

Committees on Arms Export Controls

Oral evidence: UK arms exports during 2016, HC 666v

Wednesday 6 June 2018

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Members present: Graham P. Jones (Chair); Ann Clwyd; Leo Docherty; Mr Marcus Fysh; Mike Gapes; Mr Ranil Jayawardena; Emma Little Pengelly; Mark Menzies; Priti Patel; Faisal Rashid; Gavin Robinson; Lloyd Russell-Moyle; Henry Smith; Stephen Twigg; Catherine West.

Questions 217-298

Witnesses

I: Sir Alan Duncan MP, Minister of State, Foreign and Commonwealth Office, Graham Stuart MP, Minister for Investment, Department for International Trade, Edward Bell, Head of the Export Controls Joint Unit, Department for International Trade, and Ben Fender, Head of Security Policy Department, Foreign and Commonwealth Office.

Examination of witnesses

Witnesses: Sir Alan Duncan MP, Graham Stuart MP, Edward Bell and Ben Fender.

Q217 Chair: Thank you very much for coming to what has been an interesting inquiry over the past few months. You arrive at the penultimate point, I think, as we come towards the final evidence session in our review of arms export controls during 2016.

I would like to start by asking you why we have Ministers before the Committee and not Secretaries of State, given that we wrote to the Secretaries of State some four weeks ago asking for a date that was suitable for the Committees to accommodate them and hear evidence from them. Is there an explanation for why they are not attending? I think Members are concerned about their non-attendance.

Graham Stuart: Chairman, I am sorry that the Secretaries of State were not able to be present today, but I hope that the presence of Sir Alan and myself is a sign of the seriousness with which we take the Committees. We recognise the important role that they play in scrutinising UK defence and dual-use exports. Export controls are an important part of the international rules-based system for countering the proliferation both of weapons of mass destruction and conventional weapons, as well as ensuring that our obligations and values are upheld across a wide range of concerns, including sanctions, human rights and regional conflict.

I agree with you, Chairman, that it is important that the Government are held to account to ensure that our controls are effective and transparent.

Sir Alan Duncan: I am sorry if you feel that you have got the monkey rather than the organ grinder, but I hope that we can answer questions to your satisfaction. We have been working very closely together to make sure that the quality of the evidence we will give you is, we hope, up to standard. The Foreign Secretary is seeing the Prime Minister of Israel—it is very difficult even for him to be in two places at once.

Q218 Chair: Just to be clear, the Committees did offer a date suitable to the Secretaries of State, not the other way round. I would add that a note in your ministerial portfolio, Sir Alan, is that you are charged with “relations with Parliament”.

Sir Alan Duncan: Which I hope I will be exercising properly this afternoon.

Q219 Chair: Okay, but in future do you think there would be a chance of exercising that on the Secretary of State?

Sir Alan Duncan: That would be entirely up to him, of course.

Q220 Chair: We will start the substantive questions with the fact that we have heard from the Government that they are encouraging industry to use open licences rather than standard licences. In what cases are standard



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licences appropriate, rather than open licences?

Graham Stuart: I will answer that, if I may, Chairman. I don't know whether it is worth setting out an overview on the licences or not; I know that it is in the annual report, so perhaps it isn't.

Chair: There is no need to, no.

Graham Stuart: Okay, excellent. The open licences provide for situations in which what is needed is a more tailored and flexible licence. In the case of OIELs—you have your OIELs and your OGELs—they are valid for up to five years and are granted to support more complex business activities than those generally covered by the standard individual export licences or SIELs. Applications must include goods to be exported and destinations, but the specific quantities and named end-users do not necessarily need to be provided before the licence is issued. This data must be provided over the lifetime of the licence. None the less, OIELs are not a simple or quick option for exporters and the application process can take several months. Terms and conditions for use will vary depending on the goods and export destinations. Holders of OIELs are subject to audit by DIT compliance inspectors, but when there is a repeated need for licences OIELs can create a system that is equally thorough but allows less bureaucracy at either end of the process.

Q221 **Chair:** That last point was very interesting. How often in 2016 were companies that used open licences subject to compliance audits?

Graham Stuart: As you will know, there were 406 OIELs issued—in 2017, in fact. We carried out 574 audits in 2016 and 549 in 2017.

Q222 **Chair:** That is of OIELs?

Graham Stuart: That is the total of all compliance audits. That is the OGELs and the OIELs.

Q223 **Chair:** Just to be clear, how often in 2016 were overseas-based companies subject to such compliance audits, and how far are resource implications a constraint on conducting such audits overseas?

Graham Stuart: We do not audit overseas.

Chair: Interesting.

Q224 **Mr Jayawardena:** Would you agree, Ministers, that it is promising to see 82% of SIELs now processed within 20 days, up from 2015? Would you also agree that it is unacceptable that the industry says that OIELs are impossibly difficult to get renewed in an efficient manner?

Graham Stuart: Of course, on both sides one tends to get some criticism, given the fact that industry complains about the scope of the open licences, and would like it to be broadened, and the fact that when it comes to renewal it would like that to be rubber-stamped, it would be fair to say, for commercial reasons. We are extremely thorough in our approach and look in detail at whether the situation has changed and whether it needs to be reviewed. That is the reason we do it. We make no



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apology for being extremely thorough. The open licence provides benefits to those who receive it, but we must ensure that they are entirely in line with Government policy.

Q225 Mr Jayawardena: So you do not think that there is anything that can be done to improve the process to renew or replace OIELs?

Graham Stuart: I would never say that, and of course the system we have had has been in place for coming up for two years. We are always seeking to improve our processes, balancing the need for the greatest rigour and thoroughness with the smoothest possible process to minimise unnecessary bureaucracy at either end of the process, whether you are the applicant or part of the Government.

Q226 Mr Jayawardena: We have received evidence as a Committee that the industry welcomes the efforts from the team within Government that has been working on LITE. It is their hope that LITE will help increase efficiency for both Government and industry. Could you just explain for the record, from your perspective, what the Government believe the shortcomings of SPIRE are, and how you as the Government believe they would be addressed by the new LITE system?

Graham Stuart: The current system, SPIRE, will be replaced, as you say, by LITE. SPIRE is around 10 years old and needs to be replaced to ensure that the digital platform meets modern standards and allows business improvements to be made. You will be pleased to hear, those of you who have followed Government IT procurement in the past, that LITE will be released in phases. The first phase, comprising a new digital tool to help exporters assess whether or not their export requires an export licence, is due to be released for testing by a small number of exporters later in 2018. We envisage completing the transition to LITE over the course of 2019, and the development of the new digital licensing system—as you rightly say, Mr Jayawardena—gives an opportunity to look at all our operating procedures to ensure that they are the best they can be.

Q227 Mr Jayawardena: I am very grateful to hear the Minister say that everything will be looked at. BAE said to the Committees that they are hoping that in due course it will interface with the CDS system that HMRC is implementing hopefully to reduce the amount of duplication. Is that the intention? Is that being given due consideration?

Graham Stuart: Yes, we are very much looking to have the systems co-ordinated. It should mean not only a smoother system, providing a superior service to those of us in government, but it also—and importantly for this Committee—provides the opportunity going forward to be able to build on what is already, and I hope the Committee would agree, the most transparent system in the world. As we have improved data and better digital systems, we should be in a position to share more, in the most appropriate way, and make sure that the scrutiny that this Committee and others wish to give to the Government can be more effectively facilitated.

