



Committees on Arms Export Controls

Oral evidence: UK arms exports in 2019, HC 224

Tuesday 16 November 2021

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Members present: Mark Garnier (Chair); Stuart Anderson; Theo Clarke; Chris Law; Mrs Emma Lewell-Buck; Anthony Mangnall; Mark Menzies.

Questions 150-190

Witnesses

I: Joanne Cheetham, Deputy Director, Customs and Borders Design, HM Revenue and Customs; Richard Las, Head of Operations, Fraud Investigation Service, HM Revenue and Customs.

Examination of witnesses

Witnesses: Joanne Cheetham and Richard Las.

Q150 **Chair:** Good morning and welcome to the fifth evidence session of the Committees on Arms Export Controls inquiry into arms exports in 2019.

Today, we have representatives from HMRC. We are likely to cover HMRC's role in the enforcement of, and compliance with, export controls and sanctions; HMRC's potential role in the UK's system for post-shipment verification; and the potential impact of the UK's withdrawal from the EU on the enforcement of strategic export controls and sanctions.

We have two excellent witnesses, whom I invite to give a brief introduction with their name, rank and serial number.

Richard Las: I am Director of Operations, Fraud Investigation Service, HM Revenue and Customs.

Joanne Cheetham: I am Deputy Director with responsibility for enforcement policy, exports and sanctions.

Q151 **Chair:** We hope to finish not later than 10 past 11, which will give us an hour. Will you, Richard, briefly set out HMRC's role in enforcing export controls on strategic goods and investigating breaches of the controls—a brief résumé of what you guys do.



Richard Las: HMRC has policy responsibility for enforcing export controls on strategic exports and sanctions and also for investigating breaches of those controls. We work very closely with HM Government's export licensing community. The Department for International Trade is responsible for all licensing decisions, having first consulted other Government Departments as appropriate. We also sit on a number of cross-Whitehall tasking and co-ordination bodies. Export control is very much a team sport that the UK does well. We have no direct role in export licensing decisions. Equally, HMRC enforcement decisions are wholly independent of any other Government Department involvement beyond the providing of information or technical support.

If you want, I can talk a little about our interventions and responses.

Q152 **Chair:** Some of those questions are coming up a little later. I just want to ask a couple of quick questions. First, what is your role in respect of sanctions and how do you get involved in that? Joanne, you may reply if you're more comfortable answering that.

Joanne Cheetham: Our role is in the enforcement of sanctions. We are not responsible for setting sanctions; we just enforce the sanctions that are put in place at any given time.

Q153 **Chair:** You are an enforcer rather than a decider on sanctions.

Joanne Cheetham: That's it, yes.

Q154 **Chair:** That's really helpful. If I remember correctly, HMRC is a non-ministerial Department, but how do you maintain your independence from other Government Departments?

Richard Las: Our decisions are independent from other Government Departments. In many respects, this is enshrined in legislation. Section 18 of the Commissioners for Revenue and Customs Act 2005 places strict limits on what we can tell other Government Departments or, indeed, any other body about any enforcement action that we might take.

Q155 **Chair:** That is very helpful. When I was on the Treasury Select Committee, I remember we used to get your chief executive in, and he was very strict on that particular point.

Richard Las: It is an offence for our individuals to breach it.

Q156 **Chair:** One final point. How would any possible breaches be brought to your attention? Do you wait to hear from the Export Control Joint Unit, do you have whistleblowers or is there self-reporting by exporters? What is the source of your information?

Richard Las: I guess there are a wide range of sources for us. It is not just one area. For example, we target export control risks at border; that is a 24/7, 365-days-a-year arrangement. It is delivered by our National Clearance Hub. We respond to alerts and notifications and we make a significant number of detections in that way. We receive information or referrals from other teams across HMRC, the National Crime Agency, police forces and other UK and international counter-proliferation partners



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and from Border Force. Typically, we will get referrals from the ECJU compliance team when it finds serious non-compliance and we also get voluntary disclosures made by exporters. A significant number of those are when they have concerns about some activity.

