



Defence Committee
Third Report

Foreign Affairs Committee
Second Report

International Development Committee
Third Report

Trade and Industry Committee
Fourth Report

Session 1999–2000

**Annual Reports for 1997 and 1998
on Strategic Export Controls**

Response of the Secretaries of State for
Defence, Foreign and Commonwealth Affairs,
and Trade and Industry

*Presented to Parliament
by the Secretaries of State for
Defence, Foreign and Commonwealth Affairs,
and Trade and Industry
by Command of Her Majesty
July 2000*

**REPORTS FROM THE DEFENCE, FOREIGN AFFAIRS, INTERNATIONAL
DEVELOPMENT, AND TRADE AND INDUSTRY COMMITTEES**

SESSION 1999–2000

ANNUAL REPORTS FOR 1997 AND 1998 ON STRATEGIC EXPORT CONTROLS

**RESPONSE OF THE SECRETARIES OF STATE FOR DEFENCE, FOREIGN AND
COMMONWEALTH AFFAIRS, AND TRADE AND INDUSTRY**

Debate

(1) We recommend an annual debate on the Government's Annual Report on Strategic Export Controls and reports thereon by Select Committees, to be held on a substantive Motion (paragraph 3).

The Government notes the Committees' recommendation. It is our intention to hold a debate on strategic export controls this year, subject to the availability of parliamentary time.

Scott Report legislation

(2) We are dismayed that the Government should not have afforded greater priority to bringing forward a Bill to implement the recommendations made four years ago in the Scott Report (paragraph 4).

The Government would draw the Committees' attention to the fact that most of the recommendations made in Sir Richard Scott's Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions have already been implemented. The Annual Reports on Strategic Export Controls themselves fulfil one of the Scott Report's key recommendations, that the Government should be more ready to disclose to Parliament details of its export licensing decisions and of actual exports of strategic goods from the UK. Sir Richard Scott himself has praised the improvement in transparency and accountability which the Annual Reports represent compared with the circumstances at the time of his Inquiry. In addition, action has also been taken in response to the Scott Report's recommendations on inquiry procedures; the role of Customs and Excise; prosecution procedures; public interest immunity; the use of intelligence by Government Departments and Ministerial accountability.

The Government notes the Committees' views on the timing of the new legislation to address those recommendations in the Scott Report which have not yet been implemented. The Government regrets that the demands on parliamentary time have not allowed a Bill to be introduced to implement the proposals contained in the White Paper on Strategic Export Controls (Cm 3989). However the Government will announce proposals for new export control legislation following the conclusion of the review of the White Paper proposals in the light of responses received and the views expressed by the Committees. Decisions on the legislative programme for future sessions have yet to be taken; in doing so, the Government will take into account the Committees' support for new legislation.

Result of scrutiny

(3) Were Parliament to establish a committee with the remit of examining export licences, it would no doubt wish to seek a view of the detailed assessments made available to Ministers on individual licences: without such information individual grants of licences cannot be described as having been scrutinised as fully as they have been within the machinery of Government. In the absence of the detailed papers and records of inter-departmental consultations on these licences, we cannot judge whether or not the decisions taken by Ministers were reasonable. Only a Committee with a specific remit to pursue individual licences could do that (paragraphs 7 and 21).

As the Committees have acknowledged, publication of a detailed annual report on strategic export controls already provides a considerable improvement in transparency and enables greater parliamentary scrutiny than has been possible before. As indicated in the responses to many of the Committees' other recommendations, the Government has sought to develop the annual reports in a

way which increases transparency and enhances parliamentary scrutiny, while taking into account the levels of transparency achieved by other countries to ensure that we do not undermine the competitiveness of UK industry. Parliamentary scrutiny has in practice been enhanced further by the provision to the Committees of detailed additional information on specific licensing decisions. The Government notes the Committees' comments about establishing a committee with a specific remit to examine individual licensing decisions. Although the Government is committed to facilitating a proper scrutiny role by Parliament, it is also mindful of the need to protect the confidentiality necessarily and traditionally afforded to advice given to Ministers and inter-departmental discussion.

Parliamentary scrutiny

(4) The publication of Annual Reports such as these cannot demonstrate the absence of errors of judgement; indeed it would be a bold Minister who would want to defend with the benefit of hindsight every licence given, amended or refused. We can however report that from our sampling we have found grey areas which would benefit from more stringent and consistent parliamentary scrutiny, as our more detailed examination of licences for Indonesia has revealed (paragraph 21).

(5) At this stage we would not want to rule out either the practicality or the possible desirability of prior parliamentary scrutiny of export licence applications. We will seek to come to conclusions on this issue in our next Report (paragraph 85).

The Government notes the Committees' views and their intention of returning to the issue of prior parliamentary scrutiny of individual export licence applications in their next report. The Government's views about the difficulties of prior scrutiny were set out in the White Paper on Strategic Export Controls (para 2.1.7). That said, the White Paper proposals on parliamentary scrutiny are under review, as are all proposals in the White Paper. The Government will of course consider any conclusions which the Committees may reach on this issue.

