

Latest CAEC Report

The Committees on Arms Export Controls (CAEC), formerly known as the Quadripartite Committee, consists of four Committees which meet together to consider the control of strategic exports, including weapons. The Committees involved are: Business and Enterprise, Defence, Foreign Affairs and International Development. The Chair for these meetings is Roger Berry MP, who is a member of the Business and Enterprise Committee.

The Committees' main job is to review Government policy on licensing arms exports and licensing decisions. Each year the Government produces an annual report on Strategic Export Controls, which the Committees scrutinise.

On 17th July the Committees published their latest report on the latest Government reports, and the UK's licensing policy and review of the Export Control Act 2002; in it they called for HMG to introduce tighter controls on a number of areas, including the activities of "UK Nationals" based overseas.

Amongst the Committees' conclusions and recommendations are:

1. We conclude that the Government is to be commended for bringing forward the Export Control (Security and Para-military Goods) Order 2008, to prevent the export of, and trading in, sting sticks. (Paragraph 6)
2. We conclude that two weeks to comment on the draft Trade in Goods (Categories of Controlled Goods) Order 2008 was wholly inadequate. We recommend that the Government ensure that interested parties have at least two months to comment on the drafts of the third tranche of secondary legislation implementing the Government's conclusions on the outcome of its Review of Export Controls. (Paragraph 14)
3. We recommend that the Government take steps to demonstrate the effectiveness of the export control system. (Paragraph 23)
4. We conclude that it is necessary to extend extra-territorial controls to cover the export of, and trading in, small arms, MANPADS and cluster bombs and we welcome the Government's decision to do this in the Trade in Goods (Categories of Controlled Goods) Order 2008. (Paragraph 27)
5. In the absence of a wide-ranging and enforceable international arms trade treaty we conclude that there is an overwhelming case for the UK to extend its extra-territorial controls further. (Paragraph 30)
6. We reiterate the recommendation we made last year that the Government bring forward proposals to extend the extra-territorial provisions of the export control legislation to encompass trade in all items on the Military List and that all residents in the UK and British citizens overseas be required to obtain trade control licences, or be covered by a general licence, before engaging in any trade in the goods on the Military List. In order not to undermine the employment prospects of British citizens working for reputable organisations, we further recommend that the Government issue general licences covering British citizens working overseas and engaged in categories of trade between specified countries or in certain activities such as advertising. (Paragraph 31)
7. We conclude that the Government should make its decision whether or not to include the control of transport and ancillary services within new Category B provided by the Trade in Goods (Categories of Controlled Goods) Order 2008 on the basis of evidence made available to the Committees, including any practical experience in other countries of implementing such provisions. In addition, the Government should consider not only the services to include but the nature of the control and the duties and liabilities that can reasonably be placed on those providing ancillary services. (Paragraph 33)
8. We reiterate our recommendation made previously that the Government establish a register of arms brokers.

(Paragraph 36)

9. We conclude that the Government is right to seek to introduce an end-use control on torture equipment through the EU. If this is not possible, we recommend that such a control should be introduced by the UK. (Paragraph 38)
10. We reiterate our recommendation that it should become a standard requirement of licensing that export contracts for goods on the Military List contain a clause preventing re-export to a destination subject to UN or EU embargo. In addition, we recommend that the contracts include a subrogation clause allowing the UK Government to stand in the place of the exporter to enforce the contract in British or foreign courts. (Paragraph 40)
11. We recommend that the Government make export licences for supplies to licensed production facilities or subsidiaries subject to a condition in the export contract preventing re-export to a destination subject to UN or EU embargo. (Paragraph 42)
12. We conclude that we should return to the issue of the "single action" clause—empowering the Government to refuse the transfer of an unlisted item—once the Government has pursued the matter through the EU and we recommend that in its response to this Report the Government state its current position in negotiations with the EU. (Paragraph 44)
13. We conclude that a military end-use control applying to non-controlled goods is evolving. We welcome this development. We recommend that the Government bring forward proposals for a systematic military end-use control regime. (Paragraph 46)
14. We recommend that the Government consider as part of a package of proposals for a military end-use control regime whether (i) the ML6 category of the Military List should be amended to cover utility and transport vehicles supplied for military, security or police use, including those supplied as complete items or in kit form, and (ii) the ML10 category should be amended to cover utility and transport aircraft supplied for military, security or police use. (Paragraph 47)
15. We conclude that we should continue to monitor the number of seizures made annually by HM Revenue and Customs and we recommend that the Government continue to supply this information in annual reports on strategic export controls along with an explanation for the trend in seizures. (Paragraph 50)
16. We reiterate our recommendation made previously on two occasions that the Sentencing Guidelines Council conduct a review of the guidelines on sentences for breaches of export control and we press the Council as a matter of urgency to include the review in its programme for 2008-09. We are deeply dismayed to have to make this recommendation again. (Paragraph 52)
17. We recommend that the Government suspend as a matter of course any person or company convicted of breach of export controls from the use of the Open General Trade Control Licence for a period no less than the length of their sentence and, if the Government establishes a register of brokers, he or she be struck off the register. We also recommend that those who have committed minor breaches have this recorded against their names in the register. (Paragraph 55)
18. We conclude that we should monitor the trend and type (in particular, intent, lack of awareness or neglect of duty of care) in the number of misuses of open general licences next year. We recommend that this information