Chair: I am going to bring in Anthony Mangnall for a brief question.

Q157 **Anthony Mangnall:** Thank you. I am just curious about how you reach the position of actually implementing the sanctions and how far you can go. A better understanding from my point of view would be very helpful.

Richard Las: On our responses to sanctions, we conduct a number of different activities. Last year, for example, we conducted somewhere in the region of 800 assessments into credible intelligence that we might have received from any of the partners that I mentioned earlier, and we received 136 voluntary disclosures. We would assess all those although not all of them will end up in a specific action. In the same year, we made 160 seizures and 103 detentions, and there were 19 compound settlements and 64 warning letters were issued. What I am trying to give you is a flavour of the different kinds of disposals that will arise from those particular activities. They are all investigated. Depending on the kind of intervention, we may use different investigative techniques.

Q158 **Anthony Mangnall:** I don't want to touch on the next question that is coming up, but there were 800 assessments, 136 voluntary disclosures, 160 seizures and 103 arrests. Are those figures high?

Richard Las: The detentions were of goods as opposed to individuals. They weren't arrests.

No, that was a fairly typical year, but probably a high point for us in terms of assessments over the past five years. Some of the other levels of activity were about typical for a normal year, but there were probably more compound settlements than we had done before.

Q159 **Chris Law:** It seems that 2018 was a high watermark for HMRC in terms of prosecutions, because you managed to get three. But in 2016, 2017, 2019 and 2020, there were none. Can you tell me how many there have been this year and if you would consider those figures to be ridiculously low?

Richard Las: So this year, we have no prosecutions currently, but six criminal investigations are being looked at by our teams and all of them are with the Crown Prosecution Service. Do I consider the figures to be low? The numbers of criminal investigations and prosecutions do ebb and flow depending on the maturity of the investigations. They can take a little time.

In previous evidence that the Committees have received from Dr Bauer and Dr Stewart, I noted that very few countries prosecute export control cases. The UK is one of a small group of countries that has built up this sort of valuable experience on the enforcement of strategic exports. Other than the United States, only Germany has prosecuted more cases than HMRC.



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Q160 **Chris Law:** You said that Germany has prosecuted more cases. We have prosecuted three in the past five years. By comparison, what is the figure for Germany?

Richard Las: I don't know that figure.

Q161 **Chris Law:** Do you take an extra interest in exports to countries of concern? Which countries are of particular concern to HMRC?

Richard Las: Generally speaking—

Joanne Cheetham: This depends on the controls that are set up and are in place. Our enforcement action is country agnostic. If cases are brought to us and are identified, we will investigate them.

Richard Las: Sorry, I was just sorting out my papers. Ultimately, we target risks as opposed to countries. That is our position. We would not specifically target any countries or human rights concerns other than when they are reflected in the UK export controls sanctions legislation. We very much target controls on risks rather than groups.

Q162 **Chris Law:** You didn't mention any countries, but you did mention human rights. Saudi Arabia clearly has an appalling record on human rights, but we sell it in excess of £4 billion in arms exports a year. Have you had to impose any sanctions against Saudi Arabia, for example?

Richard Las: I am not aware of specific cases. Joanne?

Joanne Cheetham: No. As Richard has set out, we target export controls against the risks and not specific human rights concerns other than when those concerns are reflected in the UK's export control or sanctions legislation.

Q163 **Chris Law:** I will move on; otherwise, I shall run out of time.

Conflict Armament Research told us that "there is a comparatively limited amount of data available" as the UK maintains export licence records only back to 2007.

Does that impede your investigations? Are you in HMRC adequately staffed to carry out these investigations?

Joanne Cheetham: On the export licensing data available, in practice we haven't found that we need to go back in our casework to prior to 2007, so that hasn't been a problem for us.

Chair: Joanne, I think you are a bit far from the microphone. We can just about make you out, but it is a bit distant.

Joanne Cheetham: Should I repeat that?

Chair: Yes, that would be helpful.

