



Oral evidence: [Scrutiny of Arms Exports 2015](#), HC 608

Monday 10 November 2014

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Members present: Sir John Stanley (Chair); Mr Adrian Bailey; Sir Malcolm Bruce; Ann Clwyd; Mike Crockart; Mike Gapes; Fabian Hamilton; Dr Julian Lewis; Ann McKechin

Questions 1-74

Witnesses: **Roy Isbister**, Team Leader, Small Arms and Transfer Controls, Saferworld, **Oliver Sprague**, Programme Director, Military Security and Police, Amnesty International UK, and **Martin Butcher**, Policy Adviser, Arms Campaign, Oxfam GB, gave evidence.

Q1 Chair: Mr Isbister, Mr Sprague, Mr Butcher, welcome again. I want to begin with a broad but extremely important issue—as far as the Committees are concerned, it is probably the single most important policy issue before us—and that is the Government’s policy on the export of arms that can be used for internal repression. The question I want to put to you is, do you consider that, under the present Government, that policy has become more relaxed or tighter, or is it more or less unchanged from the previous policy, as stated in October 2000 by the previous Government?

Oliver Sprague: I think this year we are genuinely concerned about a number of statements and decisions that have emerged from the Government export control machine, ministerial answers to questions and things like that, which, for us, suggest that there is a worrying departure from the rules as we had known them. I think we will talk more about this in our evidence, but we would cite as examples the justification of the decision around the Gaza licensing situation recently, comments that were made in the light of the revelations that UK equipment had been found in Hong Kong and a statement that basically said, “If we don’t sell them, someone else would have done.” Those are departures from our understanding of the Government’s assessment and its support for things like the Arms Trade Treaty and the notion of clear risk.

Q2 Chair: Thank you. Can I ask you one further question that flows from that? As you know from our last report, which we published in July, when the present Government issued its own criteria earlier this year for approving or refusing arms export licence applications for the type of arms that could be used for internal repression, it dropped the wording in the previous Government’s consolidated criteria of October 2000, which read: “An export licence will not be issued if the arguments for doing so are outweighed...by concern that the goods might be used for internal repression”. My question to you is, do you consider the dropping of that wording to be significant or not?

Roy Isbister: Looking back over the years at the way that licensing policy has worked—I am speaking for myself—I am not sure that that language in the opening statement and in the criterion specifically made a huge difference in practice. However, it has

been interesting over the last year or so, with the dropping of that language from the new consolidated criteria, but also with the language with regard to licence suspensions for equipment going to Egypt, that the Government seem to have made it very clear that there is a substantive difference between those two standards, which I don't think came across very clearly before then. That at least makes us think you need to explain exactly what these two different things mean and what the difference is in practice.

Q3 Chair: You don't think there is a difference in wording and policy between the statement I read out and the very much more narrowly defined test in criteria two, which refers simply to a "clear risk"? The issue with "clear risk" is that you can say there is a risk, but when is a risk ever absolutely clear? On those grounds, you could sell almost anything to anybody.

Roy Isbister: There clearly is a difference in words. What I was doing was looking back over the way that licensing policy seems to have worked down the years. It is not clear to me that the Government saw there had been a difference in practice. But in the language they have produced in the last year—the "might be used" language with regard to suspensions to Egypt—they say explicitly, "This is a different threshold to the clear risk threshold." So I am looking back at my own interpretation and thinking, "Okay, maybe I've got this wrong."

Chair: Thank you. We are now going to move on to the Arms Trade Treaty.

Q4 Mike Gapes: As you know, the treaty is coming into force on 24 December. What impact will it have on arms exports by the UK and, indeed, by other countries?

Martin Butcher: We welcome very much the fact that the treaty is coming into force so quickly; in fact, it is the quickest entry into force of an arms control-related treaty that we have been able to find. The political will for change that this demonstrates to us is also very welcome.

At this stage, before the treaty enters into force, it is hard to talk about specific exports that might be denied because of the treaty and specific changes that might be made in that way, but, as is clear, we will, for the first time, have a global set of rules based in international humanitarian law, human rights law and the need for conflict prevention. So the kinds of rules the UK has operated and the EU has operated will, for the first time, become a global standard.

There will also, for the first time across a range of arms exports, be a transparency that has not existed before and, in the conference of states parties and the reporting that states will make to each other, a venue and a mechanism for them to hold each other to account on dubious arms transfers. This accountability process is at the heart of the potential benefits of the treaty, so that we would hope that many more states will be more rigorously applying risk assessments before making transfers and that, on the side of recipient states, they would be looking at security sector reform measures that are necessary to have better control of arms: stockpile security and accounting; accountability within their own armed forces and security forces; as well as better control of their borders—this kind of thing.

In these very practical measures, if the mechanisms of the treaty and pressure by global civil society work to ensure the treaty is implemented robustly, then we would see that

change would come. We have seen with, for example, the cluster munitions convention and land mine convention that public pressure of that kind has made a huge difference to the behaviour even of states that have not signed those treaties. We would see the same thing operating: public shaming and embarrassment can be a powerful force. We saw China transfer a large battery of arms to South Sudan and then, in embarrassment, announce they were not going to do the same thing again, during the course of this year. We would be confident that across the globe there will be a substantial effect.

Q5 Mike Gapes: You have said that a number of countries have not signed up. Clearly, Russia and China are among them. What can we do, as the UK, to make sure that more countries do sign and ratify the treaty?

Roy Isbister: I think there are a number of things that can be done, but I think the direction has to come from the top, and it has to be very public, and it has to be repeated. To go back to something that Ollie mentioned, the statement by the Foreign Secretary about the supply of tear gas to Hong Kong was pretty unhelpful, I think, because, “If we don’t sell, someone else will” is not how the Arms Trade Treaty operates.

We need political leaders to be making it very clear what is the philosophy for arms exports. They can do that publicly; they can also do that in terms of bilateral diplomacy. I think building on that there is a kind of carrot and stick approach that can be used, and in some way the carrot and the stick are the same thing. So that would be, for example: are you an ATT member? If you are, then in terms of defence relationships, defence supply relationships—the general attitude towards arms supplies to that country should be quite different if you are not an ATT member.

If we have a visit to another country that involves defence promotion, that should not be prioritised over making sure that that country is a member, or planning to become a member, of the ATT, or is implementing the ATT effectively. So it is about prioritising those kinds of issues, and obviously working with partners, I think, in doing that as well. That is a couple of examples, anyway.

Q6 Mike Gapes: You said, I think, in your written submission that participation of a state within the Arms Trade Treaty regime should be taken into consideration when invitations are issued to arms fairs or when defence co-operation agreements are signed or licences are issued to export to those countries. Do you think that is likely to happen? How do you see that working in practice?

Roy Isbister: So far, I have been disappointed by what we have seen. There have been a number of promotional visits, promoting defence sales to non-ATT signatories, where it is very difficult to get—there is no indication that there is a pro-ATT element to the visit. It is very much about defence promotion; but I think it is up to the likes of us and Parliament to be holding the Government’s feet to the fire on this kind of thing.

Q7 Mike Gapes: So are you saying that although the Government have signed up, there is already, before the treaty has come into force, a backsliding in attitudes to it, and they are not taking it seriously?

Roy Isbister: I would not say there has been backsliding. I don't think that has ever been the case. As we understand it, there have been plenty of démarches and work in embassies to promote the Arms Trade Treaty, but right through I think we have seen very little sign that, when there is a political-level push in promotion of arms exports, the issue of the Arms Trade Treaty features in that relationship.

Q8 Mike Gapes: This is the wider problem—isn't it?—where on the one hand, there are policies on human rights, and on the other, policies on exporting arms, and in the balance, it is normally the exports that take priority.