(6) We are unanimous in our conviction that the scope and character of strategic export licensing, which regularly arouses public and parliamentary concern, requires vigilant and thorough scrutiny. We have referred the question on future scrutiny of the Annual Reports on Strategic Export Controls to the Liaison Committee, and will be making our own proposals to the Committee in due course based on our experience to date (paragraphs 81 and 86).

The desire to increase transparency and accountability to Parliament was the principal reason for the decision to publish Annual Reports on Strategic Export Controls. The Government has taken note of the Committees' decision to refer the question of scrutiny to the Liaison Committee. The Government responded to the Liaison Committee's report *Shifting the Balance: Select Committees and the Executive* on 18 May (Cm 4737).

Indonesia

(7) We obtained from the Government a list of all the licences valid as of May 1997 for export to Indonesia, numbering around 125. It does not take long to review this list. Other things being equal, it would have been entirely practical to have reviewed the 125 outstanding valid licences for Indonesia. It is by no means clear that there was in 1997 a sufficiently radical shift in policy towards the supply of arms to Indonesia, beyond a heightened distaste for such exports in Government, to have survived legal challenge to the revocation of an individual licence. We regret that, despite several requests, the Government has not made available to us the legal advice provided to it on this point, either before the 3 November hearing as we asked or thereafter. We conclude that it would have been practicable to have reviewed all valid licences for the export of arms to Indonesia; but that, in the absence of any radical and demonstrable change in the Government's policy towards supply of arms to Indonesia which would have stood up to judicial scrutiny, and possibly in the light of other commercial factors, Ministers were persuaded that revocation would be imprudent (paragraphs 22 to 24).

The Government's views remain as set out in the Foreign Secretary's oral evidence on 3 November and in the Foreign and Commonwealth Office Memorandum of 26 November (Appendix 2 of the Committees' Report). As the Foreign Secretary told the Committees, the Government considered

that in the event of a legal challenge to the decision to revoke licences, a court would have regard to whether particular licences had been singled out or whether all extant licences had been considered by the same procedure. By “all extant licences” was meant all licences valid and in force at that time, not just those covering exports to Indonesia.

The Government does not accept that there was no demonstrable change in policy towards arms exports to Indonesia after it took office. The rigorous application of the July 1997 criteria to export licence applications for Indonesia resulted in refusal of licences for the export of equipment which might have been used for internal repression. The only change which would have provided the basis for especially restrictive treatment of Indonesia, as opposed to other destinations, would have been an arms embargo, for which there were no grounds at the time.

Concerning the disclosure of legal advice, the FCO’s Memorandum of 26 November highlighted the special status afforded, by long-standing practice, to legal advice, whether given to government Ministers or to any private individual. This special status has been enshrined in both the Code of Practice on Access to Government Information and in the Government’s Freedom of Information Bill. Legal advice is exempt from the disclosure requirements of these measures. However, the Foreign Secretary gave in his oral evidence what was in effect a summary of the legal considerations which fed into the Government’s decision, along with other policy and practical considerations.

Licensing of spares

(8) The Government should now draw up and publish guidelines governing the extent to which the UK feels bound to licence spares for existing UK-supplied equipment (paragraph 27).

All applications for Standard or Open Individual Licences, or for the amendment of Open Individual Licences, covering the export of goods entered in Part III of Schedule 1 to the Export of Goods (Control) Order 1994 (the UK Military List), or dual-use goods where there are grounds for believing that the end-user will be the armed forces or internal security forces of the recipient country, are considered on a case-by-case basis against our national export licensing criteria and those in the EU Code of Conduct on Arms Exports.

This policy applies to spare parts as well as to main equipment. Thus, if approval would be inconsistent with the UK’s international obligations and commitments, or if the arguments for approval are outweighed by concern that the spares would support the continued operation of main equipment that might be used for internal repression or international aggression, or by the risks to regional stability, or other considerations as described in the national criteria and the Code of Conduct, then the application should be refused.

In assessing whether or not there is a clearly identifiable risk that the main equipment whose operation the spares would support might be used for internal repression or that the intended recipient would use it aggressively against another country or to assert by force a territorial claim, consideration is given to what decision would be taken had the application covered the main equipment itself and not simply spares. Technical considerations, such as whether the spares are integral to the main equipment or would extend its life in service, are not the sole determinant of whether to grant or refuse a licence covering spares but they may be relevant to the assessment of the use to which the spares or the main equipment might be put.

In reaching decisions on applications covering spare parts, we also give full weight to the UK’s national interests as specified in the national criteria and as provided for in the Code of Conduct. We therefore take into account whether the spares would be provided in accordance with an existing contract relating to the supply of the main equipment. A decision to refuse an application might put the supplier in breach of contract and could potentially cast wider doubts on the reliability of UK defence suppliers generally and have an effect on the UK’s relations with the country concerned. If Export Credit Guarantee Department (ECGD) supported the original contract, there could also be a risk of impact on public finances including existing ECGD commitments.

Even if the exporter is not under any contractual obligation to supply the spares, there may well be an expectation that they will be supplied, especially if the licence applicant originally supplied the main equipment. In these circumstances, we take into account the fact that refusal of the application could have repercussions for the company concerned and also the potential wider impact described above.