Joanne Cheetham: In practice, we have not found that for the purposes of our investigations we need to go back to data older than 2007. The fact that the system runs from then is not a problem for us.



Richard Las: On resourcing, we have decided to increase the capacity of the main teams involved in this work, known as Customs A and B. Part of the reason we decided to increase the resourcing was that we were suffering staff attrition in this area due to retirements and moves, which was pointing to potential future risks in maintaining our critical operational capacity.

We have considered a general increase in resourcing targeting customs work as part of the EU exit.

Finally, we wanted to broaden what we investigate and cover more risks.

To give you a sense of the scale of the increase, those teams will increase from about 20 people last year to nearer 60 by the end of this financial year.

Q164 **Chris Law:** When might it be decided that an investigation or prosecution is not in the public interest? Who would make that decision? An example that has already been touched upon is Saudi Arabia.

Richard Las: The prosecutor will make decisions about public interest tests. In England, that is the Crown Prosecution Service. There are different prosecutors in Scotland and Northern Ireland, although the system is broadly the same.

They will take a number of factors into account in the public interest test: the scale of the offence; the severity of the offence; any factors in relation to previous conduct; and, more broadly, an individual's circumstances. It is their test, not ours. We refer the case to them.

Q165 **Chair:** This is an incredibly important question because it refers to our relationships with other countries. What is behind this question, which it is important to drill out, is that, as you rightly state, the Crown Prosecution Service will look at the public interest test to see whether it is worth doing it, but people watching this sitting will be wondering whether there will ever be a situation where the UK Government as an institution do not bring a prosecution against an arms export to a country where we may have a diplomatic relationship that we want to maintain.

How do we make it crystal clear that an infringement of the rules is prosecuted, irrespective of who the customer is? I completely accept your answer about the Crown Prosecution Service, but I think I read that you have to refer a case to the CPS to do it. How do you ensure that you can demonstrate, beyond any doubt, that you are not failing to pursue a case where you feel you should because of pressure from the Foreign, Commonwealth and Development Office? I appreciate that your non-ministerial Department position is very important, but the question is how you demonstrate very intense scrutiny.

Richard Las: I fully understand the question, and it applies across much of HMRC's activities—for example, where we are investigating taxpayers or other entities. That is absolutely why HMRC is a non-ministerial body and has its independence enshrined in legislation.



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It is hard for me to prove a negative. I have worked in this area for many years. I assure you that I have never felt pressurised to stop an action or to take action against an individual.

We would consider previous instances of non-compliance. Were the individuals aware of the controls? Had we issued warning letters? What is the sensitivity—not in a political sense—of the goods and intended destination? It is then about evidence of deliberate attempts to circumvent controls.

All the decisions that we make in the legal process are scrutinised closely by the judicial system, but we also have a series of internal controls that look at our decision making and checks and balances, where people will review case decisions and case decision logs. I appreciate that that is inward, but that is our process.

Q166 **Chris Law:** Will you provide cross-country comparisons of prosecutions? You mentioned the US and Germany. What checks and balances do they use before considering prosecution, compared with the UK? Would it be possible to supply that?

Richard Las: Absolutely, we will try to get that information for you.

Chris Law: The Committees would benefit from that. Thank you.

Q167 **Stuart Anderson:** I should be interested to hear what HMRC is doing to meet the challenges of technological advancements, specifically with export controls.

Richard Las: It is fair to say that new technologies may be added to control lists from time to time. The nature of emerging technologies means that, almost by definition, control lists will tend to be behind the curve.

HMRC does not lead on which technologies to control; again, that is a DIT licensing issue. We do have a role to play, and our risk and intelligence service works closely with other Government Departments to provide us and other Government Departments with analysis of potential risks, including those from emerging technologies, and to help us to manage and understand them.

One of the aims of that work is to identify as soon as possible where the new challenges are and make sure that they are brought to the attention of DIT so that it can include them in its considerations around licensing requirements.

Q168 **Stuart Anderson:** Do you believe that there is enough interaction with different departments to make sure that that is sufficient?

