



Written evidence submitted by Control Arms UK to the Committees on Arms Export Controls inquiry on 2017 arms exports Annual Report

Control Arms UK recommends that:

Arms transfers and the war in Yemen

- While the war in Yemen continues and attendant serious violations of international humanitarian and human rights law occur, the UK applies a *de facto* embargo on any arms transfers to Saudi Arabia or UAE, and suspends existing licences and deny future applications for transfers to all other members of the Saudi and UAE -led Coalition where there is any risk that those arms might be used in the conflict in Yemen
- The government calls on other arms exporting countries to apply the same policies (as above), including at the level of the EU.
- The government acknowledges the Coalition's investigative mechanism, the Joint Incidents Assessment Team (JIAT), falls short of relevant international standards including those of transparency, independence, impartiality and effectiveness.
- CAEC uses its report to highlight the extent to which the UK's conduct *vis-à-vis* arms exports is damaging the rules based international system, including the ATT, and that the government should move to become immediately and consistently compliant with its international obligations.
- The government improves efforts to adopt a joined-up approach to conflict resolution and prevention, and stops authorising arms exports which may undermine humanitarian, development and peace-building initiatives, including those supported by DFID.

Implications of Brexit for controls on strategic goods

- CAEC presses the Government to:
 - provide specific details on how export control of strategic goods, including dual-use and torture equipment, will be managed post-withdrawal from the EU and what the specific future relationship between the UK and various EU regimes is likely to be.
 - confirm that during any proposed transition period, matters relating to strategic export and non-proliferation controls will be formally incorporated into the proposed UK-EU joint committee system and that observer status will be established for various EU working groups (e.g. COARM) overseeing implementation of current EU controls.
 - set out a detailed timetable of proposed new legislation for export control of strategic goods including arms, dual-use goods, firearms and torture and death penalty equipment, specifying the steps that will be taken to ensure adequate and meaningful consultation with relevant UK stakeholders.

Arms Trade Treaty

- The government henceforth includes information on UK arms imports in its annual report to the ATT Secretariat, according to its obligations under Arms Trade Treaty Article 13 (3), and ensure that its report is made public.

Regulation of brass-plate companies

- The government makes an explicit written policy statement (circulated *inter alia* through a “notice to exporters”) that it intends to use existing company law powers to close brass-plate companies and disqualify their directors on public-interest grounds where there is reasonable suspicion of their involvement in illegal brokering activity.
- DIT requests that the Companies House website provides clear and accessible information on export control issues, particularly in relation to arms brokering, so that it is clear to anyone establishing a company via the online registration system that brokering of strategic goods is subject to export controls, including extra-territorial controls.
- A specific system is established to enforce these powers, including an inter-departmental working group comprising of enforcement teams from export licensing and HMRC, to investigate cases involving arms brokering undertaken by brass-plate companies. Where formal prosecution using existing export control legislation is deemed problematic, yet reasonable grounds remain that offences have been committed, this should include the establishment of formal procedures whereby the Secretary of State responsible for export licensing notifies Companies House of his/her recommendation to remove specific companies from the UK register and the rationale for doing so.
- The UK sets up a register of arms brokers, including the establishment of a fit and proper person test for all companies and individuals wishing to broker strategic goods. Failure to register would further strengthen the enforcement of existing brokering controls, especially in cases involving brass plate entities.

Arms brokering

- The government explains what steps it has taken to investigate possible breaches of the Export Control Act that may have been committed with regard to the transfer of ammunition from Bosnia to Saudi Arabia, for which trade control licences were eventually refused.
- The government devises plans for how to seek and share information with other parties to prospective transactions which may involve UK intermediaries and which give cause for concern in cases where there is not an *obligation* to consult.

Open licences

- The government reintroduces the reporting measures on open licences as first set out following the 2012 Transparency Initiative consultation.

Criterion 8 and the role of DFID

- The government amends criterion 8 of the Consolidated Criteria such that licensing assessments include risks associated with the potential *use* of the prospective export in the recipient or in any other country, and encourages the adoption of a similar amendment to the EU Common Position.
- The role of DFID in the assessment process is expanded to include cases where the possible use (as well as the purchase) of the items raises concerns around the impact on development.

'Special measures'

- The government operates a presumption of denial for the transfer of any controlled items to any of the Human Rights Priority Countries in the FCO's Annual Human Rights and Democracy Report.
- The government operates similar restrictive measures with regards to transfers of production capacity to recipients that are not States Parties or signatories to the ATT.
- Countries are excluded from the lists of destinations on OGELs unless they have
 - signed the ATT, and
 - are not among the Human Rights Priority Countries in the FCO's Annual Human Rights and Democracy Report.

Clarion Events Limited and arms fairs

- CAEC asks the government:
 - if it has granted Clarion Events a licence to promote Category A goods;
 - how it ensures that UK companies organising overseas arms and security fairs comply with the UK Export Control Act;
 - how it identifies events that risk breaching the provisions of the Act;
 - whether any relevant enforcement action has taken place and if so against which companies or individuals;
 - whether it will investigate Clarion Events for breaches of the Act during BIDEC 2017.

Corruption

- The government introduces a new corruption criterion to the Consolidated Criteria, and encourages other states to introduce a formal obligation to consider corruption risk in their licensing assessments, either unilaterally or through regional mechanisms.

Section 1: Introduction

1. Control Arms UK welcomes the Committees on Arms Export Control's (CAEC) inquiry into UK Arms Exports during 2017. Control Arms UK is the UK national platform of the Control Arms Coalition, an international coalition of non-governmental organisations, research institutions and other civil society organisations working for effective controls on the international arms trade.¹
2. Control Arms UK primary concern with respect to UK arm transfer policy and practice over the last year (and since 2015) is the sale of controlled items that are at risk of being used in the Yemen war. We regard this as probably the most problematic context for UK arms transfers since the Export Control Act became law. While we agreed with many of the conclusions and recommendations in the CAEC report, we would argue that Yemen deserved more attention than it received in last year's CAEC enquiry and report, and that it merits explicit mention in the Terms of Reference (ToR) of the current enquiry.²
3. We do note, however, that there are opportunities within the ToR to focus on the relationship between UK arms exports and Yemen, most obviously the request for submissions on "the use/adequacy of the 'Consolidated criteria' for assessing arms exports, and how they are interpreted." The next section of this memorandum, which interrogates UK arms supplies and the Yemen war, addresses this issue. We then consider several other issues included within the ToR, however this is not a comprehensive record of all of the concerns of Control Arms UK members with respect to the UK system for controlling strategic items.
4. For many years the government has repeatedly stated that the UK export control system is among the best and most robust in the world, and that all licence applications are rigorously assessed on a case-by-case basis against the consolidated criteria. For the most part the UK has one of the most *elaborate* systems in place for the control of conventional arms transfers, however, an elaborate process does not necessarily make for a good outcome. In the case of the Yemen conflict, more and more States are operating a more restrictive approach to arms exports than the UK, on the grounds that the behaviour of the combatants (on all sides) is unacceptable and serious violations of international law are being committed on a repeated basis using conventional arms, including the type of conventional arms exported from the UK. For the UK to claim in these circumstances that it has one of the most rigorous systems in the world flies in the face of substantial evidence.

