



BRIEFING

Working to prevent armed violence

The Review of the Export Control Act (2002) – June 2007

A. Introduction

1. In May 2007, the Government will commence a review of the first three years operation of the Export Control Act. The Export Control Act (2002) came into force in May 2004. The Act prescribes licensing procedures for exports and includes powers to impose controls on exports from the UK; on the transfer of technology from the UK; and on the trafficking and brokering of controlled goods.

2. However, loopholes in the legislation continue to allow for UK weapons to reach regions of conflict, contrary to UK arms policy, and fall into the hands of unscrupulous users.

3. The review provides a timely opportunity for the Government to close the loopholes by implementing a number of measures on arms brokering, end-use monitoring and the transfer of production capacity offshore – key issues consistently raised by MP's and civil society to strengthen controls of UK arms exports.

B. Recommendations for the Review

4. The review of the Export Control Act should:

- **honour the Government's 2001 Manifesto commitment and introduce full extraterritorial controls on arms brokering and trafficking.**
- **implement a system to allow clear and effective monitoring of the end-use of UK arms exports.**
- **ensure that British companies wanting to license the production of weapons overseas should first have to apply to the UK Government for a license.**
- **ensure that Licensed production agreements will contain specific re-export clauses to prevent the export of goods produced under license to countries of concern.**
- **introduce measures to ensure that overseas subsidiary companies in which a majority shareholding is held by a UK parent or where UK beneficial ownership can be established, should be subject to UK export controls. Secondary legislation for embargoed destinations must be modified to apply to all exports from overseas subsidiary companies.**
- **make available more resources for budget and staff capacity for investigation and enforcement of breaches of the Export Control Act.**

C. Arms brokering - gaps in UK legislation

5. The primary legislation of the Export Control Act provides for the control of the arms-brokering activities of UK passport-holders wherever located, however the secondary legislation asserts extra-territorial control on arms brokers only where the brokering activities are in relation to long-range missiles or torture equipment, or to embargoed destinations. This allows all other equipment, including small arms and light weapons to be freely brokered to areas of conflict beyond the jurisdiction of UK courts.

6. For example, Imperial Defence Services Limited website stated that: *"The Ranger H-P Pistol can only be obtained from this company, who will either export it to clients from the UK or from Bulgaria when easier for export licensing procedures to certain destinations."*¹

7. Despite repeated calls from the QSC to introduce full extra-territorial controls on arms brokering, the Government has failed to fully meet its 2001 Manifesto commitment to control traffickers and brokers *"wherever they are located"*.² The QSC's latest report concludes that *"no logical case can be made for including some controlled goods within the Government's extra-territorial control on brokering and trafficking whilst excluding others. We therefore further recommend that all controlled goods should be included."*³ The Committee further calls on the Government to detail the criteria it will apply to consider the case for extending extra-territorial controls during the review of the Export Control Act next May.

D. Risk of diversion of UK weapons – more effective end-use monitoring of arms exports required

8. Little is done to check what happens to arms exports after they have been licensed and left the UK. Very few post-export checks are undertaken to verify delivery and monitor end-use to ensure that exported British military equipment is used as intended – and not diverted elsewhere or used for other purposes.

9. For example, in 2002 and 2003 a number of reports surfaced regarding the diversion of military equipment from third countries into Iraq. India, Jordan, Ukraine, the UAE and Yemen, all countries to which the Government authorised weapons sales in 2002, were suspected of being links in the Iraqi military-equipment supply-chain.

10. Under the UK Government's own arms export criteria, it is obliged to consider *"the existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions"*,⁴ when deciding on whether to license an export. But without a formal system for checking what happens to arms exports after they have been licensed and left the UK, the risk of diversion of weapons away from their intended destination or end-use is increased. Embassy staff are responsible for checking the end-use of arms exports, and are instructed to watch out for and report on any misuse of UK-origin defence equipment in third countries. However, the FCO have refused to publish any details regarding the nature of the

¹ http://www.imperialdefence.co.uk/defence_equipment.htm.

² Labour Party Manifesto 2001

³ Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny, August 2006, HC873

⁴ Criterion 7 UK Government Consolidated Criteria.

content of these instructions, and the Quadripartite select committee has described the current arrangements as *"a rather haphazard approach to end-use monitoring"*.⁵

11. The Government has previously argued that such a formal system of end-use monitoring would be impractical, but other countries such as the US operate them. The Government has consistently argued that to monitor the end-use of all strategic exports would be impractical, however neither Saferworld nor the QSC has ever suggested such a system. Critics of the Government's current lack of activity in this area have instead called for a system of targeted end-use monitoring. In its latest report, the QSC has called on the Government to *"establish a pilot programme of end-use monitoring focusing on cases where it has identified some degree of risk.....when considering an application for an export licence and to report the outcome of the exercise in 2007."*

12. Without such a system, the Government must continue to rely on the "guarantees" given by importing countries who, while committing human rights violations using foreign equipment against civilians, give their assurances that they are not using equipment supplied by the UK.

E. Moving production offshore

13. There is an increasing trend for UK companies to be involved in arms production in other countries. This involvement can take several forms, for example: co-production and joint venture deals in which final assembly takes place elsewhere; the licensed production of arms by companies in overseas countries; or via subsidiary companies, based overseas, but owned by UK parent companies.

14. These arrangements tend to be both under-regulated and poorly reported by governments. In the case of overseas-based, UK-owned subsidiaries, it appears that UK controls do not apply at all – even to embargoed destinations. This is despite the fact that they may be owned, or controlled, by a UK-based parent company.

F. Enforcement

15. A clear test of the effectiveness of the new UK export controls is how successfully they are enforced and policed. Despite many new cases coming to light since the introduction of the new controls, it would appear that enforcement of these controls remains inadequate.

16. For example, in September 2004, a UK newspaper reported that it had obtained documents showing that arms brokers based in the United Kingdom had been involved in negotiations for arms deals to supply £2.25 million worth of arms to Sudan.⁶ Sudan has been subject to an EU arms embargo since 1994. The documents, which have been seen by Amnesty International and other researchers, were made available to the Government. These included a series of End-Use Certificates (EUCs) which were all dated and stamped after March 2004 – the date when the new controls on Trafficking and Brokering came into effect. One of the EUCs, issued on 25 May 2004, authorised the UK company Endeavour Resources UK

⁵ *Strategic Export Controls, Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny, May 2003*; HC 474.

⁶ "Briton supplies arms to Sudan", *Sunday Times*, 5 September 2004 and "Sudan Arming the perpetrators of grave abuses in Darfur", *Amnesty International Report*, November 2004.

Ltd to negotiate for the supply of multiple rocket launchers, main battle tanks, armoured personnel carriers, armoured fighting vehicles, field guns, and pistols. In answers to parliamentary questions, despite the existence of such strong evidence of these documents, the Government has stated that it believes there is insufficient evidence to investigate that matter further.

17. Other examples exist which have also been ineffectively investigated. It appears that inadequate resources are being invested in policing and enforcing the export control system. More resources including budget and staff capacity should be made available for investigation and enforcement of breaches of the Export Control Act.