised as among the most informative and transparent in the world.<sup>191</sup> Nevertheless, we would not wish complacency to prevent future Annual Reports from being improved further. In this particular area, informativeness and transparency are less developed than they might be at the international level.

166. Furthermore, Sibylle Bauer, who has conducted research on transparency in export controls across the EU, has questioned the claim that the British Annual Reports on Strategic Export Controls are superior to those of other EU countries. In her view, "with regard to a number of elements of arms export policy, other countries' annual reports are more transparent. In fact, at least one element of best practice can be found in most EU countries' reports".<sup>192</sup> Belgium and Denmark give information about end users in broad categories. The Netherlands publishes the detail of denial notifications made under the EU Code of Conduct, specifying "the intended destination (e.g. Pakistan), the recipient within the country (e.g. the Pakistani airforce), the end-use (if not identical with the recipient), a detailed description of the equipment (e.g. 'turbojet engine for training aircraft, adjusted for military use', WA ML 10), the reason(s) for the denial based on the Code criteria (e.g. criteria 4+6), and date and number of the denial notification within the EU information exchange (e.g. NL/8 of 19 June 1998)".<sup>193</sup> Where a licence has been refused, Germany identifies not only both the intended destination and the type of military equipment involved, as in the United Kingdom, but also the consolidated criteria under which licences have been refused to particular countries. Other countries provide other information, none of which is published by the British Government.<sup>194</sup>

167. Much of this information would be of great interest. It is hard to see how the Government could have principled objections to publishing this information, given that other EU countries do so already. In the past, the Government has implied that it is prevented from publishing information on individual denial notifications by operative provision 4 of the EU Code of Conduct.<sup>195</sup> Given the German and Dutch practice, however, this would seem no longer to be the case. **We recommend that the Government should explain in its response to this Report why it does not publish information on individual denial notifications under the EU Code of Conduct to the same level of transparency as the Netherlands.**

168. Many of the Government's past arguments against including more information in the Annual Reports have related either to commercial confidentiality or to implications for the size of the Reports. We have some understanding for both of these concerns, although with the development of electronic media, size is less of a consideration. We would not want

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191 Ev 2, Qq 3–4

192 Ev 45

193 Ev 45–46

194 Ev 46

195 HC (1999–2000) 225, para 54; Ev 20

information contained in the Annual Reports to give an unfair advantage to overseas competitors of British business. However, as Ms Bauer points out, while “most EU governments use similar arguments to justify the confidentiality of certain aspects of arms export policy: commercial confidentiality, foreign policy considerations, legal and constitutional provisions, and the recipient countries’ national security ... this results in the disclosure of different aspects of information”.<sup>196</sup>

169. There are two areas in particular—over and above those that we have touched on already in this Report—in which the provision of further information would not only increase the transparency of the Annual Reports, but also avoid some of the false impressions which are given by the partial information published at present. These two areas are: information on the end users of licences, and better information on the value of exports.

### Information on end use

170. The case for publishing information on end users is that it is often only in the context of this information that the Government’s decisions can be properly assessed. For example, opinion as to whether the Government would be right to allow the export of military equipment to a particular country might depend on whether the end user is an international peacekeeping force, a national army, a local police force implicated in human rights abuses or a firearms dealer of dubious provenance.

171. The main barrier to providing information on the end users of licences appears to be commercial confidentiality. The Government has told us that “information on specific end users is commercially confidential”.<sup>197</sup> We are not convinced that the publication of information on specific end users would in fact compromise the commercial prospects of British business, particularly given the buyer-driven nature of the international defence market. Companies might be concerned if the Government proposed to publish detailed specifications of the equipment intended for export or agreements as to exact price. In some cases, the sale of Hawk to India for example, there are no grounds for claiming that information about the end user is commercially confidential—it is widely known that the deal is being promoted and who the end user is. In most other cases, it is unlikely that publication of the identity of an end user would be to a company’s commercial disadvantage. It may be that in some cases, there are good reasons for not publishing the identity of end users. We would appreciate reassurance, however, that these reasons are neither overstated nor used as an excuse for failing to publish information that would do no harm to companies and would be of public interest. **We recommend that the Government should explain in its response to this Report in what circumstances it believes that the publication of the identity of end users of export licences would be to the commercial disadvantage of the exporter.**