¹ Each individual organisation brings different areas of policy expertise encompassing a wide range of related policy concerns and therefore may not address or take specific views on all areas contained within this submission. The members of Control Arms UK for the purposes of this submission include Action on Armed Violence, Amnesty International UK, Article 36, Omega Research Foundation, Oxfam, Saferworld, Transparency International-Defence and Security, and United Nations Association-UK.

² 2017 arms exports Annual Report inquiry Terms of Reference, Committees on Arms Export Controls, <https://www.parliament.uk/business/committees/committees-a-z/other-committees/committee-on-arms-export-controls/news-parliament-2017/2017-arms-exports-annual-report-launch-17-19/>, accessed 15 January 2019.

Section 2: Arms transfers and the war in Yemen

Licences granted to Saudi Arabia

5. The UK has been one of the main arms suppliers of the Saudi and UAE -led Coalition fighting in the war in Yemen, with Saudi Arabia the principle recipient.
6. The government issued standard individual export licences (SIELs) for transfers to Saudi Arabia to a total value of £125m in 2018 to the end of September. (Figures for the final quarter of 2018 will be reported in April 2019.) Of this, £49m was for items on the Military List, with the remainder being dual-use goods. A further 21 Open Individual Export Licences (OIELs) and one Open Individual Trade Control Licence (OICTL), for which no limits are placed on the quantities that can be transferred or the values thereof, were issued in the same period.
7. In 2017, £1.156bn worth of SIELs were issued, plus a further 50 OIELs and two OITCLs. Of these, £1.33bn in SIELs, and 43 open licences were for military list items, with the small remainder being for dual use goods.³
8. In 2016 the comparable value of SIELs issued was £756m, plus two OIELs and 1 OITCL. In 2015, following the start of the intervention by the Saudi and UAE -led Coalition, the comparable figures were £2.9bn worth of SIELs, 25 OIELs and two OITCLs. Since 2008 (the point at which comparable figures are available online), there has been no systemic change in pattern of supply to Saudi Arabia whatsoever.
9. The 2015 figures highlight a troubling problem with this data. We know the value of goods licensed for export under a particular Military List category. We have no way of knowing what quantity of those goods, or for what value, have actually been delivered against these licences. For example, the 2015 figure includes a £1.7bn licence for combat aircraft, however subsequent government data gives no indication of how many if any of these aircraft have been transferred.
10. It would be much more efficient and transparent if government reports included data about actual deliveries against licences issued. Licensing data can fluctuate wildly year-on-year; it is not unusual that following the granting of large licences there will be a period of much lower licensing activity.
11. Despite the ongoing humanitarian catastrophe in Yemen caused by the war, the rate of approval licences has not slowed, nor have significant numbers of denials of licences been reported.

³ Figures are made available by the government on a quarterly basis, and compiled into an easily accessible browser by Campaign Against Arms Trade. A good visual representation of the government's own data for licenses issued for exports to Saudi Arabia in 2017 can be found at https://www.caat.org.uk/resources/export-licences/licence?use=military®ion=Saudi+Arabia&index=value&order=desc&date_from=2017-01-01&date_to=2017-12-31&n=0.

12. The government does provide *some* information on the use of open licences (as a result of the 2012 Transparency Initiative—for more on this, see below). This reveals that the total number of deliveries made under all types of open licences was 5,610 in calendar year 2015; 5,930 in 2016; and 6,567 in 2017 (the last year for which figures are available). This suggests deliveries to Saudi Arabia have stayed at a high level throughout the conflict and indeed the number of deliveries in 2017 was up 17 per cent on deliveries in 2015. It should be noted, however, that the government gives no information on the quantities of strategic items that have been delivered, only the number of times deliveries have been made. The picture is therefore substantially incomplete.
13. We reiterate our position held since 2015: while the war in Yemen continues and attendant serious violations of IHL occur, all arms transfers to any warring party must be stopped where there remains a clear risk that those transfers might be used in the conflict.

The humanitarian impact of the war in Yemen

14. The impact of the war in Yemen has been devastating for the civilian population. In August 2018 the UN Office of the High Commission for Human Rights said that “Between 26 March 2015 and 9 August 2018, our office has documented a total of 17,062 civilian casualties – 6,592 dead and 10,470 injured.”⁴ However, they also acknowledge there are many deaths that they are not documenting.
15. According to the Armed Conflict Location & Event Data Project (ACLED) there were 3,071 events targeting civilians between 2016 and November 2018⁵, and at least 56,000 people, including over 6,000 civilians were killed between January 2016 and October 2018. They estimate that from March 2015 to the end of 2018, the number of deaths related to combat could be as high as 80,000.⁶ This does not include deaths as a result of disease or malnutrition, only direct combat casualties. ACLED calculates that three-quarters of those deaths are attributable to the actions of the Coalition. The Yemen Data Project has reported that while the overall number of air attacks decreased during 2018, the proportion of those attacks striking clearly civilian targets rose, while attacks on clear military targets fell. They report that of the 3,362 air raids in Yemen in 2018:
 - 420 air raids hit residential areas
 - 231 hit farms
 - 133 hit transport infrastructure
 - 95 hit civilian vehicles and buses⁷
 - 31 hit educational facilities (schools, institutes, universities, etc.)
 - 16 hit oil and gas facilities

⁴ Press briefing notes on Yemen civilian casualties, Spokesperson for the UN High Commissioner for Human Rights: Liz Throssell, Geneva, 10 August 2018. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23439&LangID=E>.

⁵ See ACLED press release at <https://www.acleddata.com/2018/12/11/press-release-yemen-war-death-toll-now-exceeds-60000-according-to-latest-acled-data/>.

⁶ See the ACLED website at <https://www.acleddata.com/2018/11/08/fatalities-in-the-yemen-conflict/>.

⁷ ‘Air raids on civilian vehicles and buses’, Yemen Data Project Air Raids Summary for August 2018, <https://us16.campaign-archive.com/?u=1912a1b11cab332fa977d3a6a&id=9bf79defdb>, accessed 22 January 2019.