Roy Isbister: That is the impression we get, yes.

Oliver Sprague: If I could come in quickly, there is a wider point about the ATT and its relation to official invites to arms fairs, official delegations to trade exhibitions and so on. Signing and ratifying the Arms Trade Treaty is an international obligation. If you look, for example, at the eligibility for open general licences, and if you look on the schedule of permitted destinations—the countries that you are allowed to use those licences for, and more importantly, the countries that you are not allowed to use those licences for—many countries are on the list of non-permitted destinations because they have not signed up to relevant international instruments, whether that be the Australia group, whether that be the Chemical Weapons Convention, whether they be subject to an arms embargo or moratorium. I think the Arms Trade Treaty is as significant as any of those agreements and, in fact, more relevant than those agreements when exporting conventional weaponry. So it is a question for the Government, but I think it is one where there is a very strong case that those open licences should be amended, so that any country that has not signed the Arms Trade Treaty should not be eligible to use them.

Q9 Mike Gapes: Thank you. Finally, in terms of the progress of the treaty, there is supposed to be a conference next year of the states parties, and some kind of secretariat is supposed to be established. Are we any nearer being clear about how that is going to work and who is going to fund it?

Roy Isbister: We are getting close to being clearer. There is a meeting in Berlin at the end of the month which is a preparatory meeting towards the first conference of states parties, and in theory there will be something like five position papers presented at that conference, which will cover issues such as the provisional secretariat, the secretariat, rules of procedure, reporting templates and one other that has slipped my mind—financing, I think. That is going beyond options; it is suggesting that this is the best way forward. So we may be a lot closer in another month's time to having a sense of what this is going to look like.

Chair: Now we are going to come on to arms fairs.

Q10 Sir Malcolm Bruce: With reference to the biennial Defence & Security Equipment International exhibition, two companies were eventually thrown out, but only after outsiders had identified that they were promoting unsuitable equipment. That was a decision by the organisers to pack them up and throw them out. Those were MagForce and Tian Jin MyWay, but they were not prosecuted. You have expressed concern about that. Should they have been, and on what basis?

Oliver Sprague: One of the points here is that this is not an isolated incident. Looking back, we have been to this Committee on numerous occasions saying exactly the same thing over the years. Probably since 2005—

Sir Malcolm Bruce: 2005, 2007—

Oliver Sprague: Yes, I think every fair since 2005. It is alarming for me that if you look at the guidance and the law as written, our understanding, having been through the consultation process to develop that law, is that displaying and advertising category A goods—in this case it was leg irons and electro-shock weaponry—are offences. They are breaches of the legislation. If we read the signed memorandum of understanding between Clarion Defence, the organisers of DSEi, and BIS, we see that it quite categorically states that the advertising and promotion of category A goods without the prerequisite Government licence would be a breach of the law. In all those areas, there are very clear statements, as I read them, saying that this is against the law.

If, however, we read some of the Government's more detailed responses to your Committee—this is where I start to get a little worried—I get the feeling that the answer is that the law itself might not be clear enough, and that there is a reason why companies are not being prosecuted. What might be needed here is a re-look at the law, because the intention behind that law was clearly to make these illegal acts. Having been through the whole process, I am sure of that. If there is a reason why companies in breach of that law are not finding themselves prosecuted—I do not mean just being made to leave the building—that points out to me that there is a problem with the way the law is drafted. It needs to be tightened.

Q11 Sir Malcolm Bruce: The Business Secretary said to us that displaying pictures of category A goods might not necessarily constitute an offence. There is an export control order saying that “no person to whom this article applies shall directly or indirectly...do any act calculated to promote the supply or delivery of any category A goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.” Is the Business Secretary saying it is okay if they honestly said that they did not expect it to go to the wrong places? Is the implication that the law is not clear for that reason?

Oliver Sprague: Again, that is a contradiction of the memorandum of understanding that I think the Secretary of State signed with Clarion.

Q12 Sir Malcolm Bruce: Was he being disingenuous?

Oliver Sprague: It clearly said that displaying this material, with the intention to supply, without the necessary licence would be an offence under the law. There is a mismatch somewhere that needs unpicking and understanding.

Q13 Sir Malcolm Bruce: Would it be more effective, or as effective, to include in any prosecution the organisers of the exhibition?

Oliver Sprague: Again, let's go back to the agreement they signed, as there is a clause saying that any company would be adequately vetted. There is a responsibility on them

adequately to vet any company coming to exhibit there. We noticed that this was signed for five calendar days, or effectively two working days, before the fair took place—I think it was signed on 5 December or 2 December. In two days, I am not quite sure how one could realistically pre-vet any of the companies that are exhibiting. So this agreement needs to be revisited for the next fair, and much greater emphasis needs to be placed on the pre-scrutiny.

Q14 Sir Malcolm Bruce: So, perhaps just to pull all that together, how would you like it to look in terms of the procedures, for example? You say you want more robust procedures, but what should they be? What specific and explicit restrictions should be placed on companies? It seems to me that what you are saying is that nobody should be in any doubt about what can and cannot be done or about the penalties. If that was the case, in my view, it would be legitimate to say that the organisers had to take responsibility as well as the exhibitors. That is just my personal view.

Oliver Sprague: That would be my view, too. If you are asking for simple steps, the first thing that needs to happen is that all companies exhibiting must have their materials vetted in advance and the necessary licences given or not given as appropriate. It would be good to have a statement from the Government in no uncertain terms that displaying this stuff is clearly an offence that will lead to an automatic suspension from the fair and a move to prosecute. Any company that has been found to be in violation should not be allowed back, and companies that have not signed the relevant international agreements—the Arms Trade Treaty, for example—should not automatically be eligible to come and exhibit.

Q15 Sir Malcolm Bruce: So, just to clarify that, any company from a country that has not signed the treaty should be ineligible?

Oliver Sprague: They should not automatically be able to come.

Q16 Sir Malcolm Bruce: There is a suggestion they should not be eligible to come.

Oliver Sprague: Similarly with cluster bombs, where any country has not signed the cluster bombs convention or any company has not got a categorical statement in writing to say that none of its subsidiaries or partnership companies are involved in the production and promotion of cluster bombs, there should be an outright prohibition on those companies too. Is that clear?

Sir Malcolm Bruce: Yes.

Q17 Ann Clwyd: This has been going on for years. I remember asking questions in the previous Committees—I don't know how many years ago, but it was years and years ago—and getting the same sort of answers and weasel words. How serious are Governments—I am not picking out one—about actually cracking down on this kind of export fair?

Roy Isbister: I think the evidence so far is that they are not serious. We would like it if they were.

Oliver Sprague: It sends entirely the wrong message, and it is deeply unfortunate—I might use stronger words than that actually—that this has happened every year since 2005, or every other year.

Martin Butcher: With particular reference to the Arms Trade Treaty, aside from the provisions on human rights and humanitarian law, one reason why our Government chose to pursue this was, as was said many times, to level the playing field of regulation and law for British firms and foreign firms. If they are not going to do that at home, where else are they going to do it?

Chair: Thank you. We now come to revocations and suspensions.

Q18 Ann McKechin: I would like to turn to two countries of concern. The first is Russia. Yesterday, former President Gorbachev warned that we might be facing another cold war. You have collectively expressed concerns about suspensions and revocations to Russia in March. What are those concerns, and what should the Government now do to allay them? Do you think the Government have gone far enough, or is there more to be done?

Roy Isbister: The concern was a lot about the way the change was communicated, in one sense. The statement that was read to the House—I think in March—talked about the specific types of licences. It said the UK would “suspend all extant licences and application processing for licences for direct export to Russia for military and dual-use items destined for units of the Russian armed forces or other state agencies which could be or are being deployed against Ukraine.” There was a bit more about licences for incorporation. That was very widely interpreted as meaning that a unilateral embargo was being put in place on arms sales to Russia, and that was far from the case. Reading the words carefully, this isn’t what it says.