172. The Government has itself published or authorised us to publish end-user details in a small number of licensing decisions, particularly where it has licensed the export of goods to countries under embargo, usually for the use of non-governmental organisations or

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<sup>196</sup> Ev 46

<sup>197</sup> 2001 Annual Report, p 16; Ev 34

peace-keeping forces, and it wants to make clear that no embargo has been broken by doing so. Information in the 2001 Annual Report on licences to Afghanistan and information provided to us on licences granted to Somalia and Sudan are cases in point.<sup>198</sup> The publication of this information in the Annual Reports would be useful to the Government as well as to the reader, because the basic information which the Reports normally include on licences might without supporting information cast the Government's decisions in an unfavourable light. **We recommend that the Government consider providing more information in future Annual Reports where this could help to explain licensing decisions which might otherwise give rise to the suspicion that they had been improperly granted.**

173. An alternative to publishing the identity of specific end users would be to give information on end users by category—to indicate whether a licence had been granted for end use by, for example, armed forces, police, industry or private use. This would presumably overcome most of the Government's concerns about commercial confidentiality. According to Ms Bauer, Belgium and Denmark already publish such information.<sup>199</sup> She also notes in the context of incorporation cases that “the categorisation of recipients practised in Belgium and Denmark would permit further scrutiny of equipment exported to industry abroad, and therefore possibly subject to re-export once integrated into the final product”.<sup>200</sup>

174. When the Quadripartite Committee in the previous Parliament recommended that the Government should publish end-user information, the Government responded by stating that it was “not aware of any other Government which routinely publishes details of end-users”.<sup>201</sup> This is evidently no longer the case. **We recommend that the Government should consider publishing information on end users of licences by broad category.**

### Information on value of exports

175. Information on the value of exports currently contained in the Annual Reports is less useful than it might be.<sup>202</sup> This is because the customs tariff codes used to compile the statistics do not match the classifications of goods subject to strategic export controls.<sup>203</sup> It is therefore impossible to make any meaningful comparison between the information on strategic goods licensed for export and the information on the value of military exports. In July 2000, the Government agreed with our predecessor Committees that “greater co-ordination between the EC Tariff (the Combined Nomenclature) and ratings of military goods for export licensing purposes would be desirable in order to simplify the collation and cross-referencing of information”.<sup>204</sup> But we are not clear what progress, if any, has been made since then. **We recommend that the Government should consider again how it might provide information on the value of military exports which comes closer to providing a comprehensive measure of all exports of licensable goods.**

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198 2001 Annual Report, p 16; Ev 25, 24

199 Ev 46

200 Ev 47

201 Cm 4799, p 12

202 2001 Annual Report, pp 369–370

203 2001 Annual Report, p 367

204 Cm 4799, p 13

## 7 Administration of the licensing system

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176. The export licensing system is necessary in order to ensure that strategic exports do not reach undesirable end users. In most cases, the system seems to have produced the right decisions. As mentioned above, we have discovered what we consider to be occasional failures by officials to carry out basic checks. More importantly, we have identified shortcomings in the Government's information systems.

177. The licensing system also has a significant regulatory impact on industry. This cannot be avoided, but every effort should be made to ensure that the system imposes no unnecessary or excessive burdens.

178. Each Government Department involved in the licensing process, the DTI, the FCO, the Ministry of Defence and the Department for International Development had a target in 2001 of 10 working days for processing licence applications.<sup>205</sup> The DTI met this target in 80 per cent of cases in 2001, a slight improvement on the previous year. However, the performance against this target of the other three Departments deteriorated in 2001 as against the previous year, with each meeting the target in only about 50 per cent of cases.<sup>206</sup> For the consideration of appeals, while all the cases considered only by the DTI were processed within the 15 working day target, none of the cases circulated to other Government Departments were completed to schedule. When we asked the Government why service had deteriorated, it was explained to us that:

service is not always reflected by the headline performance target ... Because of the way performance is measured, clearance of long standing cases (which entails factoring into the performance statistics of the longer processing times for these cases at the time they are finalised) has the effect of reducing the overall performance figure, even if performance on other applications is as good or better than for previous accounting periods. Thus, the greater the number of long standing cases finalised in a given period, the worse the overall performance figure is likely to be. Similarly the target does not take account of fluctuations in the volume of applications received.<sup>207</sup>