Grounds for refusal

(9) These provisions [in the national criteria and EU Code of Conduct] seem to fall some way short of a system whereby a licence can be refused simply because of pervasive abuse of human rights in the country to which arms are to be exported. We would welcome reassurance that Ministers are confident that the new national criteria on arms sales and the EU Code of Conduct do not prevent the exercise of their discretion, without fear of judicial review, to refuse licences on broad grounds of public policy, not explicitly covered by the criteria (paragraph 28).

The criteria announced by the Foreign Secretary in July 1997 and those in the EU Code of Conduct on Arms Exports clearly state that respect for human rights and fundamental freedoms in the recipient country must be taken into account. In addition the Code of Conduct specifies that Member States will “exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or the EU”. The July 1997 criteria and those in the Code of Conduct also contain additional detail on how human rights considerations are applied when considering licensing decisions.

The criteria inevitably circumscribe to some extent the manner in which the powers set out in the Import, Export and Customs Powers (Defence) Act 1939 may be exercised by Ministers. But they do not prevent Ministers from taking rational decisions for other reasons or declaring different policies.

The Committees will recall that the Scott Report criticised the “absence of any indication in the empowering legislation of the purposes for which export controls can legitimately be used”. He argued that this absence “had led to a dangerous confusion between the law on export controls and Government policy on export controls”. Sir Richard questioned “whether export controls should be regarded as a legitimate tool of foreign policy available to be utilised whenever the Government believes it to be in the national interest to do so” and recommended that “in any legislative replacement of the 1939 Act, the broad purposes for which export controls authorised by replacement legislation can be imposed and, once imposed, used, ought in my opinion to be expressed in the legislation.” The Government agrees with the thrust of these conclusions and, in the White Paper on Strategic Export Controls, proposed that secondary legislation should specify the purposes of strategic export controls. As noted already, all of the proposals in the White Paper are being reviewed in the light of comments received.

Lessons of Indonesia

(10) We recommend that the Government examine the issues raised to identify lessons of general application which can and should be learned (paragraph 32).

The Government always seeks to identify and learn lessons for the future from difficult or controversial cases involving the application of strategic export controls.

Pakistan and EU

(11) We urge the Government to initiate discussions with our EU partners to establish a common position on defence and defence-related exports to Pakistan, so that there can be no question of advantage being taken by other member states of the suitably cautious approach being taken by the UK (paragraph 38).

The Government discusses developments in Pakistan regularly with EU partners. Where an application for a licence to export military equipment to Pakistan or dual-use goods to end-users in the Pakistan military or internal security forces is refused in accordance with the EU Code of Conduct then details of that decision will be circulated to our EU partners under the denial notification procedures of the Code of Conduct.

Evidence on Pakistan and Zimbabwe

(12) In the three months since our oral evidence session with the Foreign Secretary in November 1999, serious questions have arisen in respect of the application of strategic export controls over defence equipment destined for Pakistan and Zimbabwe, raising wider issues of public policy. In neither case have we had the opportunity of raising these issues with Ministers. We have therefore invited the Foreign Secretary to appear before us to give evidence on these issues (paragraph 40).

Mr Peter Hain, Minister of State at the Foreign and Commonwealth Office, gave evidence to the Committees on the application of strategic export controls in respect of Pakistan and Zimbabwe on 4 May. Additional information on policy in respect of Zimbabwe was given in Mr Hain's letter of 17 May to the Committees.

The position in respect of strategic exports to Zimbabwe is as set out in the Foreign Secretary's statement to the House of Commons of 3 May (Official Report columns 149-162) and his written answer to the Hon member for Barnsley East and Mexborough of 12 May (Official Report columns 493-494W).

The Government's policy on the application of strategic export controls in respect of Pakistan was set out in a letter from the FCO's Parliamentary Relations Department to the Clerk of the Committees on 18 January 2000. Details of recent export licensing decisions in respect of Pakistan were given in Mr Hain's written answer to the Hon member for Bury South of 5 July (Official Report columns 221-222W).

Brokering and trafficking

13. We support a more stringent national policy on brokering and trafficking, which could act as a spur to international action. We look to the 1999 Annual Report to make some specific reference to the Government's view of the way forward on this issue (paragraph 46).

The Government notes the Committees' support for tighter controls on trafficking and brokering, and for international action on this matter. The Government's White Paper on Strategic Export Controls contained proposals for tighter controls, and these proposals are under review. We remain committed to constructive participation in international discussions on trafficking and brokering. As noted above, the Government will be announcing proposals for new export control legislation following its review of responses to the White Paper.

Licensed production overseas

14. The most desirable solution [to the problem of licensed production overseas] would indeed be a multilateral one and it should be vigorously pursued in the appropriate international fora. The issue of licensed production overseas must be given a far higher priority by the Government, if necessary by the passage of legislation (paragraph 47).