I’m not sure the Government ever actually said, “This is an embargo,” but they never clarified what the situation really was. They seemed very comfortable with people interpreting this to mean an embargo, when that was not the case at all. That is why we put down a freedom of information request to find out what was going on. Then we discovered that only 10% of existing licences had been suspended. So it was very misleading, and the Government could have done a lot better in explaining the situation. In these situations, the Government has a responsibility to be clear. Also, on the 90% of licences that are not being suspended or cancelled, why is the Government confident that those are safe exports? So, much more information should be provided in those situations to show what the basis for these things is. That would be extremely helpful in general in these cases.

Q19 Ann McKechin: So, in general, where you have a country that is of concern due to emergency events, you would prefer the Government to state not only why they are suspending licences, but why they have chosen not to suspend or revoke licences?

Roy Isbister: Listing still extant licences in that circumstance would be very helpful—much clearer for the likes of you and us—in trying to make sense of what is actually happening.

Q20 Ann McKechin: Obviously the EU arms embargo on Russia was somewhat controversial, given the actions of the French Government shortly after the embargo was announced, but do you think the embargo currently goes far enough, or should the UK be taking additional unilateral action to strengthen the embargo?

Roy Isbister: I think the embargo does not go far enough, but I am not sure how much the UK can do unilaterally. The big issue is the sale of amphibious assault ships, from France to Russia. The idea of an embargo that allows that to proceed because the deal was agreed beforehand, but will prevent very small transfers of relatively inoffensive equipment, as long as it is on the military list or dual-use list, that may have no offensive capability at all—that, to me, seems perverse. So I think the embargo, and embargoes in general, should be applied retrospectively to any transfer previously agreed but not yet delivered.

Q21 Ann McKechin: If I could turn now to Israel, it is obviously a subject of controversy, and the Chair has mentioned, and you have mentioned today, that the Government, in talking about the possibility of suspension and revocation, said that they would only do so if there was a resumption of significant hostilities. You have argued that this has set a fundamentally dangerous and alarming precedent. Could I ask each of you what you think the implications are of that phraseology; and where does it actually leave us, in terms of the arms criteria?

Oliver Sprague: Up until that statement—that licences would be suspended pending a resumption of significant hostilities—we were always under the assumption that UK Government policy had been based on a risk assessment, based on the likelihood and foreseeability of breaches of the criteria. So if you look, for example, at criterion 2, is there a “clear risk” that the equipment “might be used for internal repression”, which also includes deciding how likely that is, based on evidence of how equipment might have been used in the past? So when one of the Foreign Ministers, in a debate in Parliament, says that this is the third time in six years that Gaza has escalated into crisis, using precisely the kind of equipment that we believed was subject to the licences, the Government had admitted that those 12 licences covered systems that were at risk of being used. I think if you take all of that together, the UK’s existing policy should have been clear: it should have suspended or revoked any licence that it saw as at risk of being used in that crisis.

Three or four years ago, the Government concluded that arms of that type had actually been used in the previous crisis, in 2009—I think the phrase they used was that “almost certainly” they had been used. In that respect, I think, using a phrase like “a resumption of significant hostilities” in some ways rides a coach and horses through the previous understanding of a preventive approach based on clear risk.

Q22 Ann McKechin: Can I just ask whether you are aware if any other EU exporting state applied any suspension or revocation this summer?

Oliver Sprague: Spain unilaterally suspended all of its export licences in light of the crisis.

Roy Isbister: I think there are some other EU member states that have some very strict licensing policies anyway on exports to Israel. Sweden is one example, where the only military exports to Israel are for production purposes—for equipment that will not be used in Israel, but will be exported to a third destination. Clearly it is a sensitive destination for a number of states across the EU.

Martin Butcher: I just want to add from Oxfam’s perspective that our concerns about Gaza and this area relate to our mission as a humanitarian organisation. Over the last 10 years, the European Union, as the largest donor in Gaza, has given €1.3 billion for

rebuilding—half a billion of that after the military operations in 2009. Much more is required this time. If we are talking about the test of significant hostilities, we saw 17,000 homes destroyed, the single operating power plant put out of action; at one point, at least in August, everybody living in Gaza was without access to clean water. Oxfam is providing water and sanitation to hundreds of thousands of people. Gaza needs 89,000 new dwellings and 226 schools just to get back to the status quo ante.

Q23 Ann McKechin: Where they were before July.

Martin Butcher: Exactly. So we have very significant humanitarian concerns, and we note that the use of arms under international humanitarian law in these situations is supposed to include an element of proportionality to a threat. Given statistics like these, it is open to question—

Q24 Ann McKechin: Can I press you a little more? Is your view that the Government should still suspend these licences until there is a marked improvement in terms of where the future is between Gaza and the Israeli authorities? Is your view that there is still a clear risk, which would justify a suspension of the licences that have been identified by the Government?

Oliver Sprague: Yes, Amnesty went further and called for an arms embargo on all sides in response to the 2009 crisis, and we don't think anything has significantly changed in the nature of the conflict to allay fears that this isn't going to erupt again. In our view, if the Government has identified equipment that risks being used in the current crisis, licences should be suspended until that risk no longer exists, and I don't think we have in any way nearly reached that threshold. So yes, they should clearly revoke the licences.

Chair: On the same subject, Fabian Hamilton.

Q25 Fabian Hamilton: Is there not a danger, though, that policy is dictated by what happens to have good media coverage? It is right, of course, that a conflict like Gaza has good media coverage, but I am thinking of conflicts where British arms exports may be used for internal repression, but we never hear about it—for example, in China and Tibet. That is one example, and there will be many others around the world. Should our policy on arms exports and suspending licences simply depend on what we know about, and not what we don't know about? Shouldn't we be more consistent?

Martin Butcher: From Oxfam's perspective, we should certainly be consistent. No, policy should not be dictated just by what we see on News 24 or whatever. One recent example, for us, would be South Sudan—something which is rarely, if ever, seen on any British media. A crisis has been going on there in recent weeks. We have published a report on food insecurity in South Sudan and identified the conflict as the main cause of that insecurity for over a million people there. We have called for an embargo. Britain is not supplying weapons to South Sudan, but other people are. That is an example of something we have tried to push up the news agenda to get action taken. So, yes, absolutely, consistency is important.

Oliver Sprague: I would hope that the Government would never apply its policy based on the amount of media coverage that the crisis generates.

Q26 Fabian Hamilton: No, the point is that it is the media coverage that gets people upset, and when people are upset they write to their MPs and the Government, saying, “You must do something about this.” If they don’t know about what is going on, the exports can carry on, they can be used for internal repression and nobody knows anything about it. Often, of course, it is Israel’s actions that are foremost in the news, and no one else’s. You can understand the point I am trying to make.

Roy Isbister: It is a very fair point, and you can only operate on the information you have—that is just the way it is. The Government licensing system is supposed to be comprehensive, and every licence is supposed to be considered carefully. In the first instance, it falls to the Government to make sure that it is taking its obligations seriously. The more transparency you have around Government arms transfer decisions, the great opportunity that creates for others to try to keep a better eye on things. But we have to face the fact that we live in a world with imperfect information and limited resources. But, certainly, we would not support the inconsistent application of Government policy

Q27 Chair: Thank you. For the record, I would like to make it clear that for the first time over the last two years these Committees have been putting into the public domain the whole list of weapons that could be used for internal repression by the countries listed formally by the Government as being the countries that are at the top of human rights concerns, with some additional countries added.