179. If improvement in service can make the headline performance figure look worse, then the obvious conclusion is that the performance targets are not working as they should. We are pleased that this is also the conclusion that the Government seems to have reached. As the Secretary of State for Trade and Industry told us:

In the past our performance has not been as good as it should be. What we have done, not just within my Department, but the Foreign Office and MoD as well, is to look over the last year at how we can make the whole process more efficient. Inevitably there is a lot of to-ing and fro-ing between different government departments and the Foreign Office and posts abroad, and that is where a lot of the delays come from. We looked at how we can make it more efficient and we have also

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205 Licences circulated to other Government departments were therefore subject to a target of 20 working days in total.

206 2001 Annual Report, pp 365–366

207 Ev 33

made a huge effort to deal with the backlog of cases that had arisen. We used to have 104 cases that were over 12 months old, which, not surprisingly, gave rise to a great deal of frustration and anger in industry. We now have no cases over 12 months old, and we are working to get it down to deal with the ones that are between 6 and 12 months old now. I would be very concerned, indeed, if we found ourselves back in that situation with a lot of backlogs of applications. By going through this very careful process of working with industry to understand how we enforce this in the simplest possible way and concentrate our efforts on where there are real problems and on the minority of people who are deliberately flouting the law, seeking to do things we do not want them to do, then we can prepare our own system and resources and make sure that we do not end up with that backlog building up again.<sup>208</sup>

180. We understand that a Government-wide review of the licensing process is currently taking place and that it is expected to report later this year.<sup>209</sup> We look forward to seeing the results of this review.

181. It seems odd timing to conduct a major review of the licensing system just before it is overhauled by statute. New controls will shortly be introduced under the Export Control Act 2002. We are considering these separately.<sup>210</sup> The administration of these new controls will be a significant extra burden on the machinery of Government. **We conclude that the introduction of new controls under the Export Control Act will be a major test of the efficiency of the licensing regime—a test that the Government must not fail if it is to maintain the confidence of industry.**

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208 HC (2002–2003) 620, Ev 29, Q 166

209 HC (2002–2003) 620, Ev 29, Q 166–167

210 HC (2002–2003) 620

## 8 Conclusion

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182. Our general assessment of the strategic export control system is that it usually—eventually—produces the right results. The principles embodied in the consolidated criteria seem to be understood and applied in a sensible way which meets the country's interests. Unsurprisingly, some licensing decisions are open to argument; occasionally, decisions may be taken which turn out, with hindsight, to have been mistaken. But most licensing decisions—including many which may superficially seem suspicious—are uncontroversial and properly considered.

183. As we have discovered in the context of the Government's recent guidelines on incorporation, the increasing globalisation of trade in military equipment limits the extent to which national controls on exports can be effective on their own. This is a subject to which we will return.

184. The Government deserves praise for the transparency that it has brought to its operation of strategic export controls and to the policy refinements it has introduced. But a little information can be more frustrating than none at all. There is inevitably a tension between those who seek further openness, and those who believe that the Government has already gone as far as it can. We view it as one of our tasks to ensure that the Government only withholds information from the public when it has sound reasons for doing so. The Government should not sit on its laurels—however well earned these may be.

## Conclusions and recommendations

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### Conduct of the inquiry

1. We recommend that the Government should suggest how it might provide information to us on licence applications in ways that would reduce the administrative burden of doing so. (Paragraph 15)
2. We welcome the Government's acknowledgment that it is appropriate to supply information in confidence to select committees which would not be disclosed to the public. We would expect the Government to refuse to supply information to us only where there are very strong reasons for doing so. We recommend that where the Government refuses to make information available to us in confidence, it should provide a clear explanation of the reasons for that decision rather than rely on effectively meaningless references to the Code of Practice on Access to Government Information. We recommend that the Liaison Committee should take this matter further. (Paragraph 18)
3. We conclude that although retrospective scrutiny occurs too late to prevent a particular export from taking place, it can and should inform future decisions by the Government. (Paragraph 21)

