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## Developments in transparency

### 1. Introduction

**THE UK GOVERNMENT REPORTS ON STRATEGIC EXPORT CONTROLS** covering the period January 2003 to June 2004 contain some small, yet significant, improvements to the quantity and clarity of information provided over previous years. At the same time, the introduction in 2004 of quarterly reporting on strategic export controls is welcome as it allows for a more timely discussion of export licensing policy.

Recent positive developments in transparency include:

- the regular provision of background information relating to licences granted to embargoed destinations;<sup>1</sup>
- an indication whereby body armour licensed for export is intended for humanitarian end-use (see also below);<sup>2</sup> and
- the provision of information on the number of licences granted for each specific type of goods to each country destination.

However, it is regrettable that some aspects of export control policy are not reported on quarterly. For example, there is no information in the quarterly reports concerning gifts of controlled goods or on government-to-government transfers. Furthermore the level of reporting on the new trade controls in the second Quarterly Report (April to June 2004) is so limited as to be virtually meaningless.

Despite the recent changes that have taken place in reporting on strategic export controls, many serious issues raised by Saferworld over the past several years relating to transparency and accountability in UK arms export policy remain to be addressed. An extensive range of recommendations is set out in previous Audits carried out by Saferworld. However, a summary of our ongoing concerns relating to the provision of information on strategic export controls is set out in part 2 below. Beyond this, part 3 will address those issues (new and revisited) where Saferworld has further recommendations to put forward.

<sup>1</sup> See, for example, the Iran and Iraq entries in the Quarterly Report on Strategic Export Controls for April–June 04, <http://www.fco.gov.uk/Files/kfile/strategicexportcontrols2004apjunreport.pdf>.

<sup>2</sup> See, for example, the Afghanistan, Algeria and Angola entries in the Quarterly Report on Strategic Export Controls for April–June 04, <http://www.fco.gov.uk/Files/kfile/strategicexportcontrols2004apjunreport.pdf>.

## 2. Outstanding recommendations relating to transparency and accountability in UK strategic export controls

### Open Individual Export Licences (OIELs)

Upper limits should be placed on quantities and values of goods that can be exported under each OIEL and this information published in the Government Reports. The DTI should require notification by exporters of all deliveries made under each OIEL and should publish this information in the Government Reports. Finally, summary data should be provided of how OIEL compliance procedures are being followed.

### Licensed production overseas (LPO)

In view of the priority that the Government has now placed upon enhancing transparency and accountability in incorporation cases, the argument for controlling LPO agreements and publishing information relating to them must now be considered compelling.

### Transshipment

There has been no improvement in data provided or in policy regarding licensing the transshipment of controlled goods through the UK. Accordingly, our recommendation still stands that the Government should take immediate steps to clarify to Parliament and the public current policy and practice in relation to transshipment, providing reassurance that the UK, as a hub for international trade and commerce, is not systematically being used as a transshipment point for the movement of sensitive goods to end-users of concern.

### Data on Exports

In view of the fact that the problems with EU and Customs Tariff Codes are ongoing, our previous recommendation still holds, namely: the amendment of the Tariff Codes, to more accurately reflect the common Military List agreed by EU member states, is now a matter of some urgency. Saferworld welcomes the fact that the Government has held discussions with EC Partners on the issue of the Tariff Codes but regrets the Government's recent doubts concerning whether an equivalence between the Tariff Codes and Military List can be achieved.<sup>3</sup> Saferworld urges the Government to continue to work for ways round this current impasse.

## 3. New or revisited issues

### Provision of information to the QSC

In its report of May 2004 the QSC noted with regret that, in the period leading up to the publication of this report, it had been unable to secure from the Government a level of information commensurate with that provided in previous years.<sup>4</sup> In response, the Government denied that it had limited the information provided to the QSC and promised to take steps to clarify any perceived problems.

**Saferworld would urge the Government and QSC to agree on a standard format for answering queries concerning export licences granted, refusals, appeals and other material issues so that both parties may be confident that the same quality and quantity of information is being provided to Parliament year on year.**

<sup>3</sup> QSC, *Strategic Export Controls Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny, Response from the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Trade and Industry*, October 2004, para. 7, <http://www.fco.gov.uk/Files/KFile/CM6357.pdf>.