Roy Isbister: We would say that that was a major step forward; we are very grateful to the Committees for having got this up and running.

Ann Clwyd: May I ask a supplementary?

Chair: Very quickly, as we need to move on.

Q28 Ann Clwyd: There has always been an argument about end use and who monitors end use. Do we have enhanced intelligence that monitors end use? I seem to remember East Timor and the Hawk aircraft intimidating the East Timorese. There was nobody tracking what was going on; our embassy representatives were not really tracking what happened.

Roy Isbister: Additional steps are being taken. A number of things have happened on the international environment; there is the international tracing instrument, which is of some use, in relation to small arms and light weapons. Work is done by EU embargo panels, and there is a new NGO called iTRACE, which is doing a lot of work in certain conflict zones, but it is all patchwork. It is not comprehensive. For many years, we have argued that the Government could be doing more to monitor end use than it does. We would continue to push the Government to do more.

Oliver Sprague: We have been consistently frustrated with replies suggesting there was little evidence of misuse, when the question should have been, “What steps have you taken to identify any potential misuse?”—two very different questions, and the answers depend on what question is asked.

Chair: Thank you. Let us move on to the subject of arms exports to Kurdish groups opposing ISIL.

Q29 Ann Clwyd: What does the Government have to do to ensure that the recently gifted equipment, including arms to Kurdish groups in Iraq, is not diverted and does not fall into the hands of extremists? I have just been to Iraq and Kurdistan with the Foreign Affairs Select Committee. We saw some of the deliveries and we saw people being trained in the use of heavy guns.

Martin Butcher: This is linked to a certain extent to your last question. It is clear that while the Government is supplying equipment to a regional government that is not a national Government but has the structures in place that a national Government would have, or is supplying potentially to non-state groups, there is perhaps a duty to watch over that equipment more carefully than might be the case than if the supply was going to Luxembourg.

There has been a history in this region of arms swapping hands and the diversion of arms either deliberately or through capture in battle over recent years. As we see with ISIS, it is heavy weapons, but now they are being destroyed by air force action. In large part, American weapons were supplied to the Iraqi military and then taken. Keeping a watch over the units supplied with the weapons, ensuring that someone is keeping track of what is being done with them and exercising more vigilance than might normally be the case—all these are important.

Q30 Ann Clwyd: There is also a complaint about where the equipment goes. Equipment for the Kurds has had to go to Baghdad first, so there is a delay in transferring the equipment, and one does not know how it is shared out. So there is a delay in transferring the equipment, and one does not know how it is shared out. Some of the political groups in Kurdistan complain that they are not getting as much as another group, and so on.

Martin Butcher: The details of supply to, say, the Kurdish Regional Government in the north of Iraq might be somewhat different from the details of supply to, say, Kurds in Syria, where the situation is even more complex. The Kurdish Regional Government is not a national Government, and the Iraqi national Government is not keen on the military forces of the Kurdish Regional Government being built up. I would imagine that that is why the Government is dealing with the equipment in this way. There might be some legal difficulties in direct supply if that cannot be negotiated with the national Government in Baghdad.

Chair: Thank you. I want to turn now to Syria. Mike Gapes?

Q31 Mike Gapes: This follows up those remarks. The Kurdistan Regional Government is a legitimate, democratically elected Government, but there is an increasing sign that the British Government is supplying equipment of different kinds—including quite expensive equipment, £30 million worth, that is defined as non-lethal but includes things like night vision and various other types of material—to groups within Syria, which are not Government but are under the heading “Free Syrian Army” or “Syrian opposition forces”.

How concerned should we be about transfers of equipment of any kind, which could potentially be a multiplier in the battlefield, to people over whom there might be a great deal

of uncertainty as to who they are and, first, whether they are capable of retaining that weaponry or, secondly, whether there might be a defection to some other group?

Martin Butcher: Clearly the situation within Syria is much more confused and much more difficult than the situation in Iraq. As you said, the Kurdish Regional Government is an elected Government. It is, compared to some others in the region, stable and able to control its territory. Within Syria, with the opposition groups there, we see a much more fluid picture both of whole units switching the affiliation of which command they answer to and of individual fighters switching between groups on a regular basis.

The position that we have taken is that there are procedures in place for this. The risk assessments that have to be made have to be rigorously applied in all cases. It may be—although we are not privy to the private deliberations within the Foreign Office—that there was a drive at a certain point to have the ability to supply arms to opposition groups inside Syria, which fairly quickly gave way, after the EU embargo was dropped, to the supply only of certain types of non-lethal equipment. The concerns have not been as strong, I think, with potential supply, for example, to the Iraqi region—the Kurdish Regional Government in Iraq.

Roy Isbister: Oxfam and Saferworld produced—I think it was last year—a paper on supplying arms to Syria at around the time when France and the UK were advocating that the terms of the embargo should be shifted to allow this. We argued at the time that if you want to do that, the consolidated criteria, the EU common position criteria, still apply, and under our assessment of those criteria, we could not see how you could justify those transfers. I am not sure that anything has changed in Syria that would change our assessment of that.

Chair: We are going to move, now, to the Government's transparency initiative, as the Government called it, alongside its policy on open licences.

Q32 Mike Crockart: An opening question, first of all: you have expressed continuing concerns in the evidence; you have submitted a few recommendations in the paper. Perhaps you could just expand on what concerns you have about the transparency initiative, in relation to open licences, and perhaps give us some pointers as to where you think the Government should be making changes.

Oliver Sprague: For us, we were deeply concerned that we had all been through a fairly rigorous and intensive consultation process, with stakeholders including my colleagues from the defence industry and relevant officials. We all came to a common understanding that the moves to increase transparency over open licences—to start with the open licences as a transparency problem, to give much better qualitative and quantitative information on those and much more timely information on exports made under those licences—was inherently a good thing. We were aghast when it was an 11th hour decision, a unilateral decision, to scale back on that.

We have been trying to figure out where that opposition might have come from, and how it might have come, and we think it is possible that there were concerns that had been raised within the dual use exporting sector that the reporting requirements for that sector were too onerous. That was surprising to us, because the focus of the review was always on military list items, and the review was done on the basis that we were talking about arms that were exported under open licences. So if it was the case that it was voices within the dual use

sector that were voicing concerns, then we should have dealt first with the military side of things—quite clearly, because that is what the primary focus of the first phase of the consultation was about. We could then have had a separate conversation, or looked at the dual use sector at a later date.

That is not to say that reporting on dual use is not important, because of course it is, but the primary focus, and a solution around military—there was a widespread agreement as to what that was. If that was the reason, then we are very concerned that that was not brought to our attention, because we think we would have found a working solution to that.

Q33 Mike Crockart: But to be clear, your concerns, as I read them, are particularly in relation to the delay in its coming into effect, the age of the data by the time it is published, because the move from quarterly to annual reporting would then make that data quite old by the time it came out, and the non-specific nature of the data. Is that fair?

Oliver Sprague: Yes, essentially I think it is fair to say that the improvements in transparency are now only marginal at best. The fact that now only annually we will get very vague information on how many times a licence was used—we will not get any information on the amount of equipment supplied or even the types of equipment within the licence that was supplied—is a problem.

We also think that the very generic level of end user information they are going to give is actually going to throw up many more questions than it answers, because, for example, just by flagging an end user as a Government—it could be many shades of government. It could be a police force, it could be an internal security force, and, importantly, it could actually be a foreign Government.

For example, one of the big open licences relates to the Brazilian Navy, and they need, basically, a licence to be able to repair and maintain their ships when they are visiting ports, so there is an extremely broad licence that is available for a number of countries, but the end user is the Brazilian Navy and not the end user Government. In the report, however, it would be flagged as government.