### Export licence decisions during 2001

4. From the information we have received, including responses to our further written questions, we conclude that the Government operates a highly specialised and focused licensing system which ensures, probably as well as any licensing system could, that equipment at risk of being used in India or Pakistan (or indeed anywhere else in the world) for the development of weapons of mass destruction does not receive an export licence. (Paragraph 38)
5. We recommend that the Government should explain in its response to this Report how the supply of military equipment to the United Kingdom's allies conducting military operations overseas can be supported without conflicting with the terms of the consolidated criteria. (Paragraph 43)
6. Given the ongoing tension between India and Pakistan over Kashmir, we recommend that the Government judge with great rigour whether a proposed export is likely to be used aggressively. Without seeking to reach a judgement ourselves on whether it would be right or not to allow the export of Hawk aircraft to India, we recommend that decisions on whether to allow or refuse licence applications in the case of Hawk and other designated training equipment should take into account the actual and potential capabilities of the equipment, as well as their intended role. (Paragraph 56)
7. We recommend that the Government clarify in its response to this Report under what circumstances it permits the export of production equipment where it would not be prepared to license the export of the end product. (Paragraph 58)

8. We conclude that the failure of officials to identify for a period of more than a year the fact that an open licence had been issued for the export to India of Hawk components and production equipment suggests that the information systems used for retrieving licensing information are inadequate. We recommend that the Government investigate how this oversight was possible, and that it report back to us on what steps have been taken to ensure that such an error cannot recur. (Paragraph 62)
9. We conclude that it is doubtful whether the Government should have granted a licence for oversized handcuffs in one particular case, given the nature of licence applications which the Government had previously refused. We do, however, accept that in this case a judgement was reached after detailed and proper consideration. We have been asked by the Government not to identify the destination of the cuffs. (Paragraph 67)
10. In another case, we conclude that oversized handcuffs should not have been licensed during 2001 for export to a particular destination (which we have been asked by the Government not to identify). Basic checks on the end-user of this equipment from information easily accessible in the public domain would have revealed concerns about how the oversized cuffs might be used. We therefore conclude that basic checks were not conducted. We regard this as an administrative failure that should be investigated. (Paragraph 71)
11. We recommend that the Government explain in its response to this Report the apparent discrepancy between the value of the licences issued in 2001 for export to Tanzania, and the reported total value of the air traffic control system being sold to the Tanzanian Government. (Paragraph 73)
12. In its response to this Report, the Government should explain what links exist between Customs and Excise concerning the actual export of military equipment, and other Government departments concerning the legality of their export. (Paragraph 75)
13. It is unacceptable that it has taken the Government well over a year to decide whether to provide us with analytical information about the application to export an air traffic control system to Tanzania. (Paragraph 76)
14. We recommend that the Government should continue to take measures to minimise the risk that military equipment supplied to the Sri Lankan armed forces from the United Kingdom will be misused. (Paragraph 79)
15. We regret that gifts of military equipment were made to Nepal without Parliament having been informed beforehand. We trust that procedures are now in place to ensure that this oversight does not recur. (Paragraph 86)
16. While we support the Government's decision to provide military support helicopters and other equipment to Nepal, and the conditions attached to the use of the helicopters, we conclude that the Global Conflict Prevention Pool should not have been used to fund the gifting of this equipment. (Paragraph 90)

## Policy issues

17. We recommend that the Government confirm in its response to this Report whether all sales and gifts of military equipment by the Government are considered against the consolidated criteria before being made, and whether the same arrangements for interdepartmental consideration of such sales and gifts exist as for exports subject to the licensing procedure. (Paragraph 93)
18. We conclude that the use of the F680 procedure as an alternative to an export licence for equipment owned by the Government risks muddying the Government's message to industry that F680 clearance is no substitute for an export licence. (Paragraph 95)
19. We recommend that the Government explain in its response to this Report what considerations determine whether a transfer of ownership of military equipment in the possession of the Crown takes place under the F680 procedure or by letter of Crown Immunity, and what procedure is followed for gifts. (Paragraph 96)
20. we recommend that the Government explain under what circumstances it would sell or give military equipment for use abroad to an end-user other than another Government, and to explain what procedures are in place to ensure that any such transfers are consistent with the consolidated criteria. (Paragraph 97)
21. We are concerned that Government transactions could go entirely unreported where they involve the transfer of military equipment to a third party, rather than being related either to the operations of the British armed forces overseas or to collaborative equipment procurement projects, and we recommend that the Government should consider amending its reporting procedures accordingly. (Paragraph 103)
22. We recommend that, in the interests of transparency, future Annual Reports should include information on all sales, gifts and other transfers of military equipment by the Government to other end-users abroad. (Paragraph 104)
23. We recommend that before any minister becomes personally involved in promoting the sale of defence equipment abroad, the Government should consider the proposed export in question against the consolidated criteria with as much care as it would an export licence application. (Paragraph 106)
24. We recommend that the Government should publish more prominently the list of countries in which it considers that sustainable development is most likely to be an issue, and that it should clarify both the basis on which the list is compiled and the basis on which it is subject to review. (Paragraph 110)
25. We conclude that the guidance published by the Government on its application of the sustainable development criterion is a welcome step in the direction of greater openness, but that it is couched in such a way that it is unlikely on its own to be of much assistance to industry in judging whether a licence application is likely to be approved. (Paragraph 114)