The Government notes the Committees' view that the most desirable solution to the problem of licensed production overseas would be a multilateral one. This is consistent with the recommendation in the Trade and Industry Committee's 1998 Report on Strategic Export Controls (HC65) that this issue be addressed in the Wassenaar Arrangement. As a result of that recommendation, the UK initiated a discussion on licensed production in the Wassenaar Arrangement last year, and has sought information on other Participating States' practices and their views on this issue. Furthermore, although the question of controls on licensed production overseas was not examined in the White Paper on Strategic Export Controls, it is nevertheless being considered in the context of the general review of White Paper proposals. As the Government noted in its response to the Trade and Industry Committee's report HC65, a licence is already required to export any controlled production equipment or technology in tangible form for an overseas production facility, and any controlled components or sub-assemblies that might be required.

Joint production

(15) We recommend that the 1999 Annual Report covers in full the implications for strategic export controls of detailed agreements reached as a result of the July 1998 Letter of Intent, and ask that it be demonstrated that there is nothing in those detailed agreements which undermines the UK or the EU regime on the control of the export of arms (paragraph 48).

The Letter of Intent (LoI) signed in July 1998 by the Secretary of State for Defence and his counterparts from France, Germany, Italy, Spain and Sweden was designed to identify and agree common measures to facilitate defence industrial restructuring in Europe. Although negotiations on a Framework Agreement resulting from the LoI are well advanced, the Agreement has not yet been signed. If signature takes place before publication of the next Annual Report, details of the Agreement and its implications will be given in Part I of the Report.

End-use

(16) We look to the next Annual Report to address the concerns over end-use, if possible by reference to measurement of the effort being devoted to improved monitoring, and setting out the prospects for the creation of a reinforced multilateral system (paragraph 51).

The next Annual Report will describe developments in the Government's policy on minimising the risk of diversion of UK exports.

Small arms

(17) We welcome the Government's emphasis in both Annual Reports on small arms as a policy issue of concern. We recommend that future Annual Reports continue to review progress on small arms initiatives within multilateral fora and to provide details of activities funded by the Government in this area (paragraph 52).

The Government accepts the recommendation.

EU Code of Conduct: transparency

(18) Our first experience of the operation of the Code leads us to believe that some of the confidentiality surrounding the denials system is misplaced, and that the UK should press our EU partners to consider at least the publication of figures on the number of recognised cases of undercutting, preserving if necessary the anonymity of the countries concerned (paragraph 54).

The Government accepts the recommendation and has raised this issue in the CFSP Working Group on Conventional Arms Exports (COARM) with a view to reaching common agreement on how the confidentiality provisions in the Code of Conduct should be interpreted.

EU Code of Conduct: changes

(19) We would like to see the Code strengthened in several respects, including the introduction of a minimum level of transparency EU-wide. Should there be changes formally proposed to the Code, we would expect the Government's recognition of the high level of parliamentary interest in the development of the Code to lead to such changes being subject to parliamentary scrutiny. We also recommend that the Report on the EU Code of Conduct be reproduced as part of the UK's Annual Report (paragraph 55).

Since the publication of the first Annual Report on Strategic Export Controls, the Government has consistently encouraged EU partners to match the level of transparency shown by the UK. The Government will raise this issue again during the next annual review of the operation of the EU Code of Conduct.

Parliamentary scrutiny procedures for Common Foreign and Security Policy proposals apply primarily to Common Positions and Joint Actions. The Code of Conduct on Arms Exports does not fall into this category. But the Government will take into account the high level of parliamentary interest in the development of the Code when it comes to taking decisions on any changes.

The Government accepts the Committees' recommendation that future Annual Reports on Strategic Export Controls include the consolidated Report of the annual review of the EU Code of Conduct.

EU Code of Conduct: USA

(20) We wholeheartedly endorse the encouragement given by the Foreign Affairs Committee to the Government to work with the US Administration to develop an effective EU-US Code. We note that Canada has aligned itself with the principles of the Code; we recommend that the Government take every opportunity to press the USA to follow suit (paragraph 56).

Along with other EU Member States, the UK has already taken appropriate opportunities to encourage the US and other arms exporting countries to respect the principles of the Code of Conduct. In June 1998, Mrs Albright publicly welcomed the adoption of the Code and said that the US government would continue to work for closer co-ordination of EU and US export licensing policies. The Government has also noted the view of the US Government, expressed in bilateral contacts, that most of the principles in the Code of Conduct are already reflected in US licensing policy.

The Committees may be aware that the US Government is required by legislation to try to develop an international code of conduct on arms transfers. The UK and a number of other EU Member States have already had initial informal discussions with the US Government and the Government looks forward to participating constructively in any further discussions.

The Joint UK/US Declaration of Principles for Defence Equipment and Industrial Co-operation was signed by the Secretary of State for Defence and the US Defense Secretary on 5 February 2000. It commits both parties to examine jointly the scope for simplifying export procedures for military goods and technologies required for their national military use, and to devise more efficient procedures for the export of jointly developed and produced military goods to third parties. Any such measures would need to be consistent with both parties' international commitments, including the UK's adherence to the EU Code of Conduct.

EU Code of Conduct: applicant states

(21) We consider that an applicant state's proven willingness to conform with the criteria of the EU Code of Conduct and comply with its operative paragraphs should be regarded as a precondition for its accession to the EU and for membership of European defence organisations including the Western European Union (WEU) and the Western European Armaments Group (WEAG) (paragraph 58).