- 26 hit water and electricity sites
- 26 hit market places
- 15 hit factories
- 10 hit medical facilities (hospitals, clinics, etc.)
- 7 hit mosques
- 3 hit IDP camps
- 2 hit international non-government organisations (INGO)⁸

16. At the end of September 2018, civilian deaths rose dramatically because of the offensive on the city and port of Hodeidah. UNHCR reported that 1,500 civilians were killed in August and September 2018.⁹ These deaths, and attendant destruction of infrastructure in Hodeidah, have slowed only with intense external pressure for a ceasefire in that city. Fighting continues unabated in other areas of the country.

17. In January 2019, Mark Lowcock, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, briefed the UN Security Council that “[m]ore than 24 million people now need humanitarian assistance – that’s 80 per cent of the population.”¹⁰ The IPC says that 15.9 million people (53 per cent of the population) are severely food insecure¹¹; 11.3 million of those in need of assistance are children. Over 3.3 million are displaced, 81 per cent of whom have been displaced for more than a year, with 600,000 displaced during 2018.¹² According to OCHA, 242 UN agencies, international organisations and humanitarian NGOs are working to provide aid to almost 8 million Yemenis every month. While the blockade, with attendant food shortages and prices rises, is the major issue in Yemen of similar concern are reports by the World Food Programme that the Houthis have been diverting food aid from civilians to their military.¹³

18. Coalition naval forces continue to impede the arrival of supplies, even when cleared by UNVIM. According to UNOCHA, for example, between September and December 2018 fuel deliveries to Yemen ranged between 19 and 37 per cent of monthly requirements. Prices for diesel have increased 257 per cent and for petrol by 261 per cent over pre-blockade levels.¹⁴

19. By December 2018 food imports reached only 47 per cent of the pre-blockade average, and even before the blockade insufficient food was imported to feed the population. Food prices

⁸ Yemen Data Project Air Raids Summary for 2018, available at <https://malchi.mp/5ccc4f828655/january2019-yemen-data-project-update-456659?e=33bbd0634b>. For much more detailed reports see www.yemendataproject.org.

⁹ UNHCR urges protection of Yemeni civilians, 7 December 2018. Available at <https://www.unhcr.org/news/briefing/2018/12/5c0a3b014/unhcr-urges-protection-yemeni-civilians.html>.

¹⁰ Briefing to the Security Council on the humanitarian situation in Yemen, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Mark Lowcock, New York, 9 January 2019, available at <https://reliefweb.int/report/yemen/under-secretary-general-humanitarian-affairs-and-emergency-relief-coordinator-mark-13>.

¹¹ IPC ACUTE FOOD INSECURITY ANALYSIS, December 2018, available at https://reliefweb.int/sites/reliefweb.int/files/resources/1_IPC_Yemen_AFI_Situation_2018Dec2019Jan.pdf.

¹² See Lowcock UNSC Briefing, *op cit*.

¹³ ‘Yemen war: WFP accuses Houthi rebels of diverting food aid’, BBC News, 31 December 2018, <https://www.bbc.co.uk/news/world-middle-east-46722502>, accessed 22 January 2019.

¹⁴ Yemen Commodity Tracker for December 2018, OCHA, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20YEMEN%20Commodity%20Tracker%20Nov%202018.pdf>.

have risen 137 per cent during the war.¹⁵ Commercial food imports in December 2018 declined to the lowest level since the UN started monitoring imports in July 2016.¹⁶

20. The destruction of water infrastructure, including both pumped water and the destruction of bridges/roads for water tankers, has led to the world's worst outbreak of cholera in Yemen. This has resulted entirely from military attacks on civilian infrastructure, a significant breach of IHL. It is exacerbated by the blockade of Yemeni ports described above, as availability of fuel for water pumps is severely restricted and its cost now prohibitive for many. The World Health Organisation has said: "Cholera is endemic in Yemen. The country has experienced a surge in cholera cases since April 2017 due to ongoing conflict, destroyed infrastructure for health, water and sanitation, and malnutrition, which has made the population more vulnerable to various epidemic-prone diseases including cholera."¹⁷

Failure to investigate potentially unlawful attacks

21. In response to the criticism of the use of arms supplied by the UK, US, France and other countries in potential breaches of International Humanitarian Law (IHL) the Coalition established the Joint Incidents Assessment Team (JIAT), ostensibly to investigate potential war crimes, and to reduce civilian death, injury and other harm through improved understanding of military action. However, it remains clear that the JIAT does not function properly, and statistics of ongoing humanitarian harm show that there has been no reduction in impact.
22. JIAT claims to have investigated only 79 incidents since it was established, and details of only 75 of those can be established.¹⁸ The UN Panel of Experts on Yemen has said that most incidents go un-investigated and even unacknowledged. The JIAT has absolved the Coalition of any responsibility for its actions in almost every case it has investigated. It has been reported that a "UN Panel of Experts found that, except for two of 10 attacks the panel investigated in 2017, the coalition had not 'acknowledged its involvement in any of the attacks, nor clarified, in the public domain, the military objective it sought to achieve.'" Human Rights Watch reports that less than 25 per cent of the 88 cases of potential war crimes it has documented fully since 2015 have been investigated by the JIAT. This goes also for dozens of cases reported by the UN Panel of Experts.¹⁹
23. The violence has had and continues to have a serious impact on the ability of humanitarian actors to deliver and provide vital services to displaced people, including for instance water and sanitation, including assistance provided by the government itself through DFID.

¹⁵ Yemen Commodity Tracker for January 2019, OCHA, available at

https://reliefweb.int/sites/reliefweb.int/files/resources/20181231%20OCHA_Yemen_Commodity%20Tracker.pdf.

¹⁶ See UN OCHA Yemen Humanitarian Update Covering 13 December 2018-15 January 2019, Issue 1, available at <https://reliefweb.int/report/yemen/yemen-humanitarian-update-covering-13-december-2018-15-january-2019-issue-1>.

¹⁷ Epidemic and Pandemic-prone diseases: Outbreak update – Cholera in Yemen', WHO, 7 December 2018, <http://www.emro.who.int/pandemic-epidemic-diseases/cholera/outbreak-update-cholera-in-yemen-7-december-2018.html>, accessed 22 January 2019.

¹⁸ 'Hiding Behind the Coalition: Failure to Credibly Investigate and Provide Redress for Unlawful Attacks in Yemen', Human Rights Watch, 24 August 2018, p5, <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful#>, accessed 22 January 2019.