26. We recommend that the Government provide us, in confidence if necessary, with a copy of the guidance issued to overseas posts and desk officers on the circumstances in which end-use monitoring should be considered. (Paragraph 122)
27. We recommend that one of the central purposes of end-use monitoring should be to ensure that the Government is made aware when military goods exported from the United Kingdom have been diverted to unintended third parties. (Paragraph 125)
28. We conclude that it is curious that industry recognises that there has been an increase in the scope of open licensing, given that the Government has consistently denied that this is the case. (Paragraph 128)

### **Collaborative defence manufacturing**

29. While we applaud the principle of transparency which led the Government to issue guidelines on incorporation in July 2002, we conclude that the guidelines themselves do little to increase the ability of those outside Government to predict whether particular licence applications are likely to be approved. (Paragraph 136)
30. We recommend that the Government clarify whether UK-origin goods in incorporation cases are more likely to be licensed for export if they are more material and significant to the goods in which they are to be incorporated, or if they are less material and significant to these goods. (Paragraph 137)
31. We recommend that the Government should set out in its response to this Report the results of its consideration of how to present information on incorporation cases in future Annual Reports. (Paragraph 139)
32. We recommend that the Government should identify in future Annual Reports those licences for which the additional factors of 8 July 2002 were a consideration. The final destination of the equipment licensed for export should be identified in such cases as well as the incorporating country. (Paragraph 142)
33. We recommend that the Government explain in its response to this Report why it did not seek to ensure that Israeli assurances—that British exports of military equipment direct to Israel would not be used aggressively in the Occupied Territories—did not also apply to components permitted for export to Israel via the United States. (Paragraph 143)
34. We conclude that it is hard to comprehend the ethical basis for a policy which allows the export of certain military goods for end-use in Israel only via the United States with no assurance that they will not be used aggressively in the Occupied Territories. (Paragraph 146)
35. We conclude that the new policy on incorporation cases risks undermining other aspects of export policy. We recommend that the Government explain in its response to this Report how it will treat licence applications for the export of spare parts to the end user direct, or indirect but unincorporated, where the original licence was granted for incorporation in one country prior to onward export to an end user in another country. (Paragraph 148)

36. We recommend that the Government set out in its response to this Report the steps that it is taking to harmonise the policies of countries which have responsible and practical arms export controls (such as the United Kingdom and United States) on the export of defence equipment to third countries (such as Israel), particularly in cases of collaborative defence manufacture. (Paragraph 153)
37. On incorporation, we conclude that the export of components in collaborative defence manufacturing projects only involves a different balance of considerations from other defence exports because different countries operate different licensing regimes. When considering the question of the export of Head-Up Displays to Israel via the United States, the Government faced a dilemma: it could allow the export and risk undermining national policy, or it could refuse the export and risk undermining the United Kingdom's defence relationship with the United States. The Government was right to attempt to find a solution to this dilemma, and right to be open about its position. But, as we have shown, the Government's solution raises as many issues as it addresses. In our view, it also had a third choice: it could have allowed the export, but attached conditions to its end use. The United States regularly imposes end-use conditions on its defence exports; it does not seem unreasonable that the British Government should do the same. (Paragraph 154)
38. We hope that reports are accurate that agreement is imminent on a British waiver from the International Trade in Arms Regulations. We recommend that the 2002 Annual Report should include a progress report on negotiations towards this waiver. (Paragraph 157)
39. We recommend that, as a minimum, information should be published in future Annual Reports showing that a country is a permitted destination under a Global Project Licence as soon as the Government is aware that agreement has been reached with an end-user in that country for supply of equipment produced under such a licence. (Paragraph 163)
40. We note that the Government has the power under the Six Nation Framework Agreement to refuse unilaterally to allow the export to a particular destination of equipment produced collaboratively under the agreement. We conclude that this element of the agreement is essential to secure public confidence in the continuing robustness of strategic export controls. (Paragraph 164)

