



Foreign, Commonwealth
& Development Office

The Rt Hon the Lord Cameron
of Chipping Norton
Secretary of State for Foreign,
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King Charles Street
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Alicia Kearns MP
Chair
Foreign Affairs Committee
House of Commons
London
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9th February 2024

Dear Alicia,

Thank you for your letter of 29th January, following our exchanges in the Foreign Affairs Committee (FAC) evidence session on 9th January on the decision-making process for export licences to Israel. I am glad to have received your letter, having first read about it in *The Guardian* on 21st January.

Palestinian civilians are facing a worsening humanitarian crisis in Gaza. Israel must take steps, alongside Egypt and the UN, to significantly increase the flow of aid into Gaza, including by allowing prolonged humanitarian pauses, opening more routes, and restoring and sustaining water, fuel and electricity supplies. I re-emphasised these messages when I met Israeli counterparts during my most recent visit on 24th January.

The Government takes its export control responsibilities extremely seriously. We examine each application on a case-by-case basis against the Strategic Export Licensing Criteria (SELC). The SELC maintain the UK's high standards on counter proliferation and uphold our international obligations.

I should also make clear that many of the matters raised are subject to ongoing litigation. Nevertheless, I want to be as open and constructive as I can be.

In terms of the Change in Circumstances (CiC), all licences, including those granted to Israel, are kept under careful and continuous review. We can and do respond quickly and flexibly to changing international situations. Where there are significant changes in a country or region, the Export Control Joint Unit (ECJU) will conduct a CiC assessment. On the basis of that assessment, they will provide advice to the Trade Secretary as she makes any relevant decisions regarding export licence applications or extant export licences. The decision of whether to grant, refuse, revoke or amend an export licence rests with the Department for Business and Trade (DBT).

Following the Hamas terrorist attacks on 7th October 2023 and the Israeli response, the ECJU initiated a CiC Review covering both extant licences and pending licences for the export of equipment to Israel. No request is required to initiate a CiC review. This was self-initiated in line with our policy.

As described in the Government's submissions to the court, following a thorough and detailed process of review, I decided on 12th December that there was not a clear risk that items would be used to commit or facilitate a serious violation of International Humanitarian Law (IHL). My recommendation to the Trade Secretary was not to suspend or revoke extant licences, but to keep them under careful review. She subsequently accepted that recommendation.

The FCDO continues to assess Israel's commitment and capability to comply with IHL and its past record of compliance. Those assessments are supported by a detailed evidence base.

If extant licences are found to be no longer consistent with the SELC, including because of a clear risk that items might be used to commit or facilitate a serious violation of IHL, then those licences can be revoked, suspended or amended. I regularly review advice on those assessments and my actions have been consistent with that advice.

IHL is a complex area of law and there will inevitably be differences in States' interpretation of some aspects. For example, the UK's position is that Israel retains obligations as the Occupying Power in Gaza. In situations of occupation, IHL expressly requires the occupier, to the fullest extent of the means available, to ensure the provision of food and medical supplies for the population of the occupied territory.

With respect to the ICJ, the Government will continue to assess the findings contained in its ruling.

Turning to engagement with other States, the UK makes licensing decisions by applying the SELC; other countries will assess export licence applications under their processes. However, we have regular engagement with our allies, including Italy, on Israel's conduct in the conflict. For example, on 26th January the FCDO Director for Defence and International Security discussed export licensing to Israel with European colleagues.

With respect to some of your procedural questions, they are a matter for the Trade Secretary, who has overall responsibility for the export licensing regime. However, I can inform the Committee that in the last three months, no licence applications have had to be escalated to the dispute resolution mechanism or complex cases mechanism in which the Cabinet Office mediates.

HMG publishes data on export licensing decisions in the Official Statistics on a quarterly basis, including information on outcomes, end user destinations, overall value, type (e.g. military, other), and a summary of the items covered by these licences. This data is available at: <https://www.gov.uk/guidance/strategic-export-controls-licensing-data>.