Q228 Catherine West: As a quick follow-up, will Brexit, with all of its different changes, have an effect on the LITE system, or will that just be

transferred over? I can see a shake of the head—

Graham Stuart: We do not expect it to have an impact—

Q229 **Catherine West:** Obviously at the moment it is very much EU-compliant, and a lot of the modelling that is done—

Graham Stuart: Our aim is to maintain continuity, as in so many areas. The aim is that the system should be a superior system, better linked across Government as has just been said, but which also ensures continuity in the existing situation.

Q230 **Catherine West:** So we will just carry the EU framework over as well, because quite a lot of the human rights side is EU—it is a tapestry of different values that have come through the EU over 40 years. I just want to know, is that going to remain—

Graham Stuart: The aim is for continuity and transfer over. The new system, were changes to be necessary, should enable us to make any such changes more easily.

Q231 **Catherine West:** We heard from one major stakeholder that the establishment of the Export Control Joint Unit has had no noticeable impact on the licensing process. How do you respond to that?

Sir Alan Duncan: In terms of internal administration, we think it has had a very positive effect. It has very successfully joined up all the elements that need to feed into this process. From an FCO point of view, we have 13 staff dedicated to it who are serving a very effective role in co-ordinating the elements that need to go into this joint unit. For instance, we have to look at our geographical directorates within the Foreign Office—the human rights policy unit, the sanctions team, and of course FCO lawyers—and indeed our entire network overseas. All of these have been well brought together and co-ordinated so the setting up of the ECJU has been a success. Actually, what is also true is that in terms of meeting deadlines and things, the Foreign Office side of it certainly exceeds all targets in over 90% of instances. I would say that it is not only effective in co-ordinating, but very efficient.

Q232 **Catherine West:** What evidence is there that the joint unit has improved the licensing system?

Graham Stuart: Perhaps we can bring in the head of the unit to say something about it.

Sir Alan Duncan: Sing your own praises.

Edward Bell: What I cannot do is demonstrate the improvement in terms of metrics, because what we didn't do with the joint unit is fundamentally change the system where one Department is a regulator and a number of other Departments act as advisers to that regulator. That system, which was there before the joint unit, is still in place and continues.

The performance against licensing targets, which is one measure and only one measure, has shown no decrease, but what I would say is that from



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the evidence of my own eyes I can see every day colleagues from the MOD, FCO and DIT getting up, talking to one another and working through the cases in a way that they couldn't when they were scattered across a number of different buildings. I think it is that closeness. It also means that when we are developing policy it is much easier to sit down to talk through issues with people. I have to say that preparing for event like today is a lot easier when people are in the same room.

Q233 Lloyd Russell-Moyle: You just said that you didn't change the system, so there that there is still a Department and a Secretary of State—or a Minister—with overall sign-off. Does that make a mockery of the idea of it being a joint unit? Isn't it actually one unit, because the Department for International Trade can always overrule any of the other Secretaries of State, potentially putting profit before national security?

Graham Stuart: It is a joint unit because there are advisory Departments and then there is the Department responsible. The Department for International Trade is the Department responsible. We take our role and the requirements of the criteria seriously, as I would hope that the hon. Gentleman would recognise.

Sir Alan Duncan: May I say that there is a slight misunderstanding suggested in the question, that somehow the Department for International Trade would "overrule"? What is happening here is a process of measuring decisions against the criteria. That is not a matter of decision; it is a matter of measurement. So the concept of overruling that you are suggesting in your question I sense, from where I sit, does not really apply.

Q234 Chair: If DFID or the Foreign Office has concerns, but the Secretary of State for International Trade signs off a case which has been referred because it is a difficult or controversial decision, what happens where there is a disparity of view? It may not be a single issue such as you have just described—singular to one Department—and there may be multiples, with two or three Departments affected that do not share the same common view, but the Secretary of State for International Trade signs it off and makes the ultimate decision. How does that work?

Graham Stuart: It is important in an accountable system that we are clear who the decision maker is. Ultimately, the decision is taken in the Department for International Trade, where Ministers—whether that is the Secretary of State or me—will weigh the evidence carefully and take on board the differing views and the evidential base before coming to a conclusion.

Q235 Chair: But it is the Secretary of State for International Trade who signs it off, whose ultimate decision it is?

Graham Stuart: Ultimately, it is the Secretary of State for the Department.

Q236 Faisal Rashid: What specific concerns relating to particular licence applications are escalated by civil servants to Ministers? We need some

examples.

Edward Bell: The different Departments involved have their own criteria and thresholds for referral of cases, but the sorts of issues that the Chair was talking about, where there may be differences of view between Departments, we have a weekly case conference to discuss those kind of cases. The idea through that process is to reach a position where all the Departments are in agreement. If we cannot reach agreement, then in DIT certainly we would be referring cases to Ministers for a final decision.

Other scenarios might include where there is a deterioration in the security conditions in a given destination, so there is much closer and deeper scrutiny of the issues around licensing decisions. That would be an example of where cases would be going to Ministers.

You will have to forgive me: there are about six different thresholds that we operate, and having written the policy I am now struggling to remember all of them. However, I am happy to confirm the details in writing.

Q237 **Faisal Rashid:** In what proportion of those cases does that happen? Roughly, in percentages.

Edward Bell: In terms of numbers of cases per annum, we were looking at around about 100 cases, although the last time I looked at this was in 2015 or '16. I am talking about individual licensing cases. Having said that, there will have been circumstances I know of—we may have been carrying out a review—where multiple licences may be involved in a consultation.

Q238 **Faisal Rashid:** This may be a question for the Ministers. Where Ministers are involved in individual cases, what criteria or evidence do you apply when determining whether the threshold is met or any of the criteria breached?

Graham Stuart: The golden rule is to follow the consolidated EU and national arms export licensing criteria, because they provide a comprehensive framework for assessing export control risk. So it is very much in the light of the criteria, which make us all—including Ministers—think carefully about the capabilities that exports provide to end-users. All licence applications are assessed on a case-by-case basis against the eight criteria. DIT always seeks to take, and takes, into account advice from a range of Departments, as has been said, when making a decision about whether to grant an export example.

A good description of the criteria is set out in the annual report, in Annex A. To illustrate how it works, however, perhaps we could talk about Criterion Two and the role that the FCO plays in that.

Sir Alan Duncan: First of all, the Foreign Office actually assesses everything under criteria 1, 2, 3, 4 and 6.

In terms of it coming up to Ministers, I have to say to the Committee that I have very little experience of this because it has hardly ever happened to



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me as a Minister. It is referred to Ministers who have the geographical responsibility, and it just so happens that my portfolio does not really include countries to which we are exporting in that way. It would be more relevant, for example, in the Middle East, which I do not cover, and we are not at the moment selling many arms to Russia, for instance, which I do cover. The judgment I am explaining to the Committee is therefore not something that I have really been subject to as a Minister. This has not come across my desk very much, but it will have come across the desk of other Foreign Office Ministers.

Q239 Chair: May I just make one point? I know that it seems unlikely that we export arms to Russia, but recently when the Committee asked the Secretary of State for information on that, there was a very thick spreadsheet on arms exports to Russia—that is, in the reply we got back after I wrote as Chair to the Secretary of State. Some of that could include dual use, civilian use that could be used for military use, for example—so that would cover your sphere of geographical responsibility.

Sir Alan Duncan: Forgive me if I was being a touch—

Chair: Controversial arms sales.

Sir Alan Duncan: I was being a touch flippant, because obviously there are sanctions against Russia. I was explaining why things do not come across my desk—because most of the countries for which I am responsible are not those to which we are issuing licences. Ben Fender, who I should introduce properly as the head of our Security Policy Department, may be able to correct me if I am saying anything that is inaccurate.