<sup>4</sup> QSC, *Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny*, May 2004, HC 390, para. 12, <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmdfence/390/39002.htm>.

### End-use

*Saferworld has previously called upon the Government to provide information on end-use in relation to all export licences granted. In view of the sensitivities that have been alluded to with regard to giving precise end-use information, Saferworld's recommendations have centred upon the provision of such information according to broader categories of end-user such as "police" or "military".*

In its report of May 2004, the QSC urged the Government to "publish more information on end-use, because it would enable public debate on export controls to focus on those licensing decisions which are genuinely debatable" going on to cite the strong support for such a move amongst parliamentarians, NGOs and defence industry representatives.<sup>5</sup> Unfortunately, the Government, in its response to the QSC, claimed that it is not cost-effective "within the limits of its current licensing databases" to extract and provide information on end-use, even on a "government/non-government" basis, adding that licence application forms would need to be amended and databases restructured.<sup>6</sup> More positively, however, the Government did state that such amendments would be considered as part of any gradual improvements that are made.

**In view of the broad consensus in favour of increased disclosure of information on end-use, it is regrettable that the Government does not yet consider it feasible to provide information even on broad categories of end-use. Saferworld would nevertheless urge the Government to declare its willingness in principle to provide this information and to work towards its provision in the shortest possible time.**

### Incorporation

*In the previous Audit Saferworld restated the recommendation that the Government should agree a common approach to onward export with partner governments for each collaborative defence project, thereby ensuring they are always aware of the final end-user of incorporated equipment and are therefore in a position to apprise parliament and the public accordingly.*

In a new development, beginning in the 2003 Report, the Government now specifies, under each country destination, the number of Standard Individual Export Licences (SIELs) issued for goods that are intended for overseas incorporation into other equipment and, as with standard SIELs, gives a description of the goods covered by these licences. This is a positive move, not least because it illustrates the extent to which incorporation is now an issue for the UK. However, the Government has failed to provide any information concerning the final destination and end-use of the resultant equipment, giving rise to concerns that controlled goods of UK origin could be used in contravention of the Consolidated Criteria. This is a general concern, however it is particularly acute in cases where the initial destination of the goods for incorporation is a country whose export control policy does not reflect the standards set out in the EU Code of Conduct.<sup>7</sup>

Beyond this, it is also disappointing to note that no comparable information on incorporation cases is given with respect to OIELs. Saferworld maintains that the Government should require exporters to inform them as to which goods listed on each OIEL are destined for incorporation and that the Government should, in turn, publish this information along with details of the ultimate destination and end use of the finished product.

<sup>5</sup> *Ibid.*, para. 43.

<sup>6</sup> *Response from the Secretaries of State 2004*, para. 5.

<sup>7</sup> For example, in July 2002 the UK exported heads-up-display units to the US for incorporation into F16 aircraft for onward export to Israel. This is despite such F16 aircraft having been used in operations in the Occupied Territories, running contrary to restrictions placed upon direct exports of controlled goods from the UK to Israel. See Saferworld's Audit of the 2002 Annual Report on Strategic Export Controls. Furthermore, Israel is itself the second largest recipient of incorporation licences from the UK after the US. During 2003 and the first six months of 2004 Israel received goods under 61 Standard Individual Export Licences (Incorporation); during the same period the US received 64.

**Saferworld welcomes the inclusion of information on SIELs covering goods for incorporation but urges the Government to go further and to provide information on the ultimate destination and end-use of the final product. With regard to OIELs for incorporation, comparable information should be sought from exporters and published in subsequent Quarterly and Annual Reports.**

### **Government-to-government transfers**

*In the previous Audit we repeated our call that the Government should no longer be involved in export promotion with regard to transfers of controlled goods to recipients on a list of “countries of concern”. We also argued that all prospective exports of equipment to other countries made within the context of government-to-government contracts, or contracts won with the direct support of the Government, should be rigorously scrutinised against the Consolidated Criteria before a decision on granting a licence is taken. We also argued that where Government Ministers are involved in promoting specific UK arms sales, in line with the QSC’s recommendations for a two-stage system of prior parliamentary scrutiny of arms export licence applications, proposed sales should automatically be notified to the Committee in Stage 2 (in which comprehensive details of the proposed transfer are provided). All licences granted and deliveries made under such government-to-government and Government-promoted contracts should be clearly identified as such within the Annual Report on Strategic Exports.*