¹⁹ Ibid.

24. For example, over the past three years a number of Oxfam projects in Yemen have been hit by airstrikes. Oxfam has sent this information to the High Court, in letters to UK ministers in a number of departments, and in private emails to senior officials. A number of these incidents have been discussed in public Select Committees meetings of the House of Commons. Oxfam has repeatedly asked for meetings with ministers and officials to discuss the issue. Despite these requests, the MOD has yet to meet with or interview anybody from Oxfam. We do not know if they have investigated strikes on Oxfam, nor if they have passed the information to the JIAT.
25. This direct experience mirrors the publicly available information that the JIAT cannot be relied upon as a mechanism to assess the extent to which the Coalition is or is not abiding by international humanitarian law.

Arms exports and the rules-based international system

26. UK Government analysis makes it clear that Britain’s security and prosperity is contingent on a healthy rules-based international system. In 2018, the Government used its National Security Capability Review to restate the gravity of the threat posed by the erosion of the rules-based system, identifying it as a challenge “likely to drive UK security priorities for the coming decade”.²⁰
27. In her speech to the General Assembly in September 2018, Theresa May said: “we must act to uphold the international rules based system”, explaining that this is “not just a moral imperative. It is also a matter of self-interest”²¹.
28. The Arms Trade Treaty (ATT), ratified by the UK in 2014, is a fundamental part of this system, and one which, according to the UK’s National Counter Proliferation Strategy, can deliver a “step-change in the rules-based international system governing the trade in conventional arms”.²²
29. As noted above, since the Coalition intervened in Yemen in 2015, the UK has been a significant supplier of lethal weaponry being used and at risk of being used in the conflict, most notably to Saudi Arabia, a conflict that has caused inestimable humanitarian harm.
30. A wealth of UN evidence, civil society analysis, legal opinion and previous UK cross-party parliamentary reports have pointed to credible evidence that all sides of the Yemen conflict, including the Coalition, are likely responsible for war crimes and other serious violations of international humanitarian and human rights law in Yemen—from using starvation as an

²⁰ ‘National Security Capability Review’ HM Government, March 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705347/6.4391_CO_National-Security-Review_web.pdf, accessed 22 January 2019.

²¹ ‘PM speech to the UN General Assembly, 26 September 2018, <https://www.gov.uk/government/speeches/pm-speech-to-the-un-general-assembly-26-september-2018>, accessed 22 January 2019.

²² ‘National Counter Proliferation Strategy to 2020’, HM Government, March 2016, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/510716/National_Counter_Proliferation_Strategy_to_2020_-_updated_24_March.pdf, accessed 22 January 2019.

instrument of war²³ to the indiscriminate bombing of funerals, weddings and health facilities.²⁴ The Coalition itself admitted responsibility for bombing a school bus killing 40 children.²⁵ All of this reinforces the conclusion that UK exports to parties to the conflict in Yemen are in breach of both the ATT and the EU and National Consolidated Criteria.

31. Nevertheless, throughout the conflict, the UK government has often questioned the worth and credibility of the information supplied by the disinterested organisations and institutions that have been investigating the conduct of the war. Instead, they have chosen to place an extremely high level of confidence in the reassurances of the lead Coalition states, in particular Saudi Arabia, and in the processes the Coalition has established to monitor its own conduct, such as the JIAT (as described above). Control Arms UK and many others have for years now argued in response that the UK's position in this respect is not credible.
32. The recent case of the assassination of Jamal Khashoggi, and the attempted cover-up(s) that followed, shreds the already tattered credibility of Saudi Arabia in this regard. The UK must not give any more credence to Saudi reassurances where against these there is a weight of evidence painting a very different picture.

Other responses to supplying arms at risk of being used in Yemen

33. As time goes on, the UK is increasingly becoming an arms export outlier. Respected institutions and commentators have criticised the conduct of the Coalition, while allies have halted or restricted arms exports to parties to the conflict. Some illustrative examples include:
 34. In August 2018, a Report of the UN High Commissioner for Human Rights which contained the findings of the Group of Independent Eminent International and Regional Experts called unequivocally on the international community to “refrain from providing arms that could be used in the conflict”.²⁶
 35. The Head of the International Committee of the Red Cross remarked that in Yemen the arms trade is “rife and continues to flow despite repeated violations of international humanitarian law [...] the words of the [ATT] remain hollow if they are not matched with actions, and result in changes in policies and behaviour.”²⁷

²³ 'February 2018 Monthly Forecast: Yemen', Security Council Report, 31 January 2019,

https://www.securitycouncilreport.org/monthly-forecast/2018-02/yemen_32.php, accessed 22 January 2019.

²⁴ 'Yemen: UN Experts point to possible war crimes by parties to the conflict', UN Human Rights Council, 28 August 2018, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23479&LangID=E>, accessed 22 January 2019.

²⁵ 'Saudi-UAE coalition admits Yemen school bus attack “unjustified”', Aljazeera, 1 September 2018, <https://www.aljazeera.com/news/2018/09/saudi-uae-coalition-admits-yemen-school-bus-bombing-unjustified-180901141048148.html>, accessed 22 January 2019.

²⁶ 'Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Situation of human rights in Yemen, including violations and abuses since September 2014', HRC, 17 August 2018, A/HRC/39/43, https://www.ohchr.org/Documents/Countries/YE/A_HRC_39_43_EN.docx, accessed 22 January 2019.

²⁷ 'Unregulated arms trade ruined 'every aspect of civilian life' in Yemen', Middle East Eye, 11 September 2017, <http://www.middleeasteye.net/news/unregulated-arms-trade-has-lead-grim-humanitarian-situation-yemen-says-icrc-21865035>, accessed 22 January 2019.