Ben Fender: Yes, that is exactly correct. My understanding is that in 2017 we approved around 285 export licences to Russia. A lot of that was equipment for the oil and gas sector—

Chair: Which was the point that I just made about civilian-use, dual-use licences.

Ben Fender: Precisely. And in answer to your question about the types of issues that we would elevate to Ministers, it very much depends on a case-by-case basis. Clearly for some countries it may be controversial and the consequences of either approving or advising against a licence may be such that we would put that to Ministers. In many other cases, the decision or advice may be relatively clearcut. It is quite hard to offer you general guidance on exactly the issues we would put to our Ministers.

Q240 Lloyd Russell-Moyle: Edward, in the correspondence that came out during the judicial review, you said about the Saudi exports that your gut says that arms exports to Saudi and Yemen should be suspended. Do Ministers often overrule your gut?

Edward Bell: The judicial review judgment of last year, as you are aware, is subject to appeal and is likely—

Lloyd Russell-Moyle: I am not asking you to refer to that case; I am just

asking you how often Ministers overturn your gut feeling.

Edward Bell: I do not think my gut is at all relevant to licensing decisions.

Q241 **Ann Clwyd:** How subjective is the licensing process? To the extent that it is subjective, how far can the consolidated criteria be said to represent a solid legal constraint on the Government's freedom of action in granting licences?

Graham Stuart: I would say that it was not subjective and that—these Committees of all Committees would agree—it does provide a really solid framework. The evidence you have heard in previous sessions has had witnesses saying that the criteria are good—that they are a good set. The reason we have the joint unit is to ensure that we have co-operative working between the three key Departments, but not solely those Departments—of course, the former Secretary of State at the Department for International Development is nodding. But there is a whole series of Government Departments and others who are consulted.

We are not only consulting across Government. Of course, we got constant complaints about the time it takes to process licence applications because all of that goes on through the unit and with others outside it, and it also incorporates all of those appropriately in post around the world to ensure that that information is captured. All of that is captured against the criteria, one after another, to ensure that we have a coherent, robust and objective system by which any particular application can be judged.

Q242 **Chair:** How much as a percentage is arithmetic and how much is judgmental?

Graham Stuart: I find that a difficult question to answer. We can go through the criteria if you wish, and I want to throw it back: how much would your judgment be arithmetic on that? There is a process for each of the criteria. Criterion 2 can be quite illustrative in terms of both international humanitarian law and human rights—

Sir Alan Duncan: I can add to that, if it will help. There is a process. For instance, there is an EU user's guide to the common position on how to interpret criterion 2. So there is a methodology here; it is not just a subjective process at all. There is a clear methodology within which and against which the judgments can be properly made.

Q243 **Ann Clwyd:** In addition to that, what end-use monitoring is done to ensure that the arms we export are compliant with the criteria?

Graham Stuart: We do not conduct end-use monitoring. It would require the permission of the country where we would be doing it and it would make no-notice inspections very difficult. What we do do is have an extremely thorough process against the criteria when we get a licence application, as we have just discussed. We feel that the most effective, proportionate methodology is to analyse and decide before you issue the licence, rather than hope that any form of verification afterwards could be a suitable methodology.



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Q244 **Ann Clwyd:** I understand the Americans do it, and the Germans as well, so why can't we?

Graham Stuart: The Germans have recently brought in an approach for small arms. I think they have done a total of two inspections so far, and say that there will be at most five a year. We do not have a closed mind; we are always looking to see how we can improve our systems. We will seek to learn from the German experience, but to date, we are not convinced that it offers a superior alternative to what we currently do.

Q245 **Leo Docherty:** Mr Stuart, we have heard a proposal for a presumption of denial in respect of licences for exports to countries that have not signed the arms trade treaty. How would you regard that proposal?

Graham Stuart: Sir Alan, do you want to answer?

Leo Docherty: Between you—whoever.

Sir Alan Duncan: The point is that we consider every application on a case-by-case basis. I am very familiar with the arms trade treaty—I helped to steer it through the UN when I was a DFID Minister—and our policy is to get as many people as possible to sign up to it. There are not enough yet. We do not necessarily want to assume that we should do no business with such countries if they have not signed up when we are in the process of trying to encourage them to sign up. We apply the consolidated criteria, and of course criterion 2, on that case-by-case basis. We always have in the back of our mind the efficacy and importance of the arms trade treaty, but a presumption of denial could actually end up being counterproductive in that area.

Graham Stuart: I would add that whatever presumption you start with, you will go down the criteria. You have to do that, and you have to do it in a rigorous and thorough manner. You have to talk to people across Government, and beyond, and come to the right conclusion. You can start presuming what you like, but you have to ensure that everything is checked against the criteria. When you do that, you hope that you will come to a conclusion.

Sir Alan Duncan: Chair, I would add that the consolidated criteria include the provisions of the arms trade treaty.

Q246 **Stephen Twigg:** May I ask about the role of the Department for International Development, particularly as relates to criterion 8? Why are there no DFID staff in the joint unit?

Sir Alan Duncan: DFID is fully involved in that. Again, we have a former Secretary of State here, who I hope would confirm that they were when she was Secretary of State. They play a vital role. Less than 1% of licences issued last year qualified for criterion 8—I think it was something like 0.6%—

Q247 **Stephen Twigg:** What do you mean by that? Do you mean countries that are ODA recipients? Surely criterion 8 is relevant—



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Sir Alan Duncan: No, it is about whether the recipient countries are on the World Bank's international development association list—so it is not an ODA-related threshold or qualification, if you like—and whether the value of the application exceeds the threshold set by the criterion 8 methodology. If it exceeds the threshold, the central DFID team seeks further advice from DFID country officers, so it goes out to their own network, or senior advisers, and they consider the potential impact of the proposed export on the sustainable development of the recipient country. DFID are very much a central part of the process, as is the Department for Business, although they are not, in the same way as DFID, a formal part of the permanent structure of the joint unit.

Q248 **Stephen Twigg:** Edward mentioned a weekly case conference of officials. Would DFID officials be part of the weekly case conference?

Edward Bell: Not generally, no. I would just add, do bear in mind that DFID are also informing my colleagues in the Foreign Office in their assessment against a range of criteria through their presence in posts. When my Foreign Office colleagues are consulting post on a given licence application, any number of units in posts, including DFID, may feed in advice. So DFID are involved across a range of criteria, but they lead only on one criterion.

Q249 **Stephen Twigg:** So when the predecessor CAEC looked at the issue specifically of arms sales to Yemen, one concern that was raised was that had the arms sales been to the Government of Yemen, DFID would have had a say under criterion 8, but because the arms sales were not to that country but to Saudi Arabia, DFID did not have any say, even though the impact of the use of those arms was certainly on a country that has massive challenges in terms of development as well as conflict. Would it be possible for DFID's role to take into account where the weapons may be used, as well as the country to which the weapons are being sold?

Ben Fender: If I may answer that one, when we assess licences for countries that are engaged in the coalition in Yemen, we absolutely consult DFID, and its advice on the humanitarian situation feeds into our assessment against criterion 2(c), which is whether or not there is a clear risk that the export of those items might lead to a serious violation of international humanitarian law. As Edward Bell said, the advice from DFID feeds into the Foreign Office picture of the situation, which we then use to advise DIT on whether or not that criterion has been met.

Q250 **Stephen Twigg:** Just for my understanding, DFID leads on criterion 8 and has an input on criterion 2. Do they have an input on any of the other criteria?

Ben Fender: Its advice might well be relevant, for example, to criteria 3 or 4. Essentially, criterion 3 is about internal security and criterion 4 is about regional security. It would clearly depend on the situation, but I think the point to make is that, as the Foreign Office, we will take information from the fullest possible range of sources, which obviously includes our Government partners as well as NGOs, the media and other sources when we make those assessments.