The conditions for accession to the European Union are set out in Articles 6(1) and 49 of the Treaty on European Union, supplemented by the Conclusions of the Copenhagen (1993) and Luxembourg (1997) European Councils. Candidates will have to comply with the 'Copenhagen criteria' and demonstrate their ability to adopt the EU *acquis communautaire* in full including the *acquis* in the area of Common Foreign and Security Policy.

In view of the rapid development of the EU's common foreign and security policy, and in particular the Prime Minister's European Defence Initiative, it is unlikely that either the WEU or WEAG would take on new members. Applicant states are more likely to seek membership of European defence structures via accession to the EU.

Developmental criteria

(22) It may be necessary to revise the national - and in the fullness of time the EU - criteria to ensure that, where there is a consensus among Ministers that the cumulative impact of defence expenditure by a poor country is such as to threaten damage to its economy, and where they wish on those grounds to refuse one or more export licences would even if singly or together would not be regarded as damaging, they would be free to do so without the threat of legal challenge being held over them (paragraph 63).

The Government notes the Committees' conclusions with respect to the national criteria and those in the EU Code of Conduct on Arms Exports. The Government will take these into account when deciding its position on the future development of the Code of Conduct.

DFID and Annual Report

(23) DfID has, in the past, raised concerns on licence applications which may well have resulted in licences being refused. DfID should be accountable and responsible for a licensing process of which it is an integral part. We recommend that future annual reports are also signed by the Secretary of State for International Development (paragraph 61).

The Secretary of State for International Development remains of the view that it would not be appropriate for her to sign the Government's Annual Report on Strategic Export Controls. DfID has reviewed its involvement in the export licensing process and intends to focus in the future on licence applications for economically significant exports to poorer countries, and for exports to countries where DfID regional departments can add value to other Departments' assessment of the applications against non-economic criteria. As a result of these changes DfID has now chosen to see less than 5% of export licence applications received by the DTI. Details of the countries and criteria against which DfID reviews export licences will be placed in the library of the House and updated as necessary.

Delay

(24) The delay in publication of the 1997 Annual Report was unacceptable. We propose a target for future Annual Reports to be available within four months of the end of the year to which they relate (paragraph 65).

The Government has always been committed to the publication of each Annual Report as quickly as possible after the end of the relevant reporting period. Work on the 1999 Annual Report is being given the highest priority and we are hoping to reduce the timescale still further in future years. Progress will be determined in part by the fact that, as set out in this response, the Government has decided to change the format of the Annual Report and to give additional information in future Reports. Moreover, the objective of publishing the Report as quickly as possible after the end of the relevant year must be balanced against the need to take care to minimise the risk of errors in the compilation and publication of the mass of data involved.

Accuracy

(25) If we had not sought more detailed information on certain licences, it can only be assumed that significant errors in compilation and listing would have remained undiscovered. It is essential that users of the report have confidence in its accuracy; we look to those responsible to ensure a high standard of accuracy in future (paragraph 68).

The Government regrets that there were any errors in the 1997 and 1998 Annual Reports. The aim is, of course, that there should be no errors. However, the Reports do contain a mass of data derived from various computer databases and then compiled for the purposes of publication. For example, the data provided by HM Customs & Excise was obtained from an administrative system which was not designed for the specific purpose of collecting information about defence exports. Therefore, while the Government will continue to make every effort to minimise errors in future Reports, the possibility of human error, either in the construction of the source data or in its compilation, cannot be ruled out completely, as was made clear in both the 1997 and 1998 Reports.

Presentation: country tables

(26) We recommend publication of a table for each country combining to a greater degree than at present information currently spread through several tables of the Annual Report, including information on actual exports (paragraph 66).

The Government accepts the basis of this recommendation. In future Annual Reports, including the 1999 Report, information relating to decisions on applications for Standard Individual Export Licences (SIELs) or in relation to Open Individual Export Licences (OIELs) will be set out in a single entry for each destination.

However, it would be misleading to include information on actual exports made, whether under a licence or as a result of a Government to Government transfer, in the same place as information on licences issued. In the first place, because the Import, Export and Customs Powers (Defence) Act 1939 does not bind the Crown, no export licence is required for Government transfers. Secondly, an export made in a particular period may not necessarily have been made under a licence issued in that period not least because individual licences are generally valid for 1 or 2 years depending whether the export is to be temporary or permanent. Accordingly, information on actual exports will continue to be shown in a separate part of the Report.

Presentation: Open Individual Export Licences (OIELs)

(27) OIEL information is by its nature complex. Some further consideration must however be given to presenting it more clearly, perhaps by reference to the OIEL itself rather than by countries of destination, and possibly by limiting the information provided on the bulk of OIELs which are granted for exports to NATO and other allied states (paragraph 67).

The Government accepts the basis of this recommendation. Future Annual Reports, including the 1999 Report, will show against each of the relevant destinations information on applications for OIELs which have been refused in full and on OIELs issued, or whose destination or goods coverage was amended or which are revoked.