In its response of October 2004 to the QSC Report of May 2004, the Government makes the welcome statement that no transfers of military goods to overseas governments are currently unreported.<sup>8</sup> It goes on to say that: “information on items transferred government-to-government is included in the Annual Report in the section on Statistics on Exports of Military Equipment, and also in the tables on the Values of Exports of Military Equipment, on Government to Government Transfers of Equipment, and on Items of Military Equipment Gifted by the Government... and *as appropriate* [emphasis added] in the section on Export Licence Decisions.”<sup>9</sup>

Despite several exchanges between the QSC and the Government on the issue, it is still not clear under which circumstances it is “appropriate” for export licences to be issued for government-to-government transfers. The 2003 Annual Report states that where ownership transfer of surplus goods to an overseas government takes place in the UK, the purchasing Government is required to obtain a UK export licence and that information on licences granted are included in Section 2.7 (Export Licence Decisions).<sup>10</sup> However, licences that are granted as part of government-to-government deals are not identified as such in Section 2.7, and thus it is not possible to assess such licences in their proper context. Moreover, such provisions do not address those circumstances whereby ownership transfer takes place outside the UK. Previously the Government has indicated that in such cases the Form 680 process may be used as a means of authorising transfers of surplus equipment, but it is by no means clear that this process provides for the same level of scrutiny as does the full export licensing process.

Table 6 – Government-to-Government Transfers of Equipment – is the only place in the Annual Report where clear data on government-to-government transfers is set out. However, this is post-delivery information and in effect, Parliament and the public are being presented with a *fait accompli* – by the time the information is published, the transfer has taken place. It is unclear, therefore, why government-to-government transfers should be treated as a special case and not identified as such at the licensing (or approval) stage. As Saferworld has stated previously, because government-to-government transfers are a direct expression of Government policy, they warrant greater scrutiny, not less, than commercial licensed transfers.

<sup>8</sup> *Response from the Secretaries of State 2004*, para. 13.

<sup>9</sup> *Ibid.*, para. 14.

<sup>10</sup> UK Annual Report on Strategic Export Controls, 2003, p. 20, <http://www.fco.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1085327340991>.

**In addition to the Table on Government-to-Government Transfers of Equipment, the Government should provide clear information in Section 2.7 (Export Licence Decisions) on all licences and other forms of approval (such as F680) granted to prospective government-to-government transfers. The Government should also clarify the extent of the scrutiny involved in the granting of any F680 approval for government-to-government transfers which take place outside the UK.**

### **Disposal sales**

*In the previous Audit we argued that in view of the fact that Disposal Sales involve the transfer of publicly owned equipment, the QSC should be given the opportunity to scrutinise proposed transfers in advance of any licence being granted or F680 clearance being given. Also, in line with the QSC's recommendations for a two-stage system of prior parliamentary scrutiny of arms export licence applications, proposed Disposal Sales should automatically be notified to the Committee in Stage 2 (in which comprehensive details of the proposed transfer are provided). We also argued that all transfers approved under Disposal Sales contracts, and all deliveries of equipment – not just of major conventional weaponry – made under such agreements, should be documented as such within the Annual Report on Strategic Exports.*

The 2003 Annual Report states that when contractors involved in Disposal Sales are selling controlled goods to an overseas customer, they are required to apply for an export licence in the normal way; these licences are also listed under Section 2.7 (Export Licence Decisions). Again of all the information relating to export licences granted set out in Section 2.7, it is not possible to ascertain which applies to Disposal Sales and so, again, a proper assessment cannot be made. Moreover, there is no specific table of exports detailing transfers made under the Disposal Sale arrangement. Assuming that the information is carried somewhere in the Government's Annual Report, it's not clear if disposal sale transfers are listed in Table 4 (Statistics on exports of weapons and small arms), in Table 5 (Value of exports of military equipment) and/or in Table 6 (Government-to-Government transfers of equipment).