Richard Las: The different departments work closely together on existing and emerging technologies; there is an awful lot of exchanging of intelligence about these matters.

Q169 **Anthony Mangnall:** Thanks for that answer, but will you help me by



identifying some of the technological challenges that you face? How quickly is it evolving?

Richard Las: Our role is very much in the enforcement of technologies on the list to control.

You have two areas: emerging technologies—more physical technologies where, once they are identified and put in any licensing requirement, we can set up our profiles and investigations around them—and intangible transfers, which in the absence of a physical good, would be about intellectual input on the issues.

From an investigative perspective—looking at HMRC’s capabilities more broadly—the absence of a physical good does not stop us conducting an investigation. We have accountants, tax specialists, cyber-crime specialists and forensic teams that can look at digital material. We have a wide range of operational teams that can conduct these intangible investigations. We have the capability to manage those, very much as we would in other areas of tax as well as the sanctions side.

Q170 **Theo Clarke:** In its report on the 2016 annual report the previous Committees on Arms Export Controls expressed concern that the level of resources provided for HMRC’s export controls enforcement was not enough to deal with the scale and complexity of the task. What are the current resources being allocated to these areas, and what is the current vacancy rate?

Richard Las: I alluded to the point that we are increasing resources in this area from just over 20 a year ago and expect to have about 60 people in place by the end of the financial year. Almost half that increase is at higher officer level—individuals who bring a really good degree of investigative experience with them. They might not be exports experts, but they will develop that expertise over time. They bring with them a really strong skillset. Part of the reason we are doing that is to ensure we have a much stronger and resilient position going forward, as we anticipate that with the age profile of our teams we might lose some people. Absolutely: we are increasing our resourcing in this area.

Q171 **Theo Clarke:** What are the retention challenges that you face, and how specifically are you meeting them?

Richard Las: We face retention challenges across the board. We have highly skilled and experienced investigators with capabilities that other parts of HMRC and other organisations would desire. Some people will leave because there are other opportunities. We have lost a number of people over the last couple of years to retirement. We would expect that. We are not seeing an additional retention problem in these teams compared with elsewhere. It is in the nature of the business that we have highly regarded and well-trained individuals who will find other opportunities.

Q172 **Theo Clarke:** Prospect told us that there is a shortage of ECJU technical experts to accompany compliance teams on visits. Has HMRC had similar



challenges?

Joanne Cheetham: Having ECJU staff available to accompany us has not been a problem; people from ECJU have been available when we have required them.

We have a well-established visiting programme—post-clearance visit projects and work—and we have not experienced staff shortages in doing that.

Q173 **Chair:** You mentioned an increase in staff resources from 20 to 60 people. How will you allocate them among your teams?

Richard Las: They will primarily be in our Customs A and B teams. A number of them will be split between working on improving our intelligence and assessment analysis and some of the assessments I mentioned, and others will pick up and conduct investigations into any issues that need to be looked into.

Q174 **Chair:** So it is more about intelligence than investigations?

Richard Las: It will be. Across the board if we look at the type of outcomes and activities that we are looking to deliver, that will mean that we will be able to do more outreach work to companies and sectors of interest so that we can raise awareness. We anticipate probably more activity across the board in terms of warning letters, compound settlements, seizures and disruptions. All those will be able to develop a bit more. I do not know whether that will ultimately lead to more prosecutions. That will depend on the nature of the cases and the investigations that we take. It is not necessarily a given that it will do, but it may do.

Q175 **Chair:** But prosecutions do not necessarily result in better compliance. If you are making people scared of being prosecuted, you can save the cost.

Richard Las: I agree with you.

Q176 **Mark Menzies:** In previous written evidence you stated that a memorandum of understanding and service level agreement was in place with the ECJU. What are the main challenges that you and the ECJU face in working together?