Graham Stuart: And criterion 6 as well, just to add to that pot.

Q251 Priti Patel: The Government occasionally gives equipment to other state or non-state actors in support of the Government's wider security and foreign policy aims. How far are you able to state the specifics on the wider security and foreign policy aims and objectives that are being furthered by gifting controlled equipment in particular cases?

Sir Alan Duncan: Gifting has to be subject to the same criteria as anything else. They are given without a price tag on them, but that does not mean that they are not subject to the same scrutiny that any other such export licence would be. We are obliged to publish and declare anything that is gifted that has a putative value in excess of £300,000. This is managed, because it is normally the gifting of defence parts or maybe spare parts for some tanks, for example. The MOD is in the lead on this, but they are all assessed against the consolidated criteria in the same way as for other commercial applications.

Q252 Chair: What are "wider foreign policy aims"?

Sir Alan Duncan: It may be that we have a very strong bilateral relationship with a country, that we have the spare parts of something that they have and, as a gesture, perhaps because we do not need those spare parts, we say, "We'll give them to you."

Ben Fender: I have in front of me the list of the equipment gifted in 2016, which is in our annual report. To pick out two examples, there is gifting to Somalia of some IT server equipment for the Djibouti national police counter-terrorism unit, and some soft body armour for the Somali police counter-terrorism unit. That is a relatively typical example in many ways. Clearly, we have counter-terrorism objectives and wish to build capacity in Somalia, and gifting equipment is in the spirit of that, but as the Minister has said, all the equipment that we gift is assessed against the consolidated criteria, so that proper controls apply.

Sir Alan Duncan: And the values tend to be relatively small compared with the scale of contracts in the sector. You might be looking at £1 million or something.

Q253 Priti Patel: Can I ask about something that the Chair mentioned earlier? We were basically sent a large spreadsheet with lots of information relating to equipment—dual use and so on—and countries. Do you specifically put in the public domain examples, which state wider security and foreign policy aims, of where gifting has occurred, alongside the values? Would it be the Foreign Office, in particular, publishing a list, or are these just examples coming from the annual report?

Sir Alan Duncan: I'm just trying to understand your question. Is your question: when we gift something, do we attach an explanation of why we are doing it—because they're our best bilateral partner or something like that?

Q254 Priti Patel: Is there an explanation somewhere in Government?



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Sir Alan Duncan: Ah. I don't know; I will have to turn to Ben on that.

Ben Fender: I would have to get back to you on that. In certain cases, the answer would be yes. For example, I think in the past we have gifted certain types of non-lethal equipment to entities in Syria, and Ministers have announced that to Parliament by way of a written ministerial statement, which clearly sets out the objectives. On the question whether there is a document in each case that explains the objectives, I would have to get back to you.

Q255 **Emma Little Pengelly:** I want to follow on from that point. You have referred to the situation if there is some spare equipment and there is a relationship, but in terms of some of what we have looked at, I want to look again at 2016 and Lebanon. In the list are Lebanon velcro flags, which I assume are not spare parts in terms of the equipment that you have lying about. To me, that suggests that there is something more proactive in terms of promoting things; there is a discussion at some point about how help can be given and what could further those aims. At what level does that discussion happen and how does that filter down in terms of this gifting process, or is—

Graham Stuart: It is perhaps worth saying that whatever process is used—that would be outwith export control—from an export control point of view, they are assessed against the criteria. Whoever it is, for whatever reason and from whatever budget it comes, that is what we do. We make sure, if the Government are gifting goods that come under this regime, that they are assessed against the criteria. I am not sure that this is necessarily the right place to explore the wider issues of how and when the Government decide to fund the gifting of items.

Q256 **Mike Gapes:** Can I take you to the issue of goods that are used for encryption or decryption of information? How are they licensed, and what safeguards are there to ensure that this technology, which is rapidly changing, is not being sold to a regime that might use it for surveillance or repression of opposition or dissenting figures in society?

Graham Stuart: That is an excellent question. All cyber and cryptographic exports are subject to the same consolidated criteria as every other export, but the Department for International Trade is also able to draw on expert advice from the National Cyber Security Centre, which, like DFID, is not part of the joint unit but is regularly consulted, when appropriate, when assessing applications or making policy.

I don't know whether this is a relevant point to make, but on 11 April we published a new open general export licence permitting the export of low-risk information security equipment, such as computer servers and routers. The scope of the OGEL was carefully chosen to include only items and destinations that are consistent with the consolidated EU and national arms export licensing criteria. As far as the OGEL goes, deliberately excluded from that open licence are all high-risk capabilities, including mobile telecommunications interception equipment, cyber-surveillance tools and items designed to defeat or bypass information security, because



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those items will remain subject to individual licence applications. We have discussed the criteria in some detail already, and each of those—the product and the destination—is assessed against the criteria. Thoroughly and properly done, we believe that is a proportionate regime to ensure that we do not hand such equipment over to the wrong people.

Q257 Mike Gapes: So are you saying that cryptographic items are subject to individual licence, whereas low-level computers could be general licences?

Graham Stuart: I am saying that all high-risk capabilities are specifically excluded. You might be tempting me into going beyond my technical capabilities—talking of capabilities and capacities.

Q258 Mike Gapes: Perhaps you can send us a note to clarify, because I appreciate that these are complicated areas.

Graham Stuart: What I can tell you for the record now, Mr Jones, is that we do not believe there are any products of the sort Mr Gapes is rightly highlighting that would be covered by the open licence. But Mr Gapes is also right to suggest that it is a fast-moving area, which is why we keep both open licences in particular and the area generally under constant review, to ensure that we do not allow a framework that appears entirely benign to be overtaken by events and then get to a position where it is no longer.

Q259 Mike Gapes: We were told in evidence from ADS Group that other countries—they specifically referred to the United States—are more flexible about these issues than we are. They referred to non-contentious cryptographic goods. Would you like to comment on that and whether our position is too restrictive or too flexible?

Graham Stuart: As you will be aware, Mr Gapes, controls on cryptography come from a Wassenaar arrangement. We have international obligations and, as with all our international obligations, we aim to be top of the field in implementing them. Encryption has a role in enabling human rights defenders, for instance, to communicate securely, but equally the use of strong encryption by terrorists or others represents a threat to the security of the UK and its allies. We do not agree with the European Parliament's thoughts about removing all controls on encryption products. That is our position.

Q260 Mike Gapes: Final point: the annual reports, going back to 2009, refer to the number of licences that have been issued in this area. Every year, from 2009, they were quite small numbers, but in 2016, for the first time, there was a refusal. Would you like to give us any further information on that? Is it because these things are becoming more capable of decrypting or getting into WhatsApp groups or whatever, and therefore it is becoming more likely that there will be refusals in future?

Graham Stuart: Perhaps I will bring Edward in.

Edward Bell: I will preface this by saying that it is important not to mix up the different types of product. Encryption is a very broad category,



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from the low to the very high. Someone referred to WhatsApp, and of course many of us experienced the Visa problems the other day, and of course those systems use encryption. At the surveillance end, the area that I know is of concern, we are talking essentially about telecommunications equipment. I hope this is not a roundabout way of getting to the answer. The whole area of encryption and information security accounts for a very high percentage of standard individual export licences granted—around 1,500 a year—but when we look at the whole area of telecommunications interception equipment, we are talking about a much smaller number. For instance, from 2015 to 2017 we issued around 260 licences for telecommunications interception equipment. I would say 60% of those were temporary licences for demonstration overseas, and during that same period from 2015 to 2017 we refused 13 cases, about 4.5% of the applications. That is much higher than the overall refusal rate.