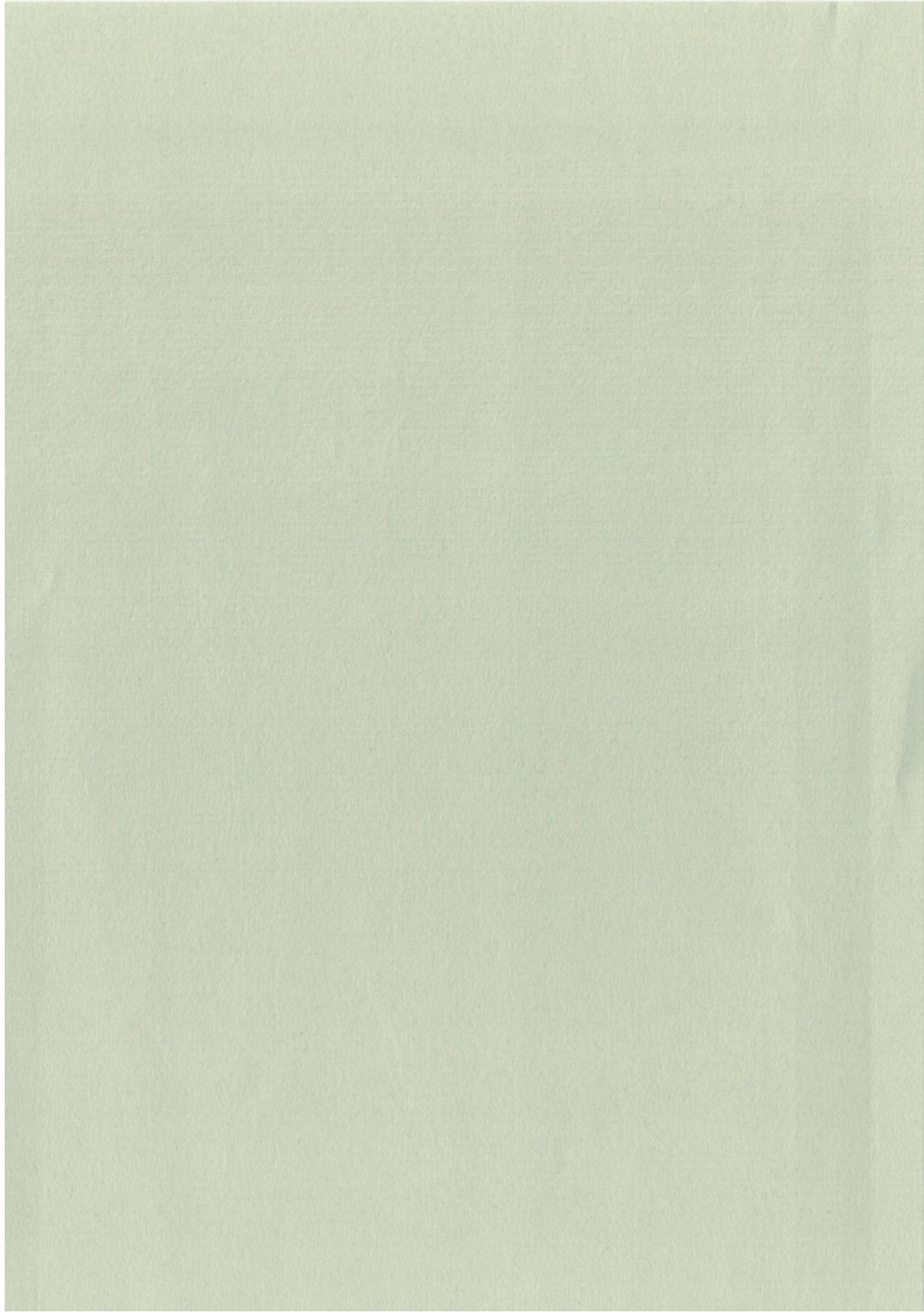
The most recent publication was on 16th January 2024 and covered licensing decisions made between 1st April – 30th June 2023. Information regarding export licence decisions made between 1st July – 30th September 2023 will be published in or around March – April 2024 and information regarding export licence decisions made between 1st October – 31st December 2023 will be published after April 2024.