Joanne Cheetham: We have a high degree of collaboration. I would not say that there are challenges in our working together. We co-operative extensively and we support the ECJU in its work. For example, if it is running outreach or educational events, we may support them in that. Likewise, it supports us by providing the technical expertise that it has when we require it. It's not a set of challenges but very much a partnership that works very well.

Q177 **Mark Menzies:** Are you involved in the ECJU transformation programme?

Joanne Cheetham: I don't think we are directly involved.



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Richard Las: No, I think we are in a number of working groups in part of that, but we are not leading the programme. Where it is relevant to our enforcement activity, we are involved in those groups.

Q178 **Mark Menzies:** The final question. What is the latest position on the implementation of the new LITE IT system? In your previous written evidence, you said it would be operational in January 2020, but I don't believe that that has actually happened.

Joanne Cheetham: The LITE system is obviously a DIT system from the HMRC perspective and the necessary connections between the LITE systems and HMRC systems were made in May this year. The systems are properly joined up and that is working effectively.

Q179 **Mrs Lewell-Buck:** I just wanted to explore post-shipment verification. Our Committees previously said that the Government should look at end-use monitoring but their response to us was that that was unnecessary and unfeasible. That would be the same even on a really small scale because it would be too resource intensive a task. As you know, other countries do that, so I wonder whether you agree with the Government's assessment that it would be unnecessary and unfeasible? If they did consider this, what role do you think HMRC would have in post-shipment verification?

Joanne Cheetham: Post-shipment verification is not a matter for HMRC. That is a DIT matter.

Q180 **Mrs Lewell-Buck:** But what kind of role could HMRC have in post-shipment verification?

Joanne Cheetham: We would not have any sort of any enforcement role in such a programme. It is possible that we might have data that could be fed into any such programme, but we would not have an enforcement role.

Q181 **Mrs Lewell-Buck:** Do you have any role in other countries' post-shipment verification visits that currently take place in the UK?

Joanne Cheetham: We have in the past had an informal role in the US verification programme. That was solely acting as a conduit for some of the questions that the US authorities wanted to pose to UK traders, but we had no formal role in that.

Q182 **Chair:** On that, I am interested in how you follow up an investigation if something has been shipped out of the country if you don't do post-shipment verification. That opens up a rabbit warren of questions. If the Americans can come in and informally ask questions, why can't the Israelis, for example? Surely there must be some sort of collaborative approach between HMRC and other customs jurisdictions to make sure that what you are all trying to do is working well. That would apply to Five Eyes if nothing else.

Joanne Cheetham: As I said, post-shipment verification checks are a licensing matter, and that is a question for DIT. On more general



international co-operation and our investigation and intelligence work, HMRC co-operates extensively with a wide variety of partners. We do that through legislative gateways and memorandums of understanding when they are in place. We also have our fiscal crime liaison officer network which is made up the accredited investigation and intelligence officers who are placed in UK embassies and high commissions. They co-operate closely with the relevant customs, tax, police and judicial authorities in those countries. We do a huge amount of international co-operation work and it is a key part of what we do. We do not actually do post-shipment verification checks as they are a licensing matter for DIT.

Q183 **Chair:** That particular point is out of your jurisdiction.

Joanne Cheetham: Exactly.

Q184 **Chris Law:** You've actually answered the first part of my question but, more pertinently, what challenges does the UK's withdrawal from the EU cause for HMRC in the enforcement of export controls and sanctions? It is highly contentious, but does the Northern Ireland protocol cause any specific enforcement challenges now?

Joanne Cheetham: On the general point, the enforcement of trade sanctions is conducted in the same way as it was prior to EU exit. The responsible agencies continue to be HMRC and Border Force. We still have access to the key systems that we continually use in the enforcement of export controls. They are UK systems, and they are the customs handling of imports and exports freight, which is a customs system, and SPIRE, which is the DIT licensing system. We still have the robust mechanisms in place to ensure that sanctions are adhered to.

As required by the Northern Ireland protocol, certain EU measures, including sanctions and EU dual-use controls, are applicable in Northern Ireland and they are implemented by regulations under the Sanctions and Anti-Money Laundering Act 2018.