36. In December 2015, *Professor Philippe Sands QC et al* found that any authorisation for arms exports to Saudi Arabia “in circumstances where such weapons are capable of being used in the conflict in Yemen, including to support its blockade of Yemeni territory” constituted a “breach of [the UK’s] obligations under the Arms Trade Treaty”.²⁸
37. In January 2018, Norway suspended supplies of lethal equipment to the UAE, citing concerns over the situation in Yemen; in November it announced that it was suspending new licences for arms exports to Saudi Arabia.²⁹
38. In April 2018, Germany (fourth largest arms exporter to Saudi Arabia) announced it would suspend future licences for arms transfers to countries directly engaged in the Yemen conflict. Germany further developed its position following the killing of Jamal Khashoggi, expanding its prohibition to include deliveries against extant licences, and urging other EU member states to do the same.³⁰
39. In October 2018, Austria, which stopped sending military equipment to Saudi Arabia in March 2015, urged other EU Member States to follow suit.³¹
40. In November, Switzerland [halted](#) the delivery of spare weapon parts to Saudi Arabia, citing concerns over the killing of Jamal Khashoggi. Switzerland’s Economic Affairs Department said it would follow developments and potentially reverse the decision in the future.³²
41. In November 2018, Finland announced that it had stopped issuing arms export authorisations to Saudi Arabia and the UAE.³³
42. In the same month the Netherlands indicated that in addition to its longstanding policy of not exporting arms to Saudi Arabia, it would argue in favour of an arms embargo in the UN Security Council.³⁴

²⁸ ‘Matrix members find UK Government is in breach of national, EU and international law and policy’, Matrix Chambers, 18 January 2015, <https://www.matrixlaw.co.uk/news/matrix-members-find-uk-government-is-in-breach-of-national-eu-and-international-law-and-policy/>, accessed 22 January 2019.

²⁹ ‘Suspension of export licences to the United Arab Emirates’, Government of Norway, 01 March, 2018, <https://www.regjeringen.no/en/aktuelt/suspension-of-export-licences-to-the-united-arab-emirates/id2583359/>, accessed 22 January 2019.

³⁰ ‘Germany halts all arms sales to Saudi Arabia’, The Week, 20 November 2018, <https://www.theweek.co.uk/97899/germany-halts-all-arms-sales-to-saudi-arabia>, accessed 22 January 2019.

³¹ ‘Austria calls for EU-wide halt in arms sales to Saudi Arabia’, Reuters, 25 October 2018, <https://www.reuters.com/article/us-saudi-khashoggi-austria/austria-calls-for-eu-wide-halt-in-arms-sales-to-saudi-arabia-idUSKCN1MZ34T?feedType=RSS&feedName=topNews>, accessed 22 January 2019.

³² ‘Switzerland suspends arms shipment to Saudi over Khashoggi case’, Aljazeera, 31 October 2018, <https://www.aljazeera.com/news/2018/10/switzerland-suspends-arms-export-saudi-khashoggi-case-181031174955576.html>, accessed 22 January 2019.

³³ ‘No foundations for arms export authorisations to Saudi Arabia or the United Arab Emirates’, Ministry for Foreign Affairs of Finland, 22 November 2018, https://um.fi/current-affairs/-/asset_publisher/gc654PySnjTX/content/ei-edellytyksia-uusille-asevientiluville-saudi-arabiaan-tai-arabiemiraatteihin?p_auth=P794L5sY&curAsset=0&stId=44227, accessed 22 January 2019.

³⁴ ‘Netherlands pledges to support UN arms embargo on Saudi Arabia’, Middle East Monitor, 17 November 2018, <https://www.middleeastmonitor.com/20181117-netherlands-pledges-to-support-un-arms-embargo-on-saudi-arabia/>, accessed 22 January 2019.

43. Also in November 2018, Denmark stated it was suspending future arms sales to Saudi Arabia³⁵, and then in January 2019 that it had stopped exporting arms to UAE and was withdrawing export permits already approved.³⁶
44. On 4 October 2018, the European Parliament adopted a [resolution](#) calling urging all EU Member States to “refrain from selling arms and any military equipment to Saudi Arabia, the UAE and any member of the international coalition, as well as to the Yemeni Government and other parties to the conflict.”³⁷
45. On 25 October 2018, the European Parliament adopted a further [resolution](#) condemning Saudi Arabia following the killing of prominent journalist Jamal Khashoggi and called for the Council to reach a common position in order to impose an EU-wide arms embargo on Saudi Arabia and to respect the EU Common Position.³⁸
46. Many UK allies and States Parties of the ATT have restricted exports to Saudi Arabia over concerns that their weapons may be used to commit war crimes in Yemen, while, in contrast, the UK continues to pursue new deals for warplanes likely to be used in Yemen.³⁹ It is not only in the context of the ATT that this is problematic; it also suggests that the UK is ignoring the relationship between atrocities committed in Yemen and commitments under Responsibility to Protect (R2P). The widespread perception of UK selectivity in meeting its international obligations, damages the rules-based international system and is irreconcilable with the UK’s claims to support such a system, as noted in a recent King’s College report.⁴⁰ It also signals to other states that they can act in the same way and reduces the UK’s power to move international political opinion.
47. *Control Arms UK recommends that:*
- While the war in Yemen continues and attendant serious violations of international humanitarian and human rights law occur, the UK should apply a de facto embargo on any arms transfers to Saudi Arabia or UAE, and should suspend existing licences and deny future applications for transfers to all other members of the Saudi and UAE-led Coalition where there is any risk that those arms might be used in the conflict in Yemen.

³⁵ ‘Denmark suspends future arms exports to Saudi Arabia’, Euronews, 22 November 2018, <https://www.euronews.com/2018/11/22/denmark-suspends-future-arms-exports-to-saudi-arabia> accessed 22 January 2019.

³⁶ ‘Denmark to suspend arms exports to United Arab Emirates’, CPH Post Online, 17 January 2019, <http://cphpost.dk/news/denmark-to-suspend-arms-exports-to-united-arab-emirates.html>, accessed 21 January 2019.

³⁷ ‘European Parliament resolution of 4 October 2018 on the situation in Yemen’, European Parliament, 4 October 2018, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0383&language=EN&ring=B8-2018-0449> accessed 22 January 2019.

³⁸ ‘The killing of journalist Jamal Khashoggi in the Saudi consulate in Istanbul’, European Parliament, 25 October 2018, European Parliament, 25 October 2018, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0434&language=EN&ring=B8-2018-0500>, accessed 22 January 2019.

³⁹ ‘Saudi prince signs £5bn deal for BAE fighter jets’, The Times, 10 March 2018, <https://www.thetimes.co.uk/article/saudi-prince-signs-5bn-deal-for-bae-fighter-jets-mpbw8hqv2>, accessed 22 January 2019.

⁴⁰ ‘Security cooperation with Saudi Arabia, Is it worth it for the UK?’, Kings College London, September 2018, <https://www.kcl.ac.uk/sspp/policy-institute/publications/uk-saudi-arabia-security.pdf> accessed 22 January 2019.