Difficult licences

(28) We recommend that the Annual Report records the number of licence applications whose complexity or sensitivity required inter-ministerial discussion or correspondence (paragraph 62).

The Government does not accept this recommendation.

As noted in the Government's memorandum to the Committees, licences to export arms and other goods whose export is controlled for strategic reasons are issued by the Secretary of State for Trade and Industry, acting through the DTI's Export Control Organisation. All relevant individual licence applications are circulated by the DTI to other government departments with an interest as determined by those departments in line with their policy responsibilities. The departments which have asked DTI to circulate applications covering particular kinds of exports include the FCO, the MoD and, since August 1997, DfID.

Decisions on applications circulated to advisory departments are taken in the light of the advice received. Such advice falls into the category of "internal discussion and advice", the disclosure of which would harm the frankness and candour of internal discussion, and this advice is therefore exempt from disclosure under the Code of Practice on Access to Government Information.

However, the processing of circulated applications cannot be completed until the relevant departments have provided advice. All of the advice received is then considered and a decision taken in the light of that advice.

Refusals

(29) We recommend that henceforth summary descriptions be published of Military List goods for which a licence has been refused (paragraph 69).

Although the Government remains willing to provide the Committees in confidence with details of equipment for which licence applications have been refused, it does not accept the recommendation that this information be published in the Annual Reports. The Government believes that there is a real risk in providing less reputable suppliers with what would amount to a list of an individual country's defence equipment requirements which have not been met. As the purpose of a refusal is to deny access to specific weapons or other strategic goods, it would be perverse to draw the attention of other suppliers to the wish of the country concerned to purchase such items. Furthermore, publication of such information could seriously damage our bilateral relations with the countries concerned. For

example, providing details of applications refused is likely to lead to speculation about the reasons for refusal, which could be damaging for the reasons outlined in response to recommendation 30. Indeed it could be doubly damaging in that such speculation may be misleading and inaccurate. A requirement to publish the details of a refusal, and the consequent possible damage to bilateral relations, could become a consideration which might inhibit a decision to refuse an application.

Reasons for refusal

(30) The details on refusals and revocations in 1997 and 1998 seem to reflect the entry into force of tighter criteria on the export of equipment which might be used for internal repression. They also demonstrate that the criteria on protection of the UK's national interests and regional security are capable of being implemented, in the latter case in relation to a relatively small amount of light weaponry. We recommend that future Reports should return to the practice of the annual ECO Reports and record by category the reasons for refusals and revocations of standard licences, and reductions in the coverage of OIELs, as we have above, since this provides an instructive analysis of the nature of decisions taken (paragraph 16).

The reports published under the previous administration by the DTI's Export Control Organisation for the years 1990 through to 1995 did not categorise the reasons for refusal of export licence applications, nor did they categorise the reasons for the revocation or amendment of issued licences. They simply included a table, broken down by destination, categorising in a very broad way the types of goods covered by applications refused during the relevant year and provided no information at all about decisions taken to revoke or amend issued licences. Accordingly, the tables concerned gave significantly less information than is already given in the Annual Reports published by this Government.

The Government is sympathetic to the Committees' view that the Annual Report should include some information on the reasons for action taken to prevent exports. Accordingly, the Government has decided that future Annual Reports, including the 1999 Report, will specify how many applications for SIELs were refused and/or how many SIELs were revoked for each of the main reasons set out in the criteria. This information will not specify the countries or the goods concerned, and specific reasons for each individual decision will not be given.

As far as the Government is aware, no other Government routinely publishes the reasons for its decisions to refuse to allow the export of goods to particular destinations. On the contrary, such information is generally exchanged on a confidential basis among like-minded governments to promote mutual understanding of the risks perceived to be associated with certain transfers. Open publication of the specific reasons for specific decisions would risk serious damage to bilateral relations with the countries concerned. It could also be misleading because the information could be taken to imply that the relevant concerns were fixed and immutable, when in certain cases the concerns might in time be addressed to the extent that the export of the goods concerned might be allowed. Finally, where the reasons for the decision related to concerns that the goods would be diverted from the stated end-use, open publication of these reasons could signal that a diversionary procurement route had been detected, thus encouraging the establishment of new routes.

The new information referred to above will not include the reasons for decisions to refuse applications for OIELs or to amend the coverage of OIELs. A decision to remove particular destinations or particular goods from the coverage of a particular OIEL does not prevent the company from applying for a SIEL to make the exports that could no longer be made under the relevant OIEL. Furthermore, although factors that led to the decision to amend the coverage of the OIEL would obviously be taken into account in the decision on any such application for a SIEL, or a similar application from another exporter, it does not follow that the application would automatically be refused. On the contrary, while the decision might be that particular goods should not be exported to a particular destination under authority on an OIEL, it might be decided that a SIEL could be issued for the export of those goods to a specified consignee in that destination. Accordingly, it would be misleading, particularly to potential exporters, to disclose the reasons for the amendment of OIELs.

Appeals against refusal

(31) We recommend that summary details of appeals against refusals of a licence be published in the Annual Reports, showing in each case the outcome and the time elapsed between recipient of information from the appellant and determination of the appeal, as well as a brief description of the goods and end-user (paragraph 20).