Around only 25 permanent licences were issued for this type of equipment in 2017. Obviously, that will come through in the next annual report. I do not have details of a particular refusal case, but I can say from experience that these cases are looked at very closely and can take quite a lot of time to work through before we get to the stage where we can make a decision to refuse or grant.

Q261 Gavin Robinson: Good afternoon, Ministers. Industry representatives have told us that they provide an evidence trail of exports under open licence, but that the Government do not publish that information. One suggestion has been that that is because of the poor quality of the data that you hold. Is that right?

Graham Stuart: That is a contributory factor to us looking forward to our new system coming into place, which will put us in a better position to judge whether and what it is appropriate to publish in due course.

Q262 Gavin Robinson: Okay. Minister, in 2012, there was a commitment from Government to publish a description of the items exported under the licence: the destination, the value, the quantity and the information about the end-user. Your answer when you talked about LITE was quite constrictive. You talked about potentially providing it to this Committee, but that is far short of the commitment offered in 2012 for publication. You just gave another sense of how you will have to see the quality of the data before deciding how and in which forum it should be published. Could you give us an indication of why the commitment that was given in 2012 was resiled from, and how closely you wish to fulfil the promise outlined in 2012?

Graham Stuart: What an excellent question, Mr Robinson.

Gavin Robinson: Flattery is not going to save you here.

Graham Stuart: I used to chair a Select Committee and I know that flattery gets you a certain way. It may not get you off the hook but it might reduce the level of malice.

Gavin Robinson: There is no malice here.



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Graham Stuart: Proposals by Sir Vince Cable to increase the transparency of the export licensing system were announced by a written ministerial statement, as you rightly say Mr Robinson, on 7 February 2012. It required exporters to report against open export licences on actual transfers of goods. After that, many companies expressed concern that that would mean an unacceptable administrative burden; consequently, Sir Vince announced in Parliament on 18 July 2013 that he had decided to dispense with some proposals relating to quarterly reporting. As a result, users of open licences were required to make reports on their usage of those licences on an annual basis only. That data is reported to the ECJU and is checked in compliance audits. As you anticipate, we do not yet have the right digital infrastructure to support public reporting.

I hesitate because, in so far as it might have been perceived that promises were made in the past and not fulfilled, I would rather not make a promise until I got the digital capability in place. I would hope and expect that the Committee will keep hot on the heels of Government to say, "If you have your new systems in place, what are you going to do to be more transparent?" We would welcome and seek to deliver that.

Q263 **Chair:** Do you see a benefit from producing more data on open licences, such as quantity and values? It cannot be too hard for companies to provide that information.

Graham Stuart: Like all good Select Committee Chairs, Mr Jones, you ask a question I have already answered, just to put me on the spot again. The Government aspires to be as open and transparent as possible. Therefore, when we have new and, we hope, improved digital systems, I will see benefit in being able to publish more information generally and not only for the benefit of the Committee, along the lines you suggest, Chair, without my committing precisely to anything.

Chair: It is just that clarity I was seeking; not to ask the question twice.

Q264 **Gavin Robinson:** That is a very useful response, Minister. That is not to suggest that there is a clanger coming here. Industry experts have said that they have provided you with the information—they have provided the evidence trail—but you have refused to publish. You have now helpfully outlined that actually industry was kicking up about the onerous task of providing information on a quarterly basis. That does not touch on the principle of publication. That touches on the regularity of the information provided and publication. In principle, do you think publication is the right thing to do? Whether it be on a quarterly basis or an annual basis, if the industry is providing—as it says it is providing—that evidence trail and suitable information, do you think the principle is right that when available it should be published?

Graham Stuart: We will be in a much better position to make that decision and for me to make a due submission to others to sign off on doing that, were that to be the Government's conclusion.

Gavin Robinson: Fair enough.



Q265 **Henry Smith:** Further to your question, Mr Jones, and Mr Robinson's, on transparency and data being user friendly, particularly when it comes to use by us parliamentarians and members of the public, what more are you doing to ensure that strategic export information is readily digestible for MPs and members of the public? For example, institutions such as King's College London are able to do this right now, but what are the Government doing to ensure that it is not just institutions that provide more transparency, but the Government themselves?

Graham Stuart: I do not think I have put this on the record. It is worth saying that information about what is licensed in open individual export licences—OIELs—is published as official statistics each quarter. The thing I would like to put on the record is that no other country publishes as much data as the UK about licensing decisions. But, Mr Smith, you are right to suggest that we want to go further. Perhaps I can bring Edward in on this.

Edward Bell: You mentioned King's College. We certainly worked closely with Project Alpha at King's College. I know that we have offered to work more closely with officials supporting the Chair, to understand more the needs of these Committees and how we can best serve those needs. We are undertaking, as part of the new digital development programme, a review of all our export control content on gov.uk. Our aim there is to make the information as simple and as clear as possible. We will have to tread carefully with the statistics, because we are subject to a code of practice on official statistics. One of the issues, I have to say, with the commitment that was entered into by Sir Vince Cable is that the code of practice came in and was applied to official statistics. We would have to work through the issues of how the code of practice would apply to the reporting of open licences. That would be an issue we would have to look at very closely. We are certainly working through the content on gov.uk, but we have not yet got to the official statistics and I think that will be a challenge. In terms of the work of the Committees, we stand ready to help you get yourself around the data, and understand it and what it is telling you.

Q266 **Chair:** Mr Bell, I am grateful for the information you have provided. I mentioned earlier that there were pages and pages of spreadsheet information that were not digestible. I hope you will bear that in mind when reviewing the presentation of statistics in the future, so that they are more digestible. I appreciate your commitment to do that.

Graham Stuart: However indigestible it felt to be at the other end of the information, I can assure you that it felt pretty tough at the end of producing the information and gathering it according to—taking very seriously—the requests that were made, quite rightly, by the Committee and you. A lot of work went into producing that. It is a continuing commitment by our team to make the information as usable as possible. You requested a lot of information stretching over quite a period, which required a vast amount of manual work with an absolutely dedicated staff seeking to ensure that everything they gave you was accurate, because the last thing we want to do is provide information and then find that it wasn't. I just say that, because by way of this hearing I want to pay



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tribute to the staff who did such a lot of work. It was frustrating for them when, having provided it, it was described as unusable. It is vast and dense—that is the information you asked for, and that’s what you got.

Chair: I think we share your frustration—I think we can move forward on the basis that we will try to improve on that frustration and be less frustrated in the future.

Q267 Lloyd Russell-Moyle: I do not know which one of you would be best to answer this, but I am interested in enforcement. What resources in terms of money and personnel does HMRC—I believe that is the enforcement body of these licences—dedicate to the enforcement of the licensing system for export-controlled goods? What has been the trend in such resources over the past five years?

Graham Stuart: I will take that if I may. As Mr Russell-Moyle rightly says, enforcement is the responsibility of HMRC. It assesses all breaches of export controls and sanctions, and where serious and/or deliberate breaches of export controls are identified, or where there are aggravating features, cases will be considered for full criminal investigation. These cases will be investigated, and if appropriate, referred to the Crown Prosecution Service, which determines whether there is sufficient evidence to prosecute, and whether that prosecution is in the public interest. Any decision by HMRC to conduct a criminal investigation will depend on several factors. Those include the seriousness of the offence, the likely impact and outcome of a criminal investigation compared with other forms of enforcement action, and the need to prioritise investigations in line with wider Government policies and strategies.