should be included in the Government's annual reports on strategic export controls. (Paragraph 57)

19. Where breaches of the requirements to use open general licences are persistent and an exporter shows no inclination to bring his or her administrative arrangements up to the required level, we recommend that the Export Control Organisation automatically remove the exporter's entitlement to use open general licences. (Paragraph 58)
20. In responding to this Report we recommend that the Government set out the arrangements and programme for reviewing and updating open general licences. (Paragraph 59)
21. We conclude that the use of civil penalties for the breach of export controls appears to offer a method of strengthening the UK's export controls. We conclude that we should consider this matter further when the Government has completed its consideration of the use of civil penalties for the breach of export controls. We recommend that the Government inform the Committees and the House of the outcome of its deliberations at an early date. (Paragraph 63)
22. In responding to this Report we recommend that the Government provide an assessment of the effects on the integrity of the UK's export control system of waiving the requirement on exporters applying for OGELs to wait for an acknowledgment of their applications from the Export Control Organisation before exporting goods under the licence. We further recommend that the Government take steps to ensure that the integrity of no part of the UK's export control system is jeopardised by the illness or unavailability of staff. (Paragraph 67)
23. We conclude that there is no overwhelming case in favour of creating an export enforcement agency in the short term. (Paragraph 70)
24. We conclude that the transfer of some functions of the Defence Export Sales Organisation (DESO) from the Ministry of Defence to The Department for Business, Enterprise and Regulatory Reform provides an opportunity to separate the functions of promoting defence sales from that of licensing exports in both departments. (Paragraph 74)
25. We conclude that all of the departments concerned with the scrutiny of export licences need to keep under review whether the cutbacks in defence attaché posts is having a detrimental effect on the UK's export controls. (Paragraph 76)
26. We recommend that within six weeks of the publication of this Report the Home Office supply a memorandum responding to the matters we raised on the import of arms in our Report last year. (Paragraph 78)
27. We recommend that the Government publish future annual reports on strategic export controls by the end of March of the following calendar each year. (Paragraph 80)
28. We recommend that that the Government include monetary information on the management and enforcement of export controls in future annual reports on strategic export controls. (Paragraph 83)
29. We recommend that the Government in responding to this Report set out any conclusions it has reached arising from its examination of the practices followed in annual reports issued by other EU Member States and provide an indication of the timetable for the completion of the work. (Paragraph 84)
30. We recommend that the Government in responding to this Report set out the timetable for bringing a fully

searchable and regularly updated database of all licensing decisions into operation and publish details of its functionality and operating arrangements. (Paragraph 85)

31. In responding to this Report we recommend that the Government explain whether in issuing export licences for armoured personnel carriers and water cannons to Libya it made an exception to its policy to refuse an export licence if the issue of a licence is assessed to be inconsistent with the Consolidated Criteria and whether it will carry out end-use monitoring in the case of these exports to Libya. (Paragraph 90)
32. In responding to this Report we recommend that the Government explain whether it carries out any Criterion 8 assessment of the impact of exports to private companies in countries on the Department for International Development's list of countries where sustainable development is most likely to be an important factor and whether it checks that an application made by a private company from a country on the list is unconnected with the government of the country. (Paragraph 91)
33. We have concluded that in the case we raised about the Open Individual Trade Control Licence which appeared to cover exports to Ivory Coast we should accept the Government's offer of a confidential briefing. (Paragraph 93)
34. We recommend that the Government send us a "Restricted" report on outreach no later than its response to this Report and clarify the timetable for the production of future reports. (Paragraph 94)
35. We recommend that when it produces guidance for those handling or dealing with exports—both for civil servants and British citizens or companies—the Government set out concisely and clearly the extra-territorial provisions in statute and common law on bribery and corruption as well as the penalties for breaching the law. (Paragraph 110)
36. We reiterate our recommendations that an assessment in the Criterion 8 methodology be applied by the Government to test whether the contract behind an application for an export licence is free from bribery and corruption, to maximise the integrity and accountability of the procurement process, and that the Government publish the methodology in the annual report on strategic export controls. (Paragraph 112)
37. We recommend that as a first step the Export Control Organisation require those applying for export licences to provide a declaration that to the best of their knowledge the export contract has not been obtained through bribery or corruption and that where an agent has been used due diligence checks have been carried out. We recommend that those who knowingly make a false declaration be liable to prosecution and revocation of all export licences. In addition, we recommend that in a case where subsequently an exporter is convicted of corruption the Government revoke all his or her export licences. We also recommend that the Government amend the National Export Licensing Criteria to make conviction for corruption by an exporter grounds for refusing an export licence. (Paragraph 117)
38. We recommend that the UK Government consider how to improve the transparency of the Salam Project. We also recommend that the Public Accounts Committee gives consideration to publishing all reports to it from the National Audit Office in respect of the Salam Project. (Paragraph 121)
39. We recommend that the Government provide in its response to this Report a statement setting out the progress made by government departments and agencies investigating current allegations of bribery in relation to arms exports. (Paragraph 123)