The Government accepts the basis of this recommendation. Future Annual Reports, including the 1999 Report, will include information on all appeals against a decision to refuse an application for a SIEL, where the decision on the appeal was taken during the relevant period. This information will also be given for any appeals against a decision to revoke a SIEL.

As noted in its response to the Trade and Industry's report on Strategic Export Controls (HC 270), the Government has set a target for processing such appeals of 30 working days from receipt of all of the relevant information from the appellant, where there are new circumstances to be taken into account. The 1999 Annual Report will give information on the performance against target.

Consistent with the Government's decisions in response to recommendations 29 and 34 that the 2000 Annual Report and future reports should not include information on end-users and not give summary descriptions of military equipment for which licence applications have been refused, they will not give this information in respect of applications refused or licences revoked on which an appeal was decided during the period.

There is no provision in the licensing procedure for a formal appeal against decisions to refuse or revoke an OIEL. Such decisions do not prevent a company from applying for a SIEL covering the export of some or all of the goods concerned to a specified consignee in the relevant destination; the factors which led to the original decision would obviously be taken into account in the decision on any such application.

Volume

(32) We recommend that in the next Report some indication be given of the numbers of items for which a licence has been given, if necessary as an approximation. For major systems whether or not covered by the UN Register an exact number should normally be given. The principal criterion for determining whether to provide such figures should be the avoidance of misunderstanding, particularly where the decision on the grant of the licence was or might reasonably have been influenced by the quantities concerned, and where there are no obvious grounds of commercial confidentiality. We would be prepared to see this introduced first for licences for non-NATO countries (paragraph 72).

The Government recognises that information on quantities of military equipment licensed for export, particularly for those items which may be most relevant to international aggression and internal repression, is an additional indicator of policy and therefore of legitimate interest. At the same time, however, the Government shares the concern expressed by the Committees about the importance of preserving confidentiality.

Against this background, future Annual Reports, starting with the Report for the year 2000, will in principle specify the number of items of military equipment in the UN Register of Conventional Arms categories covered by SIELs issued during the relevant period, provided that the relevant contract has come into force. Similarly, future Reports will in principle also give information on the number of small arms covered by SIELs issued during the reporting period. However the Reports will not give this information in cases where, under the Code of Practice on Access to Government Information, the arguments for publication of the information are otherwise outweighed by the harm which this would cause to commercial confidentiality and/or the legitimate security interests of the recipient country. We shall endeavour to keep all such exceptions to the minimum.

The Government notes the importance of recognising in this context that although SIELs allow exports up to a specified quantity some are not used to make all of the exports authorised and others are not used at all.

Finally, the Government does not believe it would be practical or useful to give this information for all military equipment and other goods licensed, and it would obviously not be possible to give it for licences covering technology. Many licences cover components and spares amounting, in some cases, to several hundred such items, and compiling this information for all of the 10,000 licences issued annually would add significantly to the timescale for producing the Annual Report. Information on the volume of exports authorised by OIELs could not be given because OIELs generally do not normally impose any limit on the volume of exports that may be made under them.

Values

(33) We recommend that the total value of licences issued in respect of each non-NATO country be given for each calendar year, founded on the values given on the applications, with an exception where the number is so small as to risk a breach of reasonable commercial confidentiality: in other words where there are only a handful of licences granted. In these cases a “ceiling” figure, such as “under £1 million”, should be provided (paragraph 73).

The Government accepts the basis of this recommendation. Future Reports, including the 1999 Annual Report, will specify the total value of all applications in respect of which a SIEL was issued for the export of military equipment or other goods to the destination concerned during the period, whether the export concerned in each case was to be permanent or temporary. To preserve commercial confidentiality, the total will either be rounded up or expressed as a ceiling figure. This is likely to be greater than the value of the exports that are actually made under the licences concerned because some of these will not be used to make all of the export authorised and others will not be used at all. In addition, some goods are exported only temporarily and later returned to the UK.

This additional information will be given for all destinations and not only for those that are not members of NATO.

It would be misleading to include the “value” for Standard Individual Transshipment Licences (SITLs) issued during the period because the goods concerned merely pass through the UK en route from one country to another and are not “exports” per se. In addition, as OIELs do not generally impose any limit on the volume of exports that may be made under them, it is not possible to assign a “value” to such licences.

End-user

(34) We recommend that end-user information be given unless either it is self-evident from the nature of the goods or there is good reason to believe that the licence would have been granted to other end-users in the country concerned (paragraph 74).

The Government will continue to provide details of end-users for equipment covered by specific licences in confidence to the Committees at the latter’s request. However it does not accept the Committees’ recommendation that this information should be published in future Annual Reports. The Government is not aware of any other Government which routinely publishes details of end-users. Such information is often commercially sensitive and in some cases, when taken in conjunction with other information in the Annual Reports, could reveal details of the recipient country’s defence strategy. It would not be practicable to publish such information selectively in respect of certain licensing decisions, as this would entail reviewing every licence issued in a particular year to determine whether the Government might have issued a licence for the export of the goods concerned to a different end-user in the destination concerned.