More detailed issues about the way that HMRC goes about its business are for HMRC to address, and I cannot comment on that. I can say, however, if you would like more detail, that in 2017 there were 118 seizures of strategic goods in breach of licensing requirements or sanctions and embargoes, and 198 end-use catch-all cases where non-listed items were stopped from leaving the UK because there was a risk that the goods would be put to an illicit military or WMD end use. There was one compound penalty that totalled £5,360.

Q268 Lloyd Russell-Moyle: Were the 118 seizures permanent seizures of those goods, never to be returned?

Graham Stuart: That is my understanding.

Edward Bell: We would have to confirm that. I think so, but I am not entirely sure.

Q269 Lloyd Russell-Moyle: Because you can have a temporary kind of suspension of the goods moving out until the issues are dealt with.

Graham Stuart: Can we take it that they were permanently seized, and if that is not the case, I will write to you? We will not write otherwise.

Q270 Lloyd Russell-Moyle: Thank you. It would be useful to know, if you have this to hand, or in a letter that you might have to write to us, how many



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successful criminal prosecutions took place in that year.

Graham Stuart: Which year?

Lloyd Russell-Moyle: The year that you are taking those statistics from.

Graham Stuart: I was giving you statistics from 2017. In terms of criminal prosecutions—

Edward Bell: That should be reported in the 2017 annual report.

Lloyd Russell-Moyle: Which we haven't yet got.

Graham Stuart: Which you haven't yet got.

Edward Bell: And the Minister has not yet seen.

Lloyd Russell-Moyle: We look forward to getting that information.

Graham Stuart: It will be next month, so it is not too long to wait.

Q271 **Chair:** We are reviewing 2016, so it would be helpful if you had the statistics for 2016 on how many prosecutions there were.

Graham Stuart: Such information is held within the 2016 report, and for all those who have read it thoroughly—

Gavin Robinson: Perhaps you can tell us.

Graham Stuart: I was going to say, including the authors by whom I hope to be surrounded—I would hope for a refreshment coming my way.

Q272 **Stephen Twigg:** "Prosecutions" is the heading of table 5.2, but then it says "number of seizures". That is not the same thing, is it? It says that in 2015-16 there were 232, and 183 in calendar year 2016—am I right that that is seizures, and not necessarily prosecutions?

Graham Stuart: Correct.

Q273 **Stephen Twigg:** Indeed, those are overwhelmingly not prosecutions.

Edward Bell: Overwhelmingly not. It is quite possible for someone to unknowingly find themselves in the act of breaching and have their goods seized at the border. The figure that the Minister quoted of 118 seizures in 2017 were permanent.

Q274 **Lloyd Russell-Moyle:** I am a bit concerned, because I have written to you, Sir Alan, and I have made a number of statements in the Commons where I have been corrected by yourself and by Mr Stuart as well, when I have said my understanding is that the number of criminal prosecutions is incredibly low, and you have referred me every time to that number. Now you are saying that that number is not actually criminal prosecutions; it includes seizures. So, if we are now discovering that for a number of years back you have not been reporting prosecutions but reporting seizures, it would be useful for you to write to us in a table for all the three years that we actually have a purview of regarding criminal



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prosecutions that have taken place in each year and that have been successful. I am trying to be clear on my wording there on what I am trying to get at, rather than the bigger catch-all.

Graham Stuart: I think you are being entirely reasonable and I will write to confirm precisely what we're talking about.

Q275 Lloyd Russell-Moyle: I have a suspicion that the number might be very low, but I might be proved wrong. Let's see.

How many breaches of licences have the joint unit or the respective Departments in the joint unit identified in the last period? We are looking at 2016, but I'm always happy to have information from 2017 as well.

Edward Bell: We are not the enforcement agency; HMRC is. And there are a number of bodies, such as Border Force, involved in the process of enforcement. So DIT is not the enforcement agency. If a report of a breach comes to us, then we would pass that information on to HMRC, but I'm afraid I don't have figures for the number of cases. I think they will be quite small.

We do get contact from exporters who believe they may have breached controls and we are not talking here, I don't think, in the main of serious breaches but of administrative errors. There is a whole process whereby an exporter may make a declaration through HMRC. So we point the exporter in that direction.

Q276 Lloyd Russell-Moyle: In today's Balkan Investigative Reporting Network report, it is detailed how there were six licences of Soviet calibre ammunition—300 million rounds, so this is a huge amount—from Bosnia to Saudi Arabia, which was rejected by the joint unit—quite rightly—because the joint unit believed they were going to go to ISIS and other Islamic militants, because they were of ammunition that Saudi never uses but the Islamicists do.

This was reported to you. I want to know particularly if you reported that to the Bosnian authorities when you rejected that licence, so they could enforce.

Chair: Syrian, not Bosnian.

Lloyd Russell-Moyle: It was from Bosnia to Saudi, then to Syria, so Saudi was the intermediary. They were rejected because the Department said they did not believe the final use—this is the joint unit—was Saudi. They believed the final use was Syria and Islamic militants. Quite rightly rejected—good on you.

What I'm trying to get at is that the goods were shipped anyway, and I have the docking report here from the Bosnian authorities. I want to know whether the Department, knowing that those goods had been applied for, and you were informed that they were shipped, because I have the correspondence here to the unit—I want to know if the unit contacted the Bosnians to say anything, because these shipments were in three different shipments, so, you were informed about the first shipment, to stop the



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second and third shipments going on. I just want to see if that communication happened in that particular case, or in other cases particularly involving Bosnia, which we know is a huge arms exporter of very dangerous weapons.

Graham Stuart: As you quite rightly identify, Mr Russell-Moyle, it is an indication of how thorough the unit is and the process is, against the criteria, that the various applications were turned down. So they were refused.

As to the communication with the Bosnians, that is not something that my Department would engage in. What I cannot do is answer for what information may or may not have been shared by other arms of Government, because I do not know.

Q277 Lloyd Russell-Moyle: When the Department was asked by the investigator about whether they would pass the information on—even pick up the phone to the Bosnians—the response from your Department, because they were asked, was that because Bosnia is not in the EU they would not pick up the phone and warn the Bosnians about this very dangerous shipment.

Seeing that it is a very dangerous shipment, I assume you have the number of the Bosnian Government, or at least of the ambassador here for Bosnia. The arms trade treaty requires us to pass that information on to all arms trade treaty signatories, which Bosnia and we both are. Why was the phone from your Department, because your Department oversees the joint unit, not picked up? You could have said, “In this case, we’ve rejected the licence but we understand that the shipment might still be going ahead—could you look into it?” Was it not that simple?

Graham Stuart: I know that we did not contact the Bosnians, and according to the report the goods were shipped before we turned down the licence applications.

Q278 Lloyd Russell-Moyle: Yes, licence applications usually take 20 days. That is the period they are expected to take. In this case, it took 15 months before you rejected it, which is a relatively clear-cut case. The US authorities have said that these items were likely to be diverted. The EU authorities reported that these items, via Saudi, if they are Warsaw pact goods, are likely to be diverted to ISIS. Anyone would say that 30 million rounds of this type of ammunition will not be used by the Saudis. You came to the decision that it would be used, quite rightly. Why did it take so long, when you could have made the decision much quicker and stopped these weapons getting into the hands of ISIS and other Islamic front groups?

Graham Stuart: We have to assess each application on its merits, as we do on a case-by-case basis. The most important thing is that we get the decision right. We did get the decision right. I am pleased that we got the decision right, and did not licence the sale of that ammunition.

Q279 Lloyd Russell-Moyle: You got the decision right, and the weapons still



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managed to be shipped, so to some extent it is a bit academic that the decision was got right. I would prefer a decision to be made in the right time.