- The government calls on other arms exporting countries to apply the same policies (as above), including at the level of the EU.
- The government acknowledges the Coalition’s investigative mechanism, the Joint Incidents Assessment Team (JIAT), falls short of relevant international standards including those of transparency, independence, impartiality and effectiveness.
- CAEC uses its report to highlight the extent to which the UK’s conduct *vis-à-vis* arms exports is damaging the rules based international system, including the ATT, and that the government should move to become immediately and consistently compliant with its international obligations.
- The government improves efforts to adopt a joined-up approach to conflict resolution and prevention, and stops authorising arms exports which may undermine humanitarian, development and peace-building initiatives, including those supported by DFID

Section 3: The implications of Brexit for controls on strategic goods

Overall concerns

48. Effective regulation based on close co-ordination and harmonisation among EU Member States in strategic export control has been one of the bedrocks of UK non-proliferation policy for almost 50 years. Yet at the time of writing, there is no clarity as to what the UK’s arms and dual-use export control regime will consist of once the UK leaves the EU. With only weeks left, there is seemingly no specific plan in place on how the UK will maintain effective export control of strategic goods, or what the relationship with the EU will be, in areas where there has been significant co-operation and co-ordination with EU partners over many years.
49. Of great concern is the lack of prioritisation given to the control of transfers of strategic goods within the Brexit process. There is no substantive reference to these issues in the Withdrawal Agreement negotiated by the government with the EU, it is not mentioned in the draft Political Declaration Setting out the Framework for the Future Relationship between the EU and the UK, and there is no clear, formal commitment by the Government to maintaining regulatory alignment with the EU in this vital area beyond the 21-month transition period.
50. The ‘Technical Note’ produced by the Government (updated on 19 December 2018) indicates that, in the event of a no-deal Brexit, significant parts of the current EU regulatory regime pertaining to dual-use goods, firearms and goods usable for torture or capital punishment will no longer apply. It is therefore difficult to see how, under such circumstances, the UK can import, wholesale, the raft of EU Regulations and Directives that apply in these areas given that substantial changes – going far beyond the minor legislative fixes envisaged under the EU (Withdrawal) Act 2018 – will be necessary. Moreover, key sections of these EU regimes require joint structured implementation systems, involving a close coordination role for EU institutions such as the commission or the Council, which are

integral to the efficacy of these control systems. Leaving such institutions as required by Brexit will leave significant gaps in many of the UK's existing export control systems and capabilities moving forward.

51. Control Arms UK would like to raise two particular areas of concern:

The Consolidated EU and National Criteria on Arms Exports

52. The Government stated in its response to the First Joint Report of the CAEC that “[a]fter the UK leaves the EU, the [Consolidated EU and National] Criteria will remain in force until such time as new or amended guidance is announced to Parliament”. It also asserts that “the government’s intention remains to negotiate with the EU to maintain as much continuity as possible for the UK’s export licensing system following EU exit, and to maintain close cooperation with the EU in this area.” However, the lack of attention paid to the issue of arms and dual-use export controls thus far in the Brexit process does not give grounds for confidence.

53. Of significant concern is that the EU Common Position (the basis for the UK’s Consolidated Criteria) is currently under review and could be substantively amended in the coming months. There has been no clear expression of intent on the part of the government that it is prepared to adopt future amendments that are made to the EU Common Position criteria, pointing to the potential for divergence in the not-too-distant future.

The UK’s involvement in information exchange, denial notification and consultation mechanisms

54. Given the lack of attention paid to the UK’s role in EU co-operative strategic export control mechanisms, the government needs to take urgent action to address the potentially serious implications for the UK system. In its response to the First Joint Report of the CAEC the Government suggested that because the UK is a party to the ATT and a member of other multilateral non-proliferation regimes the loss will be minimal. However the depth, detail and timeliness of the exchanges within the EU will be virtually impossible to replicate in any other context. Every effort should be made to ensure the UK has a similar observer role for the UK in relation to existing EU information exchange and consultation mechanisms, such as COARM, the body which oversees the functioning of the EU Common Position on arms exports and the associated implementation measures such as the licence denial-notification process and reporting requirements.

55. *Control Arms UK recommends that CAEC presses the Government to:*

- provide specific details on how export control of strategic goods, including dual-use and torture equipment, will be managed post-withdrawal from the EU and what the specific future relationship between the UK and various EU regimes is likely to be.
- confirm that during any proposed transition period, matters relating to strategic export and non-proliferation controls will be formally incorporated into the proposed UK-EU joint committee system and that observer status will be established for various EU working groups (e.g. COARM) overseeing implementation of current EU controls.

- set out a detailed timetable of proposed new legislation for export control of strategic goods including arms, dual-use goods, firearms and torture and death penalty equipment, specifying the steps that will be taken to ensure adequate and meaningful consultation with relevant UK stakeholders.

Section 4: Arms Trade Treaty

56. Control Arms UK notes the CAEC's support for UK efforts to promote Treaty universalisation. However, due to the UK's licensing practice with regard to the Yemen conflict over the last four years, the UK's reputation as a champion for responsible arms transfer controls has suffered significant harm. This is to the point where taking a high profile role in Arms Trade Treaty (ATT) promotion runs the risk of undermining the Treaty's credibility.
57. We strongly endorse the CAEC finding in last year's report that "[i]t is inexcusable that in 2015 and 2016 the UK did not report on the imports of arms covered by the ATT, in clear violation of its treaty obligations in this regard" (para. 139), and are extremely disappointed that the government has since done nothing to address this failure to meet an unambiguous and straightforward Treaty obligation.
58. The government's response to the CAEC was wholly inadequate and reflects poorly on its commitment to the Treaty. This sets a bad example to other States Parties that they can ignore Treaty provisions as they choose, and all the more so as the UK was one of the lead negotiating states and a long-term champion of securing an ATT.
59. *Control Arms UK recommends that:*
- The government must henceforth include information on UK arms imports in its annual report to the ATT Secretariat, according to its obligations under Arms Trade Treaty Article 13 (3), and ensure that its report is made public.

Section 5: Regulation of brass-plate companies

60. Control Arms UK have raised the issue of loopholes in the enforcement of the current brokering control regime with regard to brass-plate companies for a number of years. Such companies have been used to break international sanctions or broker weapons without the necessary trade control licences. There still remains no effective system in place to adequately regulate these companies, nor to enforce existing brokering controls in relation to them.
61. Last year we published details of an Amnesty International investigation into S-Profit Ltd, a brass-plate set up to broker a range of arms deals, including one for the supply of £34 million worth of small arms, light weapons and ammunition to the government of South Sudan, which has been under an EU arms embargo since 2011. Despite first raising this example directly with government officials nearly two years ago, the company remains

active to this day. Indeed, since our evidence to the CEAC last year, official records from Companies House show the company has moved registered offices twice—in November 2017 and October 2018—as well as filing accounts in July 2018. Unless the government has reason to believe that S-Profit Ltd was not responsible for brokering weapons to South Sudan, the company’s continued operation suggests the government is either unable or unwilling to take any action against such companies.