Export statistics

(35) We would welcome a degree of co-ordination between EU Tariff codes and the emergence of a common EU Military List of goods so that readers of the Annual Reports — and indeed other similar European documents — could have a greater feeling of well-founded confidence in the figures of defence exports (paragraph 75).

The Government agrees 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. Last year, the Government made a proposal to this effect in respect of small arms. However this did not win support as the prevailing trend is to limit the number of codes in the Combined Nomenclature; it is unlikely that this position will be affected by agreement on a common EU list of military equipment. HM Customs & Excise continue to explore other options to increase the coverage and reliability of their data.

Government sales etc

(36) The Reports should in future contain details of sales and other permanent or temporary transfers by Government and its agencies, and also an explicit account of exemptions from the licensing regime (paragraph 76).

Details of sales of major surplus defence equipment, and major Government to Government Supply agreements are already included in the data provided in the Annual Report on Strategic Export Controls. These explain that the Import, Export and Customs Powers (Defence) Act 1939 does not bind the Crown, which includes any body or person acting for or on behalf of a UK Government Department. The Reports also state that, where the specified conditions apply, transfers by the Crown are already included in the information on exports set out in the relevant section of the Report.

Exports from subsidiary jurisdictions

(37) We recommend that the Annual Reports contain details of the volume and nature of exports which have been licensed from overseas territories and Crown dependencies (paragraph 43).

The Government notes the Committees' recommendation and will consider the desirability and practicality of including these details in future Annual Reports.

As stated in recent parliamentary answers, Jersey and Guernsey Customs seek advice from Whitehall on all applications for a licence to export arms or other goods controlled for strategic reasons from their territories. The Government welcomes the Committees' acknowledgement that these answers should have allayed any anxieties about the licences covering exports to the Channel Islands detailed in the 1997 and 1998 Annual Reports. In addition, Customs information published in the Annual Report already includes details of any exports from the Isle of Man and Channel Islands in the overall UK figures. Against this background, it will be necessary to consider whether providing details of strategic exports both to and by the Crown Dependencies and Overseas Territories might cause confusion about the scope and purposes of the Annual Reports. The Government will also take into account the ability of the Administrations of the Crown Dependencies and Overseas Territories to provide information in a form suitable for the purposes of inclusion in the Reports.

ECO

(38) We recommend that future Annual Reports include more data on the administrative performance of the Export Control Organisation and the other departments involved in the export licensing process, including the pre-licensing process. We hope that these figures show continuing improvement (paragraph 8).

The Government accepts this recommendation. Future Annual Reports, including the 1999 Report, will give a breakdown of performance by the government departments involved in processing applications for SIELs, based on data compiled from the ELATE computer database within the Export Control Organisation for management purposes. Similar information will be given for overall performance in processing written enquiries. The Government shares the Committees' hope that the figures will continue to improve.

ECGD

(39) We recommend inclusion in the Annual Reports of details of ECGD support for defence exports in the most readily available period of 12 months (paragraph 77).

The Export Credits Guarantee Department (ECGD) provides its own Annual Report, which is placed before the House. This includes details of cover provided in support of defence exports. The Government believes that this Report, rather than the Annual Report on Strategic Export Controls, should continue to be the vehicle for reporting details of ECGD's activities.

DESO

(40) We recommend that the Annual Report include a report of the activities over the year under review of the Defence Export Sales Organisation (paragraph 78).

Information on the performance of the Defence Export Services Organisation (DESO) in coordinating the processing of export licence applications in the MoD will be included in future Annual Reports. The activities of DESO more broadly are already set out in the MOD's Departmental Report and, in respect of surplus military equipment, through the publication of an annual report on the activities of the Disposal Sales Agency (an agency within DESO).

Transparency and defence exports

(41) Transparency about arms exports is therefore an important element of our overall aim of securing a safer world. At the same time, however, it should be noted that none of our European competitors have achieved the UK's current level of transparency. There must be limits to the extent to which it can be expected that the UK should go in disclosing information about arms exports when others show little or no sign of following suit. It is important that we do not damage the competitive position of UK defence exporters in world markets. We do not think our proposals for greater transparency need do so (paragraph 79).

The Government welcomes the Committees' report and strongly shares their hope that other countries which export significant volumes of military equipment will follow the UK's example and similarly increase the transparency of their export licensing decisions. The Government also welcomes the Committees' acknowledgement that we should avoid disclosure which will damage the UK's competitive position. The Government will monitor carefully the moves which it hopes other countries, particularly EU Member States, will make to mirror its own example.

Finally, the format and content of the first two Annual Reports has been the subject of intense scrutiny and widespread comment, most importantly in the form of the Committees' own Report. While the Government welcomes such interest, it also believes that a period of stability in the format and content of the Annual Reports is required. This will allow the Government to focus its resources on improving the timeliness and accuracy of future Reports, in line with the Committees' recommendations 24 and 25. It will also give the Government time to assess the full impact of the changes set out in this response and to see whether other arms exporting states are moving towards the level of transparency shown by the UK. The Government therefore does not intend to make any further substantive changes to the format and content of future Reports, other than those set out in this response, for the next three years.