So you can see the problem here. You could get a country that would raise very significant human rights concerns at the moment—for example, Russia. You could see that this licence is very broad, covering a whole range of lethal equipment, from missile systems to combat helicopter parts, and is being used for Russia, and the end user would be flagged as government. I think that would be entirely unhelpful because what it should actually do is explain that the end user for this licence is the Brazilian Navy, and if that was done—a greater level of transparency—a lot of fears may well be allayed.

Q34 Mike Crockart: Helpfully, you have moved on to my next question and pretty much answered it. I was going to ask about the variability of the conditions contained in the open licences. What additional information do you think should be there to enable Parliament and civil society to understand better the implications of those licences?

Roy Isbister: This relates to an even more fundamental issue about a weakness that the transparency initiative has thrown up—that is, it is not just a transparency issue; it is a Government information issue. Government repeatedly, when asked what exports have left

the country, says, “We don’t collect information on exports. We don’t know what has left the country under different licences.” We have argued for years that that is not good enough, and the transparency initiative would have allowed Government information and information collection to operate much more effectively. That links in with some of the revelations that have come out about licences for private maritime and security companies—it is through the efforts of this Committee that that has come to light.

Over a year and a half, something like 181,000 items were licensed for transfer to PMSCs for anti-piracy operations, and as it turned out, only 3,000 or so of those items had been exported. I was gobsmacked—I could not believe what I was hearing when I heard that. So the Government is operating on incredibly incomplete information, and the transparency initiative has been helpful not only to us; it has been very helpful for the Government, so that it knew what was happening on its watch.

With reference to the extra information that you talked about, the generic description of open licences is multiple transfers with no upper limit, and no upper limit on values or quantities exported. When we have started to ask a bit more about open licences, we have been told, “A lot of open licences have different conditions applied under each of these elements of the licence, and there is quite a lot of variability about the way they work.”

In the first instance, it would be very helpful to find out what the conditions are that apply to open licences, because we still do not know how the different conditions work in different circumstances. Armed with that information, we could start to think about the best way of collecting it, making it available, communicating it and so on. There is so much that we do not know about the licences that it is difficult to give a proper answer to your question.

Q35 Mike Crockart: So you can’t say what extra information should be given until you know what information there is—

Roy Isbister: Until we know what conditions the Government puts in place, we do not know what that information is. We do not know if we can find out the maximum amount that might be exported under this licence, because we do not know if the Government requires that information or not. It sounds like sometimes not, sometimes yes. Just a bit more information about how it works in reality would be helpful.

Q36 Chair: On this issue, and with reference to both standard individual licences and open licences, I do not know whether you have had time to read the Westminster Hall debate, but if you have, you will have seen the point that I made: when I asked the Business Secretary for the end users of the 285 extant arms export licences to Russia, he declined to give us the information unless we undertook to make it confidential—in other words, not to put it into the public domain.

On other occasions, we have been able to get end user information from the Government. We got it from the Government on the major and sensitive question of to whom the dual-use chemicals were exported in Syria, and we got it out of the Government when we asked to whom the sniper rifles exported to the Ukraine went. Do you consider it would be beneficial in terms of transparency that the Government, as a matter of course, in the quarterly information that it makes public, states not merely the country to which the arms export is going, but the end user in that country?

Roy Isbister: Certainly we think that should be the standard operating procedure. Potentially you could work the system that has worked for delivering information on quantities of small arms which are provided. Once upon a time that did not happen; a system was introduced so that that information would be made available unless a company specifically requested that it should not be. That might be a way forward in addressing circumstances—I don't know what they are, but there might be some kind of particular legitimate concern about those confidentiality issues.

If I may, I shall make just one very quick final point on the PMSC question. I note from the Foreign Secretary's most recent response to the Committee that the PMSC licences and the discrepancy between licensed equipment and exported equipment have been acknowledged as problematic, and something is going to be done about it. I think it has been acknowledged as problematic not to know what is happening under a licence. In that circumstance, I think maybe that could be applied more widely as well. That is very relevant to the transparency initiative. *[Interruption.]*

Chair: I know that that noise was not meant to be the lead-in to Ann Clwyd's next question. On a serious issue, Ann Clwyd is going to lead on torture and end use.

Q37 Ann Clwyd: Some people might find that torturous!

You have called on the UK Government to play a constructive and active role to strengthen the EU Commission's proposals on the regulation on torture end-use goods. What specific actions should we be taking?

Oliver Sprague: I think one of the most important things the Government could do here is reinvigorate or re-establish its commitment to establish the torture end-use control. Those who have been on this Committee for a long time will remember that it was a Government priority to introduce, as part of the review of the legislation in 2008, a new provision on torture to bring things into line with what currently exists for arms embargos and in relation to weapons of mass destruction. In cases in which it is known what the equipment is going to be used for, there is an obligation to deny the transfer, or stop the transfer, even if it is not on the annexed control list. The Government argued that it would not take this as a unilateral step, but it would be far more effective to do it at an EU-wide level. Subsequently, it cautiously and carefully dropped that initiative.

We were very concerned that the Government decided not to push the torture end-use control. Now is the time for them to push it, because now is the time that the EU instrument is under formal review. It is under review now, and it is going to go on for all of next year. The Commission are drawing up proposals, and both the Parliament and member states are looking at a load of areas, including brokering provisions and advertising and promotion provisions, to close those loopholes. I think the one thing that the UK Government can do—because now is the time: if ever there was the time, it is now—is to push the EU to agree to the torture catch-all clause.

Q38 Ann Clwyd: Do you know what views our representatives are expressing in the Commission?

Oliver Sprague: My view on the EU regulation is that there is a lot of good will among all the actors involved to strengthen that regulation. They see it as a very important contribution to the international debate on export controls. It is, at the moment, the only regional control regime on this specific type of equipment—torture and death penalty equipment and so forth. So I can see this serving as a model for other regulations, and perhaps in 10 years' time we will be in this Committee talking about the UN regulation on torture equipment, the new torture treaty. I think there is genuine good will to see these things improved, and I think there is a genuine commitment to strengthening it with regard to brokering, technical assistance and promotion and advertising—strengthening it at the DSEi arms fair, for example—across Europe.

As I said, I think the UK can play a really strong point, because it has already put in place supposedly very strong laws in this area, so it could lead from the front. It should not be sitting back and letting these discussions happen; it should be pushing its views very actively forward. But it is early days in the negotiations, so it is from now onwards that these things are going to happen. I hope that when Ministers come before the Committee in a few weeks' time, they will be able to detail to you exactly how hard they are pushing this.

Chair: We will have to finish there. Mr Isbister, Mr Sprague, Mr Butcher, thank you very much indeed for your evidence.

Examination of Witnesses

Witnesses: **Paul Everitt**, Chief Executive, ADS Group, **David Wilson**, Export Compliance, Hewlett-Packard Enterprise Services and Chairman of EGAD, **Sue Tooze**, Deputy Head of Trade Controls, Compliance and Assurance, BAE Systems, and **Bernadette Peers**, Compliance Manager, Strategic Shipping Company Ltd, gave evidence.

Q39 Chair: Good afternoon, representatives from EGAD. Welcome to Mr Everitt, Mr Wilson, Miss Tooze and Miss Peers.

I am going to start with the same question I put to the UK working group. As you will have seen in successive reports that these Committees have produced, we are particularly concerned about the Government's export policy on arms that could be used for internal repression. Is your view that, under the present Government, that policy has become more relaxed or tighter, or that it is broadly the same as under the previous Government?

Paul Everitt: I guess we would take the view that the policy is clear. We are not aware of any change. For clarity, nor have we sought any change.