62. A further example emerged during 2018. In June 2015 a company registered in Cardiff—Advance Technology Global Ltd—was set up via the Companies House online web portal. It appears that this brass plate company was registered on-line from Syria by ISIS. ISIS then used this company to supply sensitive components for drones for Islamic State in Syria via Turkey. While unclear whether or not the goods in question were subject to export licences, it is clear that supplying drones and their components to ISIS operatives in Syria is of serious concern. The individual who set up Advance Technology Global Ltd was subsequently killed in a US drone strike in December 2015 and the brass-plate company was eventually closed down. It was dissolved in December 2016, not because of any enforcement activity on behalf of UK authorities due to its association with ISIS, but because being a deceased individual, he was unable to provide the necessary accounts and files to Companies House within the required deadlines, so his company was closed down by automatic dissolution procedures.
63. During the passage of the Sanctions and Anti-Money Laundering Act 2018, Amnesty International made repeated appeals for the government to explicitly link existing regulatory powers in order to tackle this issue. While it is very difficult to investigate and prosecute foreign nationals operating through UK brass plates, it should be relatively straightforward to prevent UK jurisdiction being abused in this way by striking these companies from the UK company registry and banning their directors from setting up similar entities. Amnesty International asked for existing powers in the Insolvency Act 1986, which allow UK authorities to wind up companies on reasonable grounds in the public interest, to be made explicitly available to officials enforcing UK sanctions policy. In responding to this issue, the government stated that it had the powers it needed and declined to incorporate this explicit reference in the Act.
64. The fact that UK shell companies continue to be used in such ways shows how easy it is to abuse the current system. Control Arms UK again raises the issue of using appropriate, proportionate powers to close such companies where credible evidence exists that they are acting unlawfully and/or contrary to the public interest, or in violation of international laws. While ministers have repeatedly informed parliament and the CAEC that such powers already exist in UK company law, it appears that they are not being used in export or trade control cases.
65. *Control Arms UK recommends that:*
 - The government makes an explicit written policy statement (circulated *inter alia* through a “notice to exporters”) that it intends to use existing company law powers to close brass-plate companies and disqualify their directors on public-interest grounds where there is reasonable suspicion of their involvement in illegal brokering activity.

- DIT requests that the Companies House website provides clear and accessible information on export control issues, particularly in relation to arms brokering, so that it is clear to anyone establishing a company via the online registration system that brokering of strategic goods is subject to export controls, including extra-territorial controls.
- A specific system is established to enforce these powers, including an inter-departmental working group comprising of enforcement teams from export licensing and HMRC, to investigate cases involving arms brokering undertaken by brass-plate companies. Where formal prosecution using existing export control legislation is deemed problematic, yet reasonable grounds remain that offences have been committed, this should include the establishment of formal procedures whereby the Secretary of State responsible for export licensing notifies Companies House of his/her recommendation to remove specific companies from the UK register and the rationale for doing so.
- The UK sets up a register of arms brokers (as encouraged in EU Common Position 2003/468/CFSP on the control of arms brokering and in Article 10 of the ATT) including the establishment of a fit and proper person test for all companies and individuals wishing to broker strategic goods. Failure to register would further strengthen the enforcement of existing brokering controls, especially in cases involving brass plate entities.

Section 6: Arms brokering

66. The CAEC report on 'UK arms exports during 2016' drew attention to the case of the export of small arms ammunition from Bosnia to Saudi Arabia, for which two UK-based brokers applied for trade control licences (paras. 191-192). After a 14-month processing period the licences were denied (due to a risk of diversion). However, however during that period, the transfer took place regardless.
67. The processing time alone makes it clear that this was a prospective transfer about which the government had concerns (the standard target for licence processing is 20 days). There are various aspects of this case that give cause for concern.
68. First, as was made clear in his oral evidence to the CAEC on 6 June 2018 by Graham Stuart MP, Minister for Investment, Department for International Trade, the government made no attempt to contact the relevant Bosnian authorities to gather information about the prospective transaction. The government has noted that it is under no obligation to contact the Bosnian authorities, and rather than accepting at the time that failing to do so was an indication of a lack of rigour of the process, Mr Stuart repeatedly referred to the ultimate decision to refuse licences as an example of the thoroughness of the system. On the contrary, the government's approach in this case has been wholly inadequate, and runs counter to all the information-sharing best practice that the government purports to support and to follow.

69. The government seems to have now acknowledged this, by noting in its response to the CAEC report that that “[w]here similar circumstances arise in future, Government will consider what relevant information may be shared with other countries beyond the EU, including States Parties to the Arms Trade Treaty, and how this might be done.” (response to para. 196).
70. This however remains inadequate. In light of its failing in this case, the government should be planning now for how to respond to a similar situation. This is made more urgent by the prospect of Brexit, which raises the risk of the UK becoming separated from the information-sharing mechanisms developed under the EU arms transfer control regime, and thus less likely rather than more to operate in isolation from other potential partner states.
71. Another major concern relates to enforcement. UK brokers applied for licences to arrange shipments of ammunition. While those licences were under consideration, the ammunition was delivered (from Bosnia to Saudi Arabia). The UK subsequently refused the licences. This at least suggests a likelihood, or at least a possibility, that those brokers may have broken UK law. Even if the brokers were no longer involved in the deal at the point of transfer, their preparatory actions may have amounted to licensable activities, as UK law requires a trade licence for “any act calculated to promote the cross-border supply or delivery of [small arms ammunition]”.⁴¹ The possibility exists that UK law was broken. Yet when questioned about this last year by the CAEC, and whether any enforcement investigations or actions were being considered, Mr Stuart gave responses that suggested confusion over either the questions or the law (qus. 283-284). Mr Stuart gave the impression the matter was closed because ammunition was not shipped from UK territory and the licences were eventually refused. This however fails to address the question of whether UK trade controls were broken and, if they were, what action would be taken.
72. Coupled with issues around enforcement and prosecutions raised by CAEC in the ‘UK arms exports during 2016’ report (see paras 58-59), Control Arms UK fears this raises broader questions regarding the government’s commitment to robust enforcement and transparency around enforcement.
73. *Control Arms UK recommends that:*
- The government explains what steps it has taken to investigate possible breaches of the Export Control Act that may have been committed with regard to the transfer of ammunition from Bosnia to Saudi Arabia for which trade control licences were eventually refused.
 - The government devises plans for how to seek and share information with other parties to prospective transactions which may involve UK intermediaries and which give cause for concern in cases where there is not an *obligation* to consult, acknowledging that in some circumstances bilateral communication could undermine effective export control.