**Since transfers under the Disposal Sales arrangement will involve the export of publicly owned goods, the Government should provide separate information on licences granted and transfers made under such arrangements.**

### **Gifted items**

*In the previous Audit we were critical of the fact that there was no indication in any of the Tables (4 to 8) concerning which information related to gifts of military equipment from the Government, as opposed to licensed and/or commercial transfers. We also argued that all gifts of military equipment made by the Government should be subject to rigorous scrutiny against the Consolidated Criteria, regardless of whether or not they belong to the Crown. Furthermore, in line with the QSC's recommendations for a two-stage system of prior parliamentary scrutiny of arms export licence applications, proposed gifts should automatically be notified to the Committee in Stage 2 (in which comprehensive details of the proposed transfer are provided). All licences granted and transfers made through gifting military equipment should be clearly identified as such within the Government Reports.*

In a welcome move, Section 2 of the Annual Report for 2003 carries a Table of Items of Military Equipment gifted by the Government during financial year 2003/4 (Table 7) which lists transfers of items gifted to foreign governments by the UK Government. However, since UK export control legislation does not bind the Crown, the Government is maintaining its position that no licence is required for transfers of strategic goods transferred as gifts.

In its report of May 2004 the QSC asked the Government if it was in the habit of considering denial notifications issued under the EU Code in advance of making a decision on gifting or other government-to-government transfers.<sup>11</sup> The Government replied by stating that denials are only issued under the EU Code in circumstances where goods are licensable;<sup>12</sup> this situation would therefore not arise with regard to the gifting of strategic goods. Nevertheless the Government has asserted that, in future, they will “check to see if an essentially identical transaction has been denied by another member state before approving a gift; if it has we will consult the denying state informally to inquire further into the reasons for its denial, and take this information into account in our decision”.

**The Government’s undertaking, to consider denial notifications issued under the EU Code when considering proposed gifts of strategic goods, is welcome. However the gifting of military equipment is not the only scenario when arms are transferred from the UK without an export licence having been sought or granted. Accordingly, the Government should extend its pledge to cover all types of transfer which are not formally subject to the licensing process. Moreover, where the Government considers and then decides against a gift or another type of non-licensed transfer, which would not be classed as a denial notification under EU Code rules, the Government should take steps to inform its EU partners of this decision.**

It must be stated that, even if the Government were to adopt the aforementioned recommendations, this does not alleviate Saferworld’s core concern in this regard, namely that all transfers of equipment from UK jurisdiction or ownership should be subject to an export or trade licensing requirement which involves rigorous assessment against the Consolidated Criteria.

#### **New Reporting Requirements: Framework Agreement (FA)**

*In the previous Audit we argued that it is essential that the Government provide much more information on Global Project Licences (GPLs) than is currently set out under OIELs. In Saferworld’s view, a minimum level of information on GPLs would include:*

- *a brief description of the purpose of the project, i.e. what is to be produced through the collaboration;*
- *the role of the UK (companies) in the project;*
- *the other “state parties” (FA partners) participating in the project, and their respective levels (in percent) of participation;*
- *a comprehensive description of all goods to be transferred under GPLs, including Military List Ratings;*
- *the countries where the finished products will be assembled (from which, under the terms of the FA, they will be exported, and from which export licences will therefore be required);*
- *the agreed list of countries (White List) approved as prospective recipients of the finished products, and those countries proposed for the White List but refused;*
- *comprehensive information (including quantities) on deliveries of the finished products to the country-recipients.*

In terms of reporting on strategic exports, GPLs issued under the Framework Agreement (among France, Germany, Italy, Spain, Sweden and the UK) are referred to for the first time in Section 2 of the 2003 Annual Report. Here the Government states that GPLs are treated as a special category of OIELs and that one GPL was issued in 2003 to France. However, an examination of the France country entry in Section 2.7 provides no indication of which of the 137 OIELs listed constitutes the sole GPL. It seems, therefore, that as well as treating the GPLs as a form of OIEL, as far as licensing is

<sup>11</sup> HC 390, para. 67.