David Wilson: I think, generally, we have found that the emphasis changes depending on the political situation in the various destination places over time and whether there is seen to be a risk—that is always the difficult bit that, it is accepted, Government has to follow. How much of a risk is there in sending stuff that we supply to our own police forces to a similar police force in Hong Kong? Was there seen to be a risk at the time? I would suggest that, probably, there wasn't. It is probably not seen as a great deal more of a risk than providing the same material to the Metropolitan police. So the emphasis hasn't changed, as far as I am aware.

Q40 Chair: Thank you. There is a further question I want to ask you. When the present Government issued its own consolidated criteria for arms exports in March this year, it dropped the policy statement made by the previous Government in that Government's consolidated criteria issued in October 2000. The wording read: "An export licence will not be issued if the arguments for doing so are outweighed...by concern that the goods might be used for internal repression". Do you consider that the dropping of those words is a matter of significance or not?

Paul Everitt: I am not aware that there has been any substantive change, nor would we infer from a change in wording that there had been a change in approach.

David Wilson: What I think disappeared was a certain amount of Government freedom of action to say that the risk is outweighed by something else, but of course we have no knowledge of what those other things that outweighed it might have been. I think I speak for all my industry colleagues when I say that if we think there is a risk—a clear risk, an outweighed risk; that is semantics—if we think there is a risk, nobody will be surprised if an export licence is refused.

Chair: Thank you. Now we come to the Arms Trade Treaty.

Q41 Mike Gapes: The Arms Trade Treaty comes into effect from December. What impact do you think it will have on your members?

David Wilson: Very little, I think, because we have worked closely with Government and the negotiators over a number of years to try and ensure that the Arms Trade Treaty brings other countries into line with the very clear processes that the UK already has, which are internationally accepted as robust. So to find that the Arms Trade Treaty outline processes are broadly similar to the ones that the UK has already implemented inevitably means that we as potential exporters are not going to be faced with a huge variety of great extra difficulty or bureaucracy. Little change is the simple answer to your question.

Q42 Mike Gapes: Does that apply to small companies as well as larger ones?

David Wilson: I would say so.

Bernadette Peers: I think it would do. The key problem for small and medium-sized enterprises is a lack of awareness. There has been much discussion about the Arms Trade Treaty so many SMEs are aware of it. It is more a Government concern than an industry concern because industry is following export control procedures anyway. Nothing will greatly change as a result of the treaty, so firms should not see a huge impact, but Government needs to make them aware that the treaty is now in force and, although the ECO's limited resources may struggle with this, do some awareness work with SMEs on the fact that the treaty is in place, that there is a reporting requirement and what that reporting requirement is.

Sue Tooze: Industry is very supportive of the treaty and very keen to work with Government on the implementation arrangements. We are keen to continue to be involved with that initiative and to keep that dialogue open in the future.

Chair: We now come to the Export Control Organisation within the Business Department, and its computer system.

Q43 Mike Crockart: June this year saw the ECO issue a notice to exporters stating that it had recently migrated to a new system and had experienced a "significant short term impact on the performance and availability of the ECO SPIRE system". What has been the impact on you and your members?

David Wilson: Quite a lot. As we understand it, it was largely Microsoft's fault—it is always Microsoft's fault—for withdrawing support to the operating system on which SPIRE was built, so it had to be substantially rebuilt. Short-term glitches were expected. What we were not expecting was the withdrawal of the control classification service at the same time.

The classification service enables exporters to say, "I have a piece of kit here that is rated as ML10 or whatever and therefore needs an export licence to so-and-so. Do you agree that it is ML10?" The corollary of that is to go on and ask, "Do you think I would get an export licence for it or should I not bother to have a sales push?" The lack of that ability is hurting.

Q44 Mike Crockart: And that functionality was there previously?

David Wilson: It was. You were able to ask in SPIRE whether or not something was subject to an export licence. What has increasingly happened—I think there has been a spate of it recently—is that you try and find out the answer, and they say, "Apply for an export

licence, and we will tell you whether it needs one.” That is a waste of the Export Control Organisation’s resources, and it is a huge waste of industry’s resources, because you have to go to the potential customer, you have to get an end user undertaking and you have to fill in all the bits and pieces. Then you apply for an export licence, and they say, “Actually, you didn’t need one” or “You did need one, but you can’t have one because—”.

So there is an element of where industry used to work collaboratively, if perhaps informally, with the Export Control Organisation that has changed recently. There are two reasons for those changes. One is that the system has changed a bit. The other is the lack of resources as the Export Control Organisation has been hollowed out. I understand you want to address that situation further later.

Paul Everitt: I was going to say that we obviously understand why there were some hitches with the upgrade of the system; those are normal things that happen, and that, of itself, did not create major problems for industry. But the withdrawal of what was regarded as a very valuable and useful service alongside that has created further issues.

Q45 Mike Crockart: In the movement from the previous system to the new SPIRE system, how involved were your members in looking at the functionality that was there previously and in defining what functionality the new system should have?

Bernadette Peers: We had no impact at all on any discussions or consultations in terms of what we would like to see from SPIRE. We have always been very pleased with SPIRE—it has been a fabulous system, and what it provides is very useful to industry—but the removal of that control list classification service has had quite large ramifications for SMEs, because they don’t always have the technical expertise in-house, so they got quite a benefit from the CLCS. With its removal, being told to apply for licences now is not a good solution for industry or for ECO.

Q46 Mike Crockart: You say that there were two types of impacts. One was the removal of a piece of functionality, and one was the movement from one operating system to another. Has the second lot of issues gone?

David Wilson: Pretty much.

Bernadette Peers: Yes.

David Wilson: It was a change of operating system. Our understanding was that the functionality would just move from Windows XP or whatever it was to the new operating system, and various bits of it would change a little bit around the edges. That is, substantially, what has now happened, except for CLCS.

Q47 Mike Crockart: We visited the department dealing with these things, and we were shown the wonderful new system and how wonderfully it is working now, and I am glad that you are backing up that that is the case. But at the time, I asked what processes they had for feedback from users of the system to define what functionality was missing or needed upgrading or working on, and there did not seem to be anything there.

David Wilson: There isn’t a formal system, but we have a really good working relationship, in that if we think something has gone badly wrong, there is a bunch of people

we can ring up. We can say, “Oy! This doesn’t work. What are you going to do about this?” and it will be fixed as quickly as possible. Our collective view, I think, is that SPIRE has been a success story on the part of the Government.

Q48 Mike Crockart: Okay, but in June this year, a piece of functionality was removed, and you have presumably been shouting about it since June.

David Wilson: Yes.

Q49 Mike Crockart: When is that functionality going to be put back?

David Wilson: The answer is when the Export Control Organisation is given more resources by the Government. There appears to be a lack of the technical skills inside the Government to make the technical decisions on whether something is licensable or not, and that is proving to be a big issue across a number of areas—in my case, in the dual-use area, where the UK Government has decided to take a uniquely strong line on what bits of computer equipment should be subject to export control and which bits should not be.

We have found since the end of last year that, with pieces of computer equipment, other Governments have said, “No, you don’t need a licence for that.” Particularly the US—that is where most computer equipment comes from—has said, “No, you don’t need a licence for that.” We have checked with the French, and the French have said “No, you don’t need a licence for that.”

So the company puts out advice to all its clients to say, “This piece of kit is rated as ‘no licence required’. You don’t need a licence for it.” Then it gets stopped at customs because the Export Control Organisation has said, “Oh! We think this does need an export licence.” Then you apply for a rating, and they come back and say, “Some of it is, some of it isn’t.” “OK—how do we know which?” “Ah! Well, you have to apply for a licence.” It is Catch-22, and it goes very slowly.