Dr Fox wrote to us saying that he was willing to share in confidence with the Committee certain detailed decisions of particular controversial cases. I wonder if this is one of those cases that you could share more detail of with the Committee. If you would be willing to do that, could you also share the details of why in 2013 the same shipment, and in 2014 the same shipment, were approved by the Government, despite the US warning, the EU warning, and numerous video evidence from Yugoslavia that had all been produced in 2012 before the first two shipments that your Department approved?

I wonder whether you would be willing to share all the information of those three cases, and why two were approved and then your mind changed. I mean in detail, not just a summary letter, because it seems as if there are quite complicated issues here. Liam did say that he would be willing to share in confidence with the Committee the detail of controversial cases.

Graham Stuart: Normally following this the Minister or others write to the Committee, but I think it would be helpful, if that is the Committee's overall view, for the Committee to write with a request for the information, which I will then treat when I get it.

Q280 **Chair:** Lloyd has suggested that a letter would suffice, but it would have to be a detailed one. I think we would be interested in the detail of the case.

Graham Stuart: I was interested in getting a precise steer about what exactly it is that Mr Russell-Moyle is after, so I can respond in a proper fashion.

Q281 **Lloyd Russell-Moyle:** I am sure we will write with the detail of the particular trades in which we are interested. On another issue, your Department on that deal, and in other deals, decided that the end-user report that the Saudis had signed on an affidavit was not to be believed, and that you could not trust the Saudis' word that it was their end-use. You believed that it was going to be diverted—that was your decision. Why, then, are we believing the Saudis' word for other applications if you have determined that the Saudis are an unreliable source?

Graham Stuart: That is not language that I would use. As you know, Mr Russell-Moyle, we assess on a case-by-case basis against the criteria, and it is about whether there is a clear risk. That is the assessment that we make, and we do so based on the evidence. In this particular case, as I said, it is the calibre of the ammunition, the volume, the likely use, and various other considerations which bring you to the conclusion. The whole point is to have a rigorous process that does not just fire off an opinion, but looks at each one on a case-by-case basis. We make no apology for being thorough in doing that.



Q282 Lloyd Russell-Moyle: I have one last point. I think there may be an issue that the Saudis were not telling the truth—I hesitate to say lying—in a number of applications. You have determined that about whether we can believe them in future. Does this case, particularly with the risk of diversion, and the idea that it was journalists who had to come and show that the goods had been shipped and diverted, show that we need a more detailed end-use analysis of our applications, and maybe some independent body within Government—some kind of commission or body—that has a mandate to investigate where our weapons are potentially being used, so that supplies to ISIS and other Islamist fronts can be cut off, rather than us being complicit in letting them go, as we were in the Bosnian case?

Graham Stuart: It is an extraordinary conclusion to come to to suggest that when we reject and turn down licence applications for the transfers of ammunition, we are in any way complicit with it being shipped. We precisely came out against it.

Q283 Lloyd Russell-Moyle: If you did not inform the Bosnians, and you knew it was being shipped—if you took so long—and if there is no enforcement even when you do reject an application, so it still gets shipped, there is an argument that our rules are so weak and our enforcement is so pathetic that we have a real problem on our hands.

Graham Stuart: I would agree with you if that ammunition had been shipped from the UK. It was not shipped from the UK, and I think it is not a fair characterisation—

Lloyd Russell-Moyle: It was a British person—someone who lives in my city—who arranged the shipment.

Graham Stuart: And the licence application was rejected here in this country, so we have a case where—

Q284 Lloyd Russell-Moyle: Will you be going to knock on the door of the person who lives in my city who arranged that, to ensure that they face the full force of the law?

Graham Stuart: The licence was turned down. We were not complicit in the shipping of the goods. It is a strange example to give, where we properly rejected the licence application, to then say that we need to have an end-use verification system to check that the goods that we license do not end up in the wrong hands, when we did not licence, and they did not—

Q285 Lloyd Russell-Moyle: We did in 2013 and 2014, so that is the difficulty. We did then, and there were diversion problems.

Graham Stuart: We are discussing the 2016 annual report. We will await a letter from the Committees that refers to earlier shipments. At which point, when I am in a position to look at the historical record as to why, against the consolidated criteria, we came to decisions on those shipments, I will be able to comment. In the meantime, I suggest that it is not fair or reasonable to suggest that something that we cannot properly

discuss today is taken as evidence that we inappropriately licensed any shipments.

Lloyd Russell-Moyle: These Committees are looking at the 2014, 2015 and 2016 reports, so we have a preview of the 2014 stuff as well, but I will leave it there. I think we will continue in correspondence.

Chair: I think we will.

Q286 **Mark Menzies:** By international comparisons, the UK has a very strong record when it comes to arms controls. What is the UK doing to promote the arms trade treaty so that more countries are encouraged to sign and implement it, and to follow the UK's example?

Sir Alan Duncan: We were a very early proponent of this treaty. As I said earlier, I was the Minister at the time in DFID who went to the UN. We had a very successful General Assembly meeting in 2013 that, as it were, banked this. We are determined to ensure that it is properly implemented, and we remain committed to working to ensure that it is. There are 92 states parties at the moment signed up to it. We are particularly working with the EU—and within the EU, particularly with Germany, France, Italy, Spain and Sweden—to try to get as many people to sign up as possible. Slightly paradoxically, but none the less importantly, we are also working with the US on this. They are not a signatory, but they are helping to get people to sign up to it. It is the only legally binding international conventional arms control treaty, so we are firmly dedicated to doing everything we can to keep up the momentum. We contributed more than £300,000 to the arms trade treaty voluntary trust fund, which supports states in implementing the treaty. We have not let up on this, and we will not. The US has signed, but not ratified.

Graham Stuart: That is all I was going to add.

Sir Alan Duncan: I have had a double correction there.

Q287 **Mike Gapes:** We have heard evidence in previous sessions about the use of intermediaries, agents, advisers and brokers and how that could be linked to corruption. We have got strong legislation against corruption in this country, but how are these agents, advisers and brokers regulated? How do you respond as a Government to the suggestions that we have had from some NGOs that we need stronger measures, including a register of brokers?

Graham Stuart: The Government are determined to uphold the highest standards in trade controls and to deter illegal arms brokering. To answer directly your point about how they are regulated, they are regulated by the licensing system, which we believe is the most robust and effective way of doing so. We consider that the current system of case-by-case assessment combined with customs enforcement action is the most effective means of deterring illicit brokering. A licence will not be issued if to do so would be inconsistent with the consolidated criteria, as we have found with the Bosnian case just now.

Q288 Mike Gapes: What about a register of brokers?

Graham Stuart: On that, we are not convinced that a register of brokers would have a material effect. Effectively, you are talking about bad actors acting illegally. You have to ask whether a register of legal brokers would make any difference to those who are seeking to break the law. Our balanced view—we keep an open mind—is that if we thought it would be an effective way of targeting those bad actors and making it less likely that they would be able to pursue what they pursue, we would be happy to look at it. It is just that we are not convinced so far that it would have that effect.

Q289 Mike Gapes: In other areas, we have regulations and registers of people who are allowed to practise the law or medicine, for example. There are all kinds of registers. If people attempt to do this, or advertise, that is normally a criminal offence. Can you not see the virtue of this?

Graham Stuart: Like many registers, it has an immediate intuitive attraction. It is about whether, with further investigation and analysis, you think it will overall deliver more good than harm. The Government trade controls as they stand are extraterritorial in nature, applying to all UK persons and UK-registered entities. We take any breaches of trade controls very seriously. HM Revenue and Customs is the enforcement body responsible for investigating, disrupting and prosecuting breaches of those controls. There have been 13 convictions for trade control offences since 2005, and a number of compound financial penalties. We are not aware of any EU country with a better record of prosecuting illicit arms brokers, but we have been reviewing our brokering policies to see whether we can improve our controls in this area. We will be announcing a policy change to Parliament in the coming weeks.