### **Format of Annual Reports on Strategic Export Controls**

41. We recommend that the Government should explain in its response to this Report why it does not publish information on individual denial notifications under the EU Code of Conduct to the same level of transparency as the Netherlands. (Paragraph 167)
42. We recommend that the Government should explain in its response to this Report in what circumstances it believes that the publication of the identity of end users of export licences would be to the commercial disadvantage of the exporter. (Paragraph 171)

43. We recommend that the Government consider providing more information in future Annual Reports where this could help to explain licensing decisions which might otherwise give rise to the suspicion that they had been improperly granted. (Paragraph 172)
44. We recommend that the Government should consider publishing information on end users of licences by broad category. (Paragraph 174)
45. We recommend that the Government should consider again how it might provide information on the value of military exports which comes closer to providing a comprehensive measure of all exports of licensable goods. (Paragraph 175)

### **Administration of the licensing system**

46. We conclude that the introduction of new controls under the Export Control Act will be a major test of the efficiency of the licensing regime—a test that the Government must not fail if it is to maintain the confidence of industry. (Paragraph 181)

### **Conclusion**

47. Our general assessment of the strategic export control system is that it usually—eventually—produces the right results. The principles embodied in the consolidated criteria seem to be understood and applied in a sensible way which meets the country's interests. Unsurprisingly, some licensing decisions are open to argument; occasionally, decisions may be taken which turn out, with hindsight, to have been mistaken. But most licensing decisions—including many which may superficially seem suspicious—are uncontroversial and properly considered.

As we have discovered in the context of the Government's recent guidelines on incorporation, the increasing globalisation of trade in military equipment limits the extent to which national controls on exports can be effective on their own. This is a subject to which we will return.

The Government deserves praise for the transparency that it has brought to its operation of strategic export controls and to the policy refinements it has introduced. But a little information can be more frustrating than none at all. There is inevitably a tension between those who seek further openness, and those who believe that the Government has already gone as far as it can. We view it as one of our tasks to ensure that the Government only withholds information from the public when it has sound reasons for doing so. The Government should not sit on its laurels—however well earned these may be. (Paragraphs 182–184)

## Formal minutes

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**Thursday 14 November 2002**

**The Defence, Foreign Affairs, International Development and Trade and Industry Committees met concurrently, pursuant to Standing Order No. 137A.**

Members present:

<i>Defence Committee:</i>	<i>Foreign Affairs Committee:</i>	<i>International Development Committee:</i>	<i>Trade and Industry Committee:</i>
Mr Bruce George	Donald Anderson	John Barrett	Mr Roger Berry
Patrick Mercer	Mr David Chidgey	Ann Clwyd	Mr Andrew Lansley
Rachel Squire	Sir John Stanley	Tony Worthington	Mr Martin O'Neill

Mr Roger Berry was called to the Chair, pursuant to Standing Order No. 137A (1) (d).

The Committees deliberated, pursuant to Standing Order No. 137A (1) (b).

**Thursday 27 February 2003**

**The Defence, Foreign Affairs, International Development and Trade and Industry Committees met concurrently, pursuant to Standing Order No. 137A.**

Members present:

<i>Defence Committee:</i>	<i>Foreign Affairs Committee:</i>	<i>International Development Committee:</i>	<i>Trade and Industry Committee:</i>
Mr Bruce George	Mr David Chidgey	Tony Baldry	Mr Roger Berry
Rachel Squire	Sir John Stanley	Ann Clwyd	Mr Andrew Lansley
		Mr Tony Colman	Mr Martin O'Neill
		Mr Piara S Khabra	
		Tony Worthington	

Mr Roger Berry was called to the Chair, pursuant to Standing Order No. 137A (1) (d).