Q185 **Chris Law:** Are you saying that no challenges have been presented as a result of either leaving the EU or the Northern Ireland protocol and that what you have in place is adequate? Is that correct?

Joanne Cheetham: To date, that is our experience. Obviously international co-operation is at the heart of our work on sanctions, which work most effectively when they are implemented and enforced collectively. We anticipate that we will continue to work with the EU to tackle global challenges.

Q186 **Chris Law:** Just to explore it a little further, are there any intelligence or data-sharing arrangements or databases to which you no longer have access in the same way that the ECJU no longer has access to the EU denials database? If so, how has that impacted on investigations and enforcement and how are you meeting the challenges?

Joanne Cheetham: Our fiscal crime liaison officer network that I mentioned earlier still has access to Europol systems. There is one area on the Naples II agreement where we are attempting to re-establish



operational capability which is provided for under the EU-UK trade and co-operation agreement protocol on mutual administrative assistance. That is work in progress.

Q187 **Chris Law:** Again, there have been no challenges with regard to databases and the sharing of intelligence as a result of our leaving the EU. Is that right?

Richard Las: Joanne has covered the point about the databases. Ultimately, we have access to the vast majority of the data that we need. Where any frameworks have changed at all, there are generally other ways to fall back on that we can use. We still have a network of officers in embassies across the EU and other areas. They are still able to operate with their counterparts. I would say that, at the moment, we are able to operate effectively.

Q188 **Chris Law:** I am obviously aware that you have networks in embassies across the EU but how close are you to up-to-date information and intelligence compared with where we were when we were in the EU? Or do you feel that drift is happening?

Richard Las: I find that really hard to answer. I don't feel that drift is happening. The reason I paused there is that, for that whole period, we have been through the covid pandemic where the world has been a little bit different anyway. Some of the operational practices have been slightly more challenging across the UK and internationally but, ultimately, we all have a shared interest in ensuring that the various sanctions to do with strategic export controls are managed and put in place. We co-operate on those issues and serious and organised crime issues. It is in everyone's interest to do so. I don't sense a weakening of resolve.

Q189 **Chris Law:** Perhaps as a final question, are any specific challenges in respect of sanctions enforcement? Do you have any examples of overseas Governments who do not agree with UK sanctions refusing to co-operate on their enforcement?

Richard Las: I don't have an example of that. It feels to me that there is a very strong will across the international community to work together on this and to co-operate to make sure that it works properly. If the environment were to change significantly, we would probably have to re-assess that but, at the moment, there is, as Joanne alluded to, strong co-operation. The international part of this work is really important.

Q190 **Chair:** We are clipping along at a fair old pace and this will probably be the last question. Can we just talk about brokering companies and brass plate companies overseas? Does HMRC have any role or jurisdiction over those companies acting either as intermediaries or as brass plate companies overseas?

Richard Las: A number of organisations in the UK may have an interest, but we routinely assist overseas or UN investigations that involve UK-registered companies and individuals. As I said earlier, we conduct a preliminary assessment of all credible allegations of strategic export control offences. Where there is evidence of breaches of UK export



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controls by individuals or UK-registered brass plate companies, we will then assess whatever enforcement action is required on a case-by-case basis.

In practical terms, what we generally find is that it depends on the physical UK company footprint and the involvement of UK individuals. For example, where there is no physical presence in the UK or no individual involved, there is little to be gained in trying to prosecute the empty chair of a director, where a patsy director has been put in place. It would not be appropriate in those circumstances for us to allocate resources to a full criminal investigation.

Where there is a UK footprint, we have had a number of successful enforcement outcomes over the years that involved trafficking and brokering offences—nine prosecutions since 2007. I know that is a long time, but it indicates that where we can find companies and individuals involved we will follow them. We have also set a number of compound settlements—12 in the past few years or so, I think.

Chair: That is very helpful. I think we have asked all the questions we wanted to, so it only remains for me to thank you for your time. It has been incredibly helpful and very useful.