<sup>12</sup> *Response from the Secretaries of State 2004*, para. 12.

concerned, the Government is reporting on GPLs and OIELs in such a way as to make them indistinguishable. Thus, in terms of enabling Parliament and the public to assess the impact of the Framework Agreement on UK strategic exports, this has to be considered a major failing.

Beyond this, the Government has provided no indication of any progress that has been made in discussions with FA partners on the possibility of disclosing agreed export destinations for the final product under each collaborative project, as it pledged to do.<sup>13</sup>

**As GPLs are tied to specific manufacturing agreements with an agreed list of possible destinations (White Lists) for the finished product, Saferworld believes that the Government could and should provide much more information on GPLs than they do on OIELs. Indeed it is not clear why the Government does not seem prepared even to indicate which OIELs are in fact GPLs. Beyond this, Saferworld believes that listing GPLs under the FA partner paints a misleading picture, since this partner will be merely an interim destination, prior to the export of the final product. Saferworld agrees with the QSC that once a contract has been agreed with a country on the White List of destinations identified under each collaborative project, the Government should publish this information in the Annual Report.<sup>14</sup>**

#### **New Reporting Requirements: The Trade in Controlled and Restricted Goods**

*In the previous Audit we argued that for Standard Individual Trade Control Licences (SITCLs), a minimum level of information for provision in the Annual Report should include:*

- *location of applicant at the time of application*
- *location and identity of consignee(s)*
- *name of ultimate end-user(s) (if different from consignee)*
- *location of ultimate end-use of the goods*
- *intended end-use of the goods*
- *full description of goods to be transferred, including quantities*
- *value of goods to be transferred*
- *location of goods prior to transfer*
- *mode(s) of transfer*
- *transportation route*

*We suggested that this information would most usefully be lodged under the country sections within the Annual Report according to the final destination of the goods to be transferred. Alternatively, a separate section on brokerage licences granted could be established. Where the information – such as the transportation route – is not available at the time the application is made, we urged that the applicant should be required to provide this within a specified time-frame and that, when available, this information should then be published online.*

*Although, in terms of the trade in controlled goods, activities relating to financing, transportation and insurance are currently not licensable, in the interests of transparency and accountability, Saferworld urged that, as part of the licensing of the trade in both controlled and restricted goods, the Government solicit information concerning the transportation, finance and insuring of individual transactions. There is evidence to suggest that the same operators are involved in both illicit and authorised transfers and so compiling information of this type with regard to authorised transactions is thus likely to shed light on the murkier side of the trade.*

<sup>13</sup> QSC, *Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny, Response of the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Trade and Industry*, September 2003, Cm 5943, para. 39, [http://www.fco.gov.uk/Files/kfile/CM5943\\_120903.PDF](http://www.fco.gov.uk/Files/kfile/CM5943_120903.PDF).

<sup>14</sup> QSC, *Strategic Export Controls: Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny*, May 2003, HC 474, para. 160, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmcaff/474/47402.htm>.

The first licences concerning the brokering of controlled goods (SITCLs and Open Individual Trade Control Licences – OITCLs) were granted from May 2004. However, the level of information provided on Trade Control licences in the second Quarterly Report for 2004 is extremely poor. While the information is carried in a separate section, it merely extends to the number of SITCLs and OITCLs granted. Although it is understood that the Government intends to provide more information relating to licences for the trade in controlled goods in the Annual Report on Strategic Exports, along the lines of that provided for OIELs, it is not clear why this information could not be provided electronically on a quarterly basis.

Furthermore, the Government has decided to organise the information on trade control licences issued according to the country of origin of the goods, with the destination listed beneath each source. It is not clear why this arrangement has been favoured, particularly when Parliament and the public are primarily interested in the destination of the controlled goods and in the operation of Government licensing policy in this regard.