The Committees deliberated, pursuant to Standing Order No. 137A (1) (b).

Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny: Rt Hon Jack Straw, a Member of the House, Secretary of State for Foreign and

Commonwealth Affairs, and Mr Tim Dowse, Head of Non-Proliferation Department, were examined.

### Tuesday 6 May 2003

#### The Defence, Foreign Affairs, International Development and Trade and Industry Committees met concurrently, pursuant to Standing Order No. 137A.

Members present:

<i>Defence Committee:</i>	<i>Foreign Affairs Committee:</i>	<i>International Development Committee:</i>	<i>Trade and Industry Committee:</i>
Mr Bruce George	Donald Anderson	John Barrett	Mr Roger Berry
Mr Gerald Howarth	Sir Patrick Cormack	Alistair Burt	Dr Ashok Kumar
Mr Kevan Jones	Mr John Maples	Ann Clwyd	Mr Andrew Lansley
Rachel Squire	Sir John Stanley	Mr Piara S Khabra	Mr Martin O'Neill

Mr Roger Berry was called to the Chair, pursuant to Standing Order No. 137A (1)(d).

The Committees deliberated, pursuant to Standing Order No. 137A (1)(b).

Draft Report (Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be considered concurrently, pursuant to Standing Order No. 137A (1)(c).

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 184 read and agreed to.

Summary agreed to.

#### DEFENCE COMMITTEE

The Foreign Affairs, International Development and Trade and Industry Committees withdrew.

Mr Bruce George, in the Chair  
Mr Gerald Howarth                      Rachel Squire

*Resolved*, That the draft Report (Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs,

International Development and Trade and Industry Committees, be the Fifth Report of the Committee to the House.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

*Ordered*, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

*Ordered*, That the provisions of Standing Order No. 134 be applied to the Report.

*Ordered*, That Mr Roger Berry do make the Joint Report to the House.

#### FOREIGN AFFAIRS COMMITTEE

The Defence, International Development and Trade and Industry Committees withdrew.

Donald Anderson, in the Chair

Mr John Maples

Sir John Stanley

*Resolved*, That the draft Report (Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Seventh Report of the Committee to the House.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

*Ordered*, That the provisions of Standing Order No. 137 A (2) be applied to the Report.

*Ordered*, That the provisions of Standing Order No. 134 be applied to the Report.

*Ordered*, That Mr Roger Berry do make the Joint Report to the House.

#### INTERNATIONAL DEVELOPMENT COMMITTEE

The Defence, Foreign Affairs and Trade and Industry Committees withdrew.

In the absence of the Chairman, Mr Piara S Khabra was called to the Chair

John Barrett

Alistair Burt

*Resolved*, That the draft Report (Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny), prepared by the Defence, Foreign Affairs, International Development and Trade and Industry Committees, be the Sixth Report of the Committee to the House.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.



## Witnesses

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**Thursday 27 February 2003**

**Rt Hon Jack Straw**, a Member of the House, Secretary of State for Foreign and Commonwealth Affairs, **Mr Edward Oakden**, Director, International Security, and **Mr Tim Dowse**, Head of Non-Proliferation Department, Foreign and Commonwealth Office.

Ev 1

## Written evidence

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1	Defence Manufacturers Association	Ev 17
2	Foreign and Commonwealth Office	Ev 47, 52
	Access to Information	Ev 20, 51
	Follow-up to Government Response	Ev 36
	Indonesia	Ev 17
	Provision of Information	Ev 35
	Thailand	Ev 21
3	Foreign and Commonwealth Office, Department of Trade and Industry, Ministry of Defence, and Department for International Development	Ev 21
4	Saferworld	Ev 17, 38
5	Sibylle Bauer, Institute for European Studies	Ev 45

## Reports from the Defence, Foreign Affairs, International Development and Trade and Industry Committees since 2001

The following reports have been produced.

### Session 2002–03

First Joint Report	The Government's proposals for secondary legislation under the Export Control Act	HC 620
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### Session 2001–02

First Joint Report	Strategic Export Controls: Annual Report for 2000, Licensing Policy and Prior Parliamentary Scrutiny	HC 718 (CM 5629)
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Where a response to a Report has been received from the Government, reference to it appears in parentheses.