With regard to Overseas Security and Justice Assistance (OSJA) guidance, this does not form part of the export licensing process. Export licensing decisions are taken against the SELC, having regard to all the relevant information. The SELC provide a thorough risk assessment framework and all licences to Israel are being kept under careful review.

Thank you again for raising these questions. I hope this information is helpful to the Committee's ongoing work.

Yours,

David





Foreign Affairs Committee

From the Chair
Alicia Kearns MP

Rt Hon Lord David Cameron
Secretary of State for Foreign, Commonwealth and Development Affairs
Foreign, Commonwealth and Development Office
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[by email]

29 January 2024

Dear Foreign Secretary,

Follow-up from the 9 January session

I am writing separately to follow up on our exchanges in the evidence session on the decision making process on export licences in the light of the Government's submissions in its Summary Grounds, dated 12 January 2024, in the Al-Haq judicial review case, which was published recently.

You said that the assessment of Israel's commitment to complying with international humanitarian law (IHL) is carried out by the FCDO on "a rolling basis" (Q631).

- As part of the Change in Circumstances Review initiated by the Export Controls Joint Unit (ECJU) following the 7 October attacks, on what date was the FCDO asked for a new assessment?

You outlined in evidence that the decision on arms export licences was for the Department of Business and Trade, based on advice from the FCDO (Qs 631-634). The Government submissions in the Al-Haq judicial review case make clear that the decision on whether to suspend or revoke extant licences "turned on the Foreign Secretary's assessment of whether there is a clear risk that items would be used to commit or facilitate a serious violation of IHL." (para 49) and states that you were "satisfied that there was good evidence to support a judgment that Israel is committed to comply with IHL" (para 50).

- Why was your decision limited only to determining whether there was 'good evidence' to support a judgment that Israel is committed to comply with IHL? Did this mean you were unable to reach a judgement as to the reliability of such a commitment?
- What was your specific assessment of the separate but determinative question of whether there was a 'clear risk' that items would be used to commit or facilitate a serious violation of IHL? Are you seeking further information in order to be able to make such an assessment?
- In making this assessment, what mechanisms does the FCDO have for verifying the validity of the assurances given by the Israeli Government relating to future compliance with IHL?
- Can you confirm whether the assurances provided by the Israeli Government are based on its interpretation of IHL? In what respects, if any, do the interpretations of IHL by the Governments of Israel and the UK differ?
- Can you provide any further detail on the basis for the assessment that "it was possible that Israel's actions in relation to some aspects of the provision of/access to humanitarian relief were a breach of IHL" (para 45) and set out how any such breach would affect an

assessment relating to the credibility of assurances relating to the use of dual-use and other items and the risk of them being used in violation of IHL?

- What discussions have you had with allies about Israel's compliance with IHL, including with Italy on the reasons why it suspended arms sales?
- Can you provide further detail on the conditions that would need to be met to support a decision to suspend or revoke extant licences?
- Will you commit to informing the Committee when any future Change in Circumstances review, relating to Israel, is triggered?
- In considering potential suspension or revocation of licences, what consideration has been given to the application of the arms export licensing criteria, other than 2c, for example criterion 2a on internal repression; criterion 3 on preservation of internal peace and security and criterion 4 on preservation of peace and security?
- How many licence applications for Israel in the last three months have been escalated to "the dispute resolution mechanism or complex cases mechanism" in which the Cabinet Office mediates between departments?
- In the last 12 months, how many licence applications relating to Israel have been referred to ministers for decision (broken down by the thresholds/criteria applied by different departments for such referrals).
- What was the date of the last review of OSJA guidance, insofar as it relates to the arms export licensing process? Will the application of the guidance, or the Government's wider arms export policy towards Israel, be reviewed in the light of the ICJ's interim ruling on South Africa's genocide case against Israel?

It would be helpful to have a response to these questions by Thursday 8 February. I intend to publish our correspondence.

Yours,



ALICIA KEARNS