Worse still, when you then appeal, there is no response to the appeal. We have had an appeal in since April: no response. That has resulted in huge damage—by our standards—to the UK balance of payments, because instead of stuff being sold from the UK, multinational companies now sell it from somewhere else. Simple. There is a pipeline from a manufacturer, and instead of that pipeline ending in the UK and then being sold from the UK, it now stops somewhere else, and the goods are sold from somewhere else.

Chair: Thank you. We will come back to the dual use list issue later. As you know, we very specifically and very clearly highlighted the issue of appeal delays in our last report.

We come now to EGAD’s website guidance. Adrian Bailey?

Q50 Mr Bailey: If I were a small business, I would really expect to go to a Government website, i.e. the Export Control Organisation website, to get this information. Why are you doing it, and not the Export Control Organisation?

Bernadette Peers: The Export Control Organisation are doing it, but there is a great deal of information there. ADS and EGAD, in particular, just supplement what the UK Government are doing. We work closely with them, we assist on events, but in certain areas of UK industry, it is not ECO's role to give advice on US export controls, in particular. So EGAD, ADS, will fill in that gap, because UK industry needs to understand not just UK export controls but global export controls.

EGAD sees any outreach as a supplement rather than a replacement for ECO's guidance. We have outreach sub-committees with the head of the outreach unit of ECO as the chair. So we are in discussion with them about what kind of outreach they can provide, and how we can assist them. It is a mutually beneficial arrangement, we feel.

Q51 Mr Bailey: So you are effectively supplementing what I think you said was already—I am sorry if I am putting words into your mouth—a considerable raft of information. How can that make it easier?

Paul Everitt: We would like to think it is complementary. Fortunately, in our team in the individual businesses are people who have that understanding and expertise. The very nature of our kind of organisation is that by sharing that expertise, we can promote good practice, and sometimes make it easier for people to get the point of understanding than it is when they approach a governmental website.

For those who are comfortable and use the system often, the Government site is absolutely fine. For those who are perhaps new, or for whom it is a relatively new experience, the kind of help and information we provide helps them through the process.

Q52 Mr Bailey: If I were a small business applying to the Government website and I needed, say, supplementary or complementary information, would that website signpost your particular—

David Wilson: No, it does not.

Mr Bailey: That would seem a little odd, if you are providing specialist information.

David Wilson: It works the other way round, in that we point them to the darker recesses, if you like, of the Government's bits of the website, which are not always the easiest thing for a novice to navigate.

Q53 Mr Bailey: But, again, if I were a small business dealing with a Government regulatory agency, I would assume—I may have got this wrong—I would go to the Government website first. A website that did not signpost the additional information that EGAD could provide would seem, on the surface, to be a bit of a deficiency and potentially to undermine the role that it is trying to play.

Paul Everitt: We would obviously welcome that sort of recognition and we would welcome the ECO pointing people towards us. Equally, our job as a membership organisation is to support our members. That is the approach that we take. If others acknowledge and support it as well, all the better for us.

Q54 Mr Bailey: Did you have any assistance from the Export Control Organisation when you created your website?

David Wilson: I don't think so, no.

Paul Everitt: We would have said something on the website about the information we were using.

Bernadette Peers: There is a Cranfield University scheme that exporters can participate in. It was set up with the ECO, and the companies involved and EGAD were part of that. The scheme runs online courses and a day's training. That was certainly done in conjunction with the ECO, but I don't think the website or our guidance was, no.

Chair: We come now the Export Control Organisation's performance.

Q55 Ann McKechin: You have already commented on how cuts are impacting on you, in terms of the staff in classification. More generally, you have spoken about the Department having a shortage of skilled and experienced staff and the number of applications that seem to be returned to companies.

Paul Everitt: There are a couple of points to make. First, we recognise that the squeeze on public sector resources is not focused solely on the ECO and that this is a general trend across the piece. I guess the issue for industry is more the hollowing out of expertise. It is not just a matter of people being there; it is necessary that those people have the requisite knowledge and experience of what can be quite a complex set of systems to operate and a complex industry to understand. It is more the expertise that is missing.

We understand that there is a high rate of returns or requests for further information and we have asked the ECO about that. Clearly you would expect us to undertake some root cause analysis, so if all the people who are applying are not applying appropriately, we need to understand why that is the case and what actions we can collectively take to address that. It is in nobody's interest to have a system that is not running smoothly or that does not process applications in a timely way.

Q56 Ann McKechin: Has any survey been carried out of your members of their reaction and their experiences over the past year?

David Wilson: We have asked the membership a number of questions, but I suppose inevitably individual companies are reluctant to put their head above the parapet.

Q57 Ann McKechin: Has the Government carried out a survey?

Bernadette Peers: I believe Ed Bell is undertaking an analysis of why there is such a high proportion. We would be very interested in finding out the details.

Q58 Ann McKechin: In previous years what was the normal rate of rejection of applications, and what is the current rate? Do you have any idea?

David Wilson: It has always been quite high, and we have worked with the Export Control Organisation for a number of years on a course called "Producing better licence

applications”. Of course, not everybody has attended that course before they put in a licence application. That is probably—we do not know—a fairly major cause of the problem. Everybody accepts that it is incumbent on the applicant to fill the form in properly and answer the questions properly.

Q59 Ann McKechin: I’m not trying to put words into your mouth, but if a proper analysis were carried out and you could then work out what the reason was—perhaps training, as you suggested, is the most obvious reason—that would hopefully reduce the time spent by your members on the application process, and would also presumably keep costs down. I would have thought that all these cases being bounced back and forth and the correspondence emanating from it was not—

David Wilson: It wastes time and effort both in the companies applying and in the Export Control Organisation. If the analysis is carried out properly, it will show up any lack of training that is evident in the people doing the assessing. Do you want to give some anecdotal examples?

Bernadette Peers: In ECO’s defence, they are actually looking at putting “Making better licence applications” online. It will be on the website in the future so more of industry can see it; but the other side of that is that it isn’t always industry who are making the errors. We as a company have seen a string of completely nonsensical questions come back to us on a licence application, which resulted in us losing the business—we are a freight forwarder. We know that the goods got to where they were going, but they did not come through us legitimately—that is, with a licence application—because the application was bouncing back and forth, with questions that should not have been asked. So it is not always industry’s fault, and that is why we are so keen to see the result of the analysis.

Chair: Thank you very much. We want now to deal with particular aspects of licence revocations and suspensions.

Q60 Mike Gapes: A number of licences have been revoked and reviewed in the last two and a half years—Argentina, Egypt, Ukraine, Russia, Thailand and Israel are some, and individual licences may also have been revoked. What is the impact of this revocation or suspension of licences on arms exporters?

Paul Everitt: I think the first thing to say is that the nature of the business we operate in and of the regulatory system means that those situations are always a possibility. By and large, people accept that that is a risk of the business they are in. Certainly I can say that the most recent cases, particularly during the course of the year, have not raised specific issues or concerns. I think people recognise the shift in the international situation and what appears to be a proportionate response from Government as a consequence.

David Wilson: People can read the papers, and they expect that applications for goods that are perhaps sensitive, to destinations that have become sensitive, will be subject to scrutiny, and the licences may be withdrawn. I think everybody accepts that that process is going to happen.

Q61 Mike Gapes: Are you telling me there are no issues or difficulties?

David Wilson: It will cost companies money, but I'm not sure whether there are going to be screams and wails of anguish, because people can read the papers. In particular, companies don't want to be the company that is sending sensitive goods to deeply sensitive locations, and they rely on the Government to give them advice on what should and should not be allowed.

Q62 Mike Gapes: So they won't make a public protest about it, even if they are very unhappy?

David Wilson: No. The French may.