40. We recommend that the Government continue to press determinedly for the revised EU Code of Conduct on Arms Exports to be adopted as a legally binding Common Position under Article 18 of the Treaty of European Union. (Paragraph 126)
41. We recommend that in responding to this Report the Government explain whether the conclusions and recommendations from the peer review of the implementation of EU Council Regulation 1334/2000 on the control of dual-use items have led to changes in the operation of the export control system to improve its effectiveness. (Paragraph 127)
42. On the basis of the evidence given by the Secretary of State for Defence and by the Foreign and Commonwealth Office we conclude that the Government has reached the view that neither the Defence and Security Procurement Directive nor the Intra-Community Transfers Directive as published on 5 December 2007 will lead to a weakening of the UK's export control system. This is an issue that we shall keep under review. (Paragraph 133)
43. We recommend that the Government provide us with a report on the outcome of its contacts with the Slovenian Presidency and EU States within the Working Party on Conventional Arms Exports (COARM) to consider how best to ensure that the EU Code of Conduct is applied in a uniform manner across the all Member States. (Paragraph 135)
44. We conclude that the Government is to be commended and supported in its efforts to achieve a comprehensive and effective international arms trade treaty. (Paragraph 137)
45. We recommend that the Government bring forward legislation in the next session to ratify the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Protocol). (Paragraph 140)
46. We conclude that the British Government and the EU should maintain their arms embargo on China. (Paragraph 146)
47. We recommend that the Government adopt a policy that, where a country is subject to an international arms embargo, the UK Government does not provide official sponsorship for the representatives of the State under embargo to attend arms fairs in the UK. (Paragraph 148)
48. We recommend that in responding to this Report the Government explain whether it pressed for a restriction in the Convention on Cluster Munitions agreed in Dublin in 2008 that would allow it to develop a new generation of anti-tank cluster shell. (Paragraph 152)
49. We conclude that the Government is to be commended for its support for, and agreement to enter into, the Convention on Cluster Munitions agreed in Dublin in 2008, which bans all types of cluster munitions, including so-called "smart" cluster munitions. (Paragraph 153)

The Export Group for Aerospace & Defence (EGAD), the only dedicated national industrial body in the UK dealing exclusively with export control issues, welcomes the vast majority of the proposals contained in the above report, which it feels are constructive in nature.

However, EGAD have been concerned at the recommendation to extend the scope of the UK's extraterritorial trade controls to encompass additional technologies. To address this concern, special meetings have taken place (on 14th

March, 13th June and 23rd July 2008), where groups of Industry experts (from EGAD) and a similar group of NGO experts (drawn from Amnesty International, Oxfam and Saferworld) could discuss these issues, and set about seeking possible ideas for potential changes to the UK's Trade Control System. The outcome of these meetings is intended to be proposals would make the UK's Trade Controls much better focused on the required target, but without seeking to impose any additional burdens on legitimate Industry, either here in the UK or overseas.

A copy of the full report is to be found at: www.publications.parliament.uk/pa/cm/cmquad.htm, and the CAEC can be contacted on E-mail: arms_committees@parliament.uk, and its dedicated website is to be found at:

www.parliament.uk/parliamentary_committees/arms_committees.cfm

Meanwhile, the British Government has published its latest further response to the public consultations which took place in 2007, as part of the review of the Export Control Act 2002 (for details of which see: <http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/index.html>). A copy of this response can be found at: www.berr.gov.uk/files/file47087.pdf. What has been published is entirely in line with the earlier response (of 6th February 2008), and seeks to provide further clarification of some issues.