**Saferworld would urge the Government to provide comprehensive information on Trade Control Licences on a quarterly basis (as recommended previously) and to organise this information according to the final country destination of the goods.**

### Reporting on SIELs

*In the previous Audit we listed a range of ongoing concerns relating to reporting on SIELs:*

- *information on Military List categories should be reinstated in the Annual Report*
- *the Government should disclose the maximum quantity of equipment that can be exported on a SIEL*
- *the Government should disclose the maximum value of each SIEL issued*
- *a basic description of the end-user of each SIEL should be provided*
- *for each SIEL, a “statement of end-use” should be provided, including whether the goods are part of a larger contract, part of a licensed production agreement, intended for a specific purpose (eg for hospital X-ray machine), or for incorporation into another product including details of its final destination/end-use.*

In Section 2 of the 2003 Annual Report the Government states that data provided on SIELs does not “cover applications from which specific goods were removed before a licence was issued”. This could be interpreted as meaning that no part of any licence application that is subject to amendment is reported upon. If this were the case, concerns would arise that exports are being licensed, possibly to sensitive end-users, which are not being reported upon. The first and second Quarterly Reports, however, paint a slightly different picture stating that “the SIELs data does not cover goods that were removed from an application before a licence was issued” suggesting that licences which are subject to amendment are, in fact, reported upon.

Whilst numbers of small arms licensed for export have been given for several years, there are no similar provisions relating to components of small arms – which could be intended for the large-scale manufacture of small arms – or for other weapons systems. From the information provided in the Annual and Quarterly Reports, the UK trade in small arms components appears sizeable. It is therefore important that this trade, which raises similar concerns to the trade in complete small arms and light weapons, is subject to a comparable level of scrutiny. Also, if it is possible to provide numbers of small arms without harming commercial confidentiality and without prompting an outcry from recipients, there would appear no logical reason why a similar amount of information could not be provided in relation to other weapons systems and related components.

**The Government should clarify that it is reporting on all SIELs granted – even if the licences that are granted differ in some way from the original application. The Government should also expand the practice of giving numbers of SALW licensed for export to include SALW components and to other complete systems and components therefor.**

### **Reporting on Denials/Refusals and Revocations**

*In the previous Audit we argued for detailed information to be provided on each application refused or revoked, including the reason for refusal or revocation.*

In the 2003 Annual Report and the first two Quarterly Reports for 2004 the Government continued its practice of providing only Military List ratings for licences refused or revoked. In addition, as with previous years, Table 1 of Section 2 of the 2003 Report gives an aggregate of the number of licences refused under particular criteria/concerns; this information is of little analytical value and conveys very little regarding the implementation of UK export control policy. It is not clear why the UK Government provides so little information concerning export licence refusals, particularly when an EU partner Government – that of the Netherlands – provides comprehensive information relating to denials issued under the EU Code in its Annual Report on Arms Exports.<sup>15</sup>

**Saferworld regards the information currently provided on licences refused as inadequate for the effective scrutiny of export control policy. At a minimum, Saferworld would urge the Government to provide, under each country entry in Section 2.7, the grounds for each refusal alongside the rating for each licence refused and, unless there are compelling reasons for confidentiality, a summary description of the goods. In addition, where the relevant partner government does not raise any objection, the Government should provide Parliament and the public with information regarding the outcome of any consultations on denials issued under the EU Code that were entered into by the UK.**

## **Conclusion**

In conclusion, while it is encouraging to see continued progress in the development of transparency and accountability in UK arms exports, there are still a number of pressing issues in need of attention from the Government. The continued reluctance to systematically provide even limited information on end-use, for example, is difficult to rationalise, particularly when it is considered that the Government has taken steps to clarify the end-use of certain chemicals and of body armour. While the change to Quarterly Reporting is most welcome, it is nevertheless disappointing to note that in some instances (such as reporting on the trade in controlled and restricted goods) the Government has fallen short of providing full details in these reports. While Saferworld appreciates that there has been progress in reporting on strategic export controls, it is clear that in some areas a step-change in approach is required. Saferworld hopes that the Government will be able to muster the political will in order to complete the task of creating a fully transparent and accountable export control system.

<sup>15</sup> See, for example, *Annual Report: The Netherlands arms export policy in 2001*, p. 31, [http://www.nisat.org/Export\\_Reports/Netherlands%202001%20English/Netherlands%20Annual%20Report%202001%20English.pdf](http://www.nisat.org/Export_Reports/Netherlands%202001%20English/Netherlands%20Annual%20Report%202001%20English.pdf).