Sue Tooze: The feedback we have had is that, often, it is not the military exporters who are greatly affected, because they aren't exporting to those destinations anyway. But there do seem to be some problems in the supply chain with importing goods, rather than exporting goods.

Q63 Mike Gapes: I see. So the components are coming from elsewhere.

Sue Tooze: Inwards, yes. And sometimes with dual-use exports, although that is not largely my field of expertise.

Q64 Mike Gapes: Thank you. What about the Wassenaar agreement? The EU dual-use control regime is supposed to have been updated, but it has been delayed. What is the impact of that?

David Wilson: That has been huge. As you are probably aware, the Wassenaar arrangement every year issues a new dual-use list, and every year the European Parliament and the Commission have had a sort of disagreement. That has resulted in EU dual-use regulation 428 of 2009 not being updated since 2011. There have been numbers of changes; some of them are increases in the capability of computers that are standard. Capability is increasing all the time, and the Wassenaar arrangement accepts that that is happening, as are increases in capability of encryption. As the security agencies gain capability in decrypting, the stuff that is controlled for export because it is difficult to crack should change. That hasn't changed in three years. We are told that that problem has now been resolved between the Commission and the Parliament, and the new list updating the EU dual-use list to include the Wassenaar changes made up to and including December 2013 will be published by Christmas. That is the information I had yesterday evening. Which Christmas they did not say, but they did say it would be published by Christmas.

Q65 Mike Gapes: Do you think that when that happens it will be of benefit to UK exporters, or will there be advantages for some competitors?

David Wilson: Most countries follow quite quickly on the changes, so I think the big issue is that it should become a level playing field. I referred earlier to the UK's uniquely hard line on cryptography export controls, and what should and should not be removed from those controls under what is called the mass market: stuff that you can go and buy fairly freely. The UK has taken a very, very firm line, which is causing great confusion, and that is causing a number of multinational companies to export from places other than the UK.

Q66 Mike Gapes: So the weakening of the requirements for the controls overall would make it easier for UK-based companies to export some of this quite sophisticated IT, but not necessarily stuff that would be regarded as militarily significant nowadays?

David Wilson: None of it, really, is militarily significant. Computers become cleverer and cleverer. Until fairly recently, very clever, very fast computers—for example, the computer that the Met Office has just bought, which comes from the States, needed an export licence from the States, because it is a very clever computer and it is very quick and it works very fast. So the levels change. Provided those levels stay broadly the same, which is the purpose of the Wassenaar arrangement, fine; nobody has any complaints. We are caused difficulty when the UK takes a different line. It is a matter of interpretation—I will not go into the horrible detail of it, because it would make my head hurt.

Mike Gapes: No, I don't think we have time.

David Wilson: Differences in interpretation cause big changes in where material is exported from.

Chair: We now turn to the pre-licensing of brokers.

Q67 Ann Clwyd: As you know, for a number of years the Committees have been urging the Government to implement a register of arms brokers, and in April the Export Control Organisation issued a notice to exporters calling for evidence and seeking views. I think you were a bit opposed originally.

Sue Tooze: Yes.

Paul Everitt: Fundamentally, there were four points that we raised in the evidence that we provided. First, we all recognise that the current regime is very robust, and the question that we had was: "What improvement on the existing regime would be delivered by a pre-licensing or pre-registration system?" Secondly, we were still unclear about a specification of the problem that we were seeking to resolve in implementing that regime. Thirdly, there is no standardised definition of "arms broker" or of "arms brokering". As a consequence, the danger we perceive is of something that will impose a very significant additional burden on companies which are already compliant within the existing regime, without delivering any specific benefit of which we are aware to the broader and wider community.

Q68 Ann Clwyd: When will the review be published?

Paul Everitt: I am afraid we don't know. We answered the call promptly; it is for the Government to do its job and publish the responses.

Q69 Ann Clwyd: Have you asked the question?

Paul Everitt: Not specifically.

Chair: Now we come to transparency again.

Q70 Ann McKechin: You commented about the level of reporting. You may have heard our discussions with the UK working group on this issue earlier this afternoon. Are you as an industry now content with the level of reporting that is now required by the UK Government under its transparency initiative? On the additional announcement made by the Government about reporting, which was then withdrawn, if that was confined simply to those exports that have a military use only, rather than a dual use, would that be an onerous undertaking?

David Wilson: It would depend.

Sue Tooze: It would depend on what is to be reported.

David Wilson: One of the moans we had—if we could be said to be moaning—was that all of that information is already available to the Government now. That is particularly true—this is something that Oliver Sprague mentioned earlier—of the disconnect between what is licensed and what is actually exported. HM Revenue and Customs already have the information on what is exported—where to, under what licence, what the cost was and what the volume was.

Bernadette Peers: The difficulty with that, though, is that customers have always said that CHIEF—Customs Handling of Import and Export Freight, which is the data collector, if you like, at export—is old and struggling. Enabling it to draw that data off would be problematic; hence, it fell to industry to provide that data. There is a rewrite of CHIEF. We are hopeful that, when it is rewritten, it could perhaps collect that data.

Q71 Ann McKechin: It could incorporate it automatically.

Bernadette Peers: It would be useful to industry. Then, we would not have to do more reporting when the data is there in some form. The only problem with the collection of data is at export. An EU-to-EU transfer is not an export, so that data is not collected by Customs, unless it is under a standard individual export licence, not under open licences.

David Wilson: It is recorded and reported—

Q72 Ann McKechin: Perhaps I could suggest that if you want to come back to us with any more information, that would be helpful. You will appreciate that the Committees have indicated we would like to know what is being exported and the value, so that we are able better to scrutinise Government and so that, in turn, the public can know what is going on. If there is some technical problem you think could be overcome, and which would reduce the burden on industry, we would be interested to hear what that might be.

David Wilson: We can come back to you on that.

Paul Everitt: Our only concern is about transparency—it becomes increasingly burdensome. And, I suppose, there are a limited number of circumstances where there might be commercial confidentiality, when particular quantities of particular exports to particular countries might be viewed to be too identifiable and, therefore, this might pose a competitive risk. But I don't think we have a major issue; in fact, a greater understanding of what is going on would be to everyone's benefit.

Q73 Ann McKechin: Mr Wilson mentioned that some of this information was already available in the Government records. Could you possibly let us have a note of that in writing? That would, again, be very helpful to the Committees.

David Wilson: We certainly can.

Q74 Chair: If you could address that to the Clerk, we will make certain that it is circulated to all Members.

Finally, I want to come to a particular aspect of extraterritoriality you have raised with us. This is a very wide and long-standing policy issue as far as the Committees are concerned, and we have fought a long battle of attrition with the previous Government and now with the present Government. We have got the Government position about 75% towards where we stand ourselves. You said that ECO's guidance on extraterritoriality had been found "wanting". Can you just spell out for us in what ways you consider it to be wanting?

David Wilson: I will take a very simple view on that. If exporters are calling the trade association and saying, "What on earth does all this lot mean?", there is something wanting in the guidance. Now, it is not my area of expertise.

Sue Tooze: I think it's quite difficult for companies when they have employees working abroad. It's easier for the larger companies, who can issue guidance and guidelines. Some of the smaller exporters, who perhaps have business marketing offices abroad, might find it quite difficult to make sure they are on the right side of the legislation, without having clear guidance on when it actually affects them. That is one of the messages that will be really important. It is also difficult to monitor legislation that is enacted extraterritorially. It is going to be a problem to understand how that is going to be monitored in the future.

Chair: Right. If you feel you can elaborate a bit further and more specifically in writing to the Committees on where you find this guidance wanting, that would be very helpful.

Mr Everitt, Mr Wilson, Miss Tooze and Miss Peers, thank you all very much indeed for your evidence. We appreciate it. That is the end of the session.