Q290 Mike Gapes: Oh good—that is a victory. I have another question, and I will ask it now, if that is okay. Corruption Watch gave us evidence, and they advocate the creation of an additional criterion for licensing in addition to the existing one relating to corruption—criterion 8. What is the Government response to that suggestion?

Graham Stuart: First, let me say that the Bribery Act 2010 represents a comprehensive anti-bribery and anti-corruption framework. It applies to UK nationals, UK companies, foreign nationals resident in the UK and foreign companies doing business in the UK, but it is fair to say that the Export Control Act 2002 is a separate legal instrument and is where our expertise lies. On the particular question you ask, we are not yet convinced that bribery and corruption being considered routinely as part of the export licence application process will be beneficial. Even if it were possible, it is not clear at what point allegations of corruption would constitute sufficient evidence to refuse an export licence, and if it did not end up in refusal it would not be of much practical use. I know that evidence presented to you by BAE Systems noted that the Bribery Act has been instrumental in changing behaviour, and that they do not see any benefit from mixing the two regimes—export controls and anti-corruption—but that is just a piece of evidence.

We think that it is better to make sure that the Bribery Act is being properly enforced, rather than conflating different regulatory frameworks. A bit like my answers a moment or two ago, we are not yet convinced, but were we to be we would happily reconsider.

Q291 Chair: ADS Group told us that industry had no objection to extending the scope of extraterritoriality to cover category C equipment, but said: "The issue is that the Government has found it difficult to accept because of the resource burden it would imply". Can you clarify that situation?

Graham Stuart: I shall turn to Edward Bell to answer that.

Edward Bell: This takes us back, I think, to the issue of post-licensing checks, because I know the issue there is extraterritoriality. I have been meeting colleagues from different European countries to discuss the whole issue of carrying out post-licensing checks. It is fair to say that even the countries in Europe that are finding their way are struggling to make things work at this stage.

We would need to overcome a number of barriers before we could carry out the kinds of post-licensing checks that are envisaged by some. Extraterritoriality and the legal implications of carrying out those checks are among the things that we would have to address. I think we would have to be clear that the return would be worth the considerable effort that would have to go into making that possible.

Q292 Chair: You made a reference at the beginning of the meeting when I asked about compliance audits for overseas-based companies, for example, which may or may not fall under category C, country to country. We have just heard about the Bosnian report, which I must admit I have not seen—apparently it has come out today. We are talking about overseas audits. Mr Stuart, you said that we do not do any overseas audits—for example, category C. Isn't there a real risk that arms could be diverted, that arms are being distributed, and that we have no control over them under category C because we are not auditing them? Are we completely unaware of what is going where?

Graham Stuart: It is worth saying that when we make assessments against the consolidated criteria we take evidence, as was discussed at the beginning of the meeting, from a wide range of actors, not least our overseas posts. When we look at the criteria we see whether there are clear risks of issues such as diversion happening.

I think it is part and parcel, and unless you think that a framework can be created, as well as the agreement of others, particularly if they wish to engage in that kind of activity, it is quite hard to envisage how you would get access in an effective way, which would be more effective than what we have now. I would not want to have our resources diverted to something that is not as effective as having a really rigorous and thorough system of trying to make sure that we do not put the wrong thing in the wrong place in the first place. That continues to be in place.



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Edward Bell: It is worth adding that what I would not want is the impression given that the licence is issued and that is the end of the story. The Departments involved in administering the UK's system of export controls are keeping the situation in relation to the criteria under pretty constant review. We will review the position in a given country as circumstances dictate. As those circumstances dictate and our assessment changes, clearly we will revoke, and have revoked, licences, and we will suspend licensing. That has happened historically in a number of cases.

As I said, I would not want the impression given that the story ends at the point that the licence is granted, but I can imagine that, to carry out the sort of system of extraterritorial checks post-licensing, a team of lawyers would be tied up for a long time working out the ins and outs of how we would do it, leaving aside the whole issue of how you would resource it and how you would carry it out in-country. I know the Germans have struggled with their two inspections.

Q293 **Chair:** This comes to the matter of brokerage. It suggests that there is great difficulty in policing, if not failure to police, extraterritoriality, does it not?

Graham Stuart: We do not think so. It is difficult. As I said in answer to Mr Gapes earlier, we are looking to see how we can improve our systems. We think that overall they are robust, that the core of the consolidated criteria is the right one and that getting it right first time is the best approach. Were anyone to demonstrate that there is a better alternative and make that work, then clearly we would look to follow that; but we are confident in the systems we have, although we are always looking to see how we can improve them.

Chair: Finally, I return to the Bribery Act. I think Emma wanted to ask a question—I think it will be the last question.

Q294 **Emma Little Pengelly:** As indicated, we have heard evidence previously, particularly from Corruption Watch UK, about the levels of corruption within the industry. Given the lack of prosecutions to date under the Bribery Act 2010 in respect of arms exports, how adequate is that legislation in addressing corruption within the industry, in your assessment?

Graham Stuart: The Bribery Act has had a positive effect across the piece, because of the sanctions that are in place. Companies are more careful than ever before in trying to make sure that their company is not involved in that at any level, because the responsibility, thanks to the Bribery Act, comes all the way up to the top of the company. I think it has had a material impact. The fact that it has deterred people from, at worst, supporting corrupt behaviour, or certainly from turning a blind eye to it or simply not doing enough to root it out, and the fact that it has materially changed people's incentives, has led to improvement.

Q295 **Emma Little Pengelly:** So your evidence would be that your assessment is that it has reduced corruption, as opposed to giving the ability to prosecute, so there is not a problem?



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Graham Stuart: I would never say there was not a problem, but a system with very strong disincentives to doing any of those three things I mentioned just now is one that is likely to head people away from that behaviour. That is a significant improvement. I am a fan of the Bribery Act; I think it was needed and it has sent out a strong message across the piece, including to those who are involved in arms.

Q296 **Emma Little Pengelly:** The Act effectively makes facilitation payments illegal. How stringently has that aspect been enforced, and how is enforcement affected by the fact that in some jurisdictions, such as the USA, such payments are legal?

Graham Stuart: Enforcement comes down to HMRC rather than my Department. Edward may be able to help.

Edward Bell: We are straying into territory that is quite remote from export. It is distinct from export control.

Q297 **Emma Little Pengelly:** Maybe I take that back a little bit, then. Although the decision is made elsewhere, is it your assessment that this is still happening and it is not being picked up further down the line by different agencies? Or is it your assessment that this is not a problem or there are very low levels of it?

Graham Stuart: I think that is better addressed to a different Department of State from ours.

Edward Bell: It is a Ministry of Justice lead, essentially, in terms of the detail of how the Act is working and the various processes you discussed. It is not something we have any particular expertise in.

Graham Stuart: I do know, from being on a Select Committee, that the worst thing is when somebody sits in front of you and you ask them a question that they do not know anything about, and they insist on answering it anyway.

Q298 **Chair:** I did not hear you, and I wanted clarification, to be fair. I was not quite clear about what you had said, so I thought it was fair to ask again, for clarity.

Graham Stuart: Sorry; I was not in any way trying to suggest anything. I was simply excusing us for not answering something about which we do not have any great expertise, and saying that witnesses are best not do to so if they do not have the expertise.

Chair: May I say thank you to Sir Alan, thank you to Mr Stuart and thank you to Mr Bell and Mr Fender for coming today? That concludes business.