⁴¹ ‘Guidance on ‘trafficking and brokering’ (trade controls) of controlled military goods (Review of Export Control Legislation 2007)’, Department for Business Innovation & Skills, March 2010, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15216/Trafficking_and_Brokering_Guidance_-_URN_10-664_-_new_logo_-_2012.pdf, accessed 22 January 2019.

Section 7: Open licences

74. Control Arms UK is pleased to note that the question of reporting on open licences was addressed in the CAEC's most recent report, that the ADS Group statement is supportive of improved transparency in this regard, and that the government is looking into publishing more information once "new and [...] improved digital systems' are in place." (UK arms exports during 2016, CAEC, para 129.)
75. We are nevertheless disappointed that far more comprehensive reporting on deliveries against open licences isn't already available.
76. The government in its response to the CAEC report claims that in response to a 2012 consultation on 'Transparency in export licensing', "many companies expressed concerns that this would mean an unacceptable administrative burden. Consequently, the then Business Secretary Sir Vince Cable announced in Parliament on 18 July 2013 that proposals relating to quarterly reporting would be dropped. As a result, users of open licences were only required to make reports on their usage of those licences on an annual basis." (response to para. 129)
77. This response to the CAEC report is not consistent with the government response at the time to the consultation.⁴² This applies both to the extent of opposition expressed or indeed the level of information to be provided to which the government claims objections were made.
78. The consultation asked:
What would be the burden (in number of hours) on exporters of providing data on item description (or rating), quantity and destination? If this could not be achieved within current resources please provide an indication of what extra resources would be required, including an estimate of the cost of providing them?⁴³
79. The 68 answers were categorised as follows:
- | | |
|-----------------------------|----|
| Minimal resources | 50 |
| Extra resources needed | 7 |
| Difficult to do or quantify | 5 |
| Other | 6 |
80. With regard to the type of information that might be provided and frequency of reporting, the government summarised the responses thus (emphasis added):
- There appeared to be a broad consensus regarding the information to be provided about usage of open licences. *A majority were content to provide a description of the items exported (including the rating), the value/quantity, and destination.* There was some difference of opinion among exporters regarding information about end-

⁴² 'Transparency in Export Licensing: Government Response', *Department for Business Innovation & Skills*, July 2012, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/32009/12-920-transparency-export-licencing-government-response.pdf, accessed 22 January 2019.

⁴³ *Ibid.*, question 12.

use/end-user, whereas the NGOs have indicated that for them this is one of the most valuable pieces of information. Given there was no overwhelming majority against providing at least some information about end-users, we have therefore decided that we will collect generic information about categories of end-user. The precise categories are still to be determined. Therefore we will collect and publish information on: rating; description; quantity or value; destination; generic information on end-user.

The majority of companies expressed a preference for specific time periods for reporting data (e.g. data to be provided on a quarterly or six-monthly basis), but a significant proportion preferred to be able to report in “real time” (i.e. data to be provided at the time the transaction occurs).⁴⁴

81. This is not at all consistent with the impression created in the government response to the CAEC.
82. The decision ultimately arrived at—to report only on an annual basis on the number of times deliveries are made against open licences—was taken one year after this government response and at the point where the Export Control Organisation was very close to implementing the more substantial results of the consultation (which were broadly consistent with the government summaries above).
83. Control Arms UK understands that the late reversal of the agree decision was in response to the concerns expressed by one MP on behalf of a complaint from a company located in his constituency that the new requirements were unduly onerous when it came to reporting on dual-use transfers.
84. If true, this would not be an acceptable basis for decision-making. We urge the government to reinstate its plans from its 2012-13 Transparency Initiative. We anticipate the new digital systems will be helpful in this regard, and so urge the government to factor greater open-licence transparency into their introduction.
85. *Control Arms UK recommends that:*
 - The government reintroduces the reporting measures on open licences as first set out following the 2012 Transparency Initiative consultation.

Section 8: Criterion 8 and the role of DFID

86. When the CAEC raised the prospect of DFID staff being seconded to the Export Control Joint Unit (ECJU), the government responded that “DFID is not an integral part of ECJU because fewer than 1 per cent of the licences issued are eligible for Criterion 8 assessment by DFID. Therefore, DFID does not have staff dedicated full time to export control. It is more efficient

⁴⁴ Ibid., p. 14.

for them to be based in DFID where they can carry out their other duties.” (response to para. 103)

87. While this might make sense on its own terms, it raises the larger question of why DFID looks at only 1 per cent of licence applications. This question has become more urgent since the start of the war in Yemen and the continuing supply by the government of arms being used and at risk of being used in that conflict.
88. DFID is formally excluded from the assessment process for any arms sales to countries that are not International Development Assistance (IDA)-eligible (e.g. Saudi Arabia and UAE), and from the assessment process for any arms sales to any destination with regard to the impact the *use* of those arms might have, and especially the impact of their use in a country other than that of the recipient. This means that regardless of whether DFID thinks there is a negative developmental aspect to these transfers, and no matter how extreme this might be, DFID cannot give an opinion.
89. In a discussion on this point in oral evidence by Ministers and officials to the CAEC on 6 June last year (qus. 246-250), the suggestion was made that DFID is consulted on at least some licences granted to relevant to the conflict in Yemen. Reference being made to the FCO consulting with DFID, whereby its “advice on the humanitarian situation feeds into our assessment against criterion 2(c)” (qu. 249).
90. However we remain concerned that DFID does not get to input on the question of sustainable development.
91. The current framework conspires against meaningful participation from DFID on several grounds:
- The language of criterion 8 of the Consolidated Criteria (the sustainable development criterion) refers only to consequences in the recipient state, and even then this is in effect only in the context of the budgetary implications of the cost of purchase.
 - The elaboration on implementing criterion 8 in the User’s Guide to the EU Common Position reinforces this focus on the budgetary impact of the purchase in the recipient state.
 - The UK government has developed a national methodology and indicators for assessing criterion 8, which once again is focused on fiscal matters in the recipient state. It explicitly notes that “[t]he Department for Business, Enterprise and Regulatory Reform (BERR) [now in effect DIT] will circulate export licence applications for advice to [DFID] in accordance with the agreed country circulation list for Criterion 8 assessments of the IDA-eligible countries.”⁴⁵

⁴⁵ ‘Indicators for assessing criterion 8 on sustainable development,’ UK Strategic Export Controls Annual Report 2007, Cm7451, pp. 71-74, July 2008, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243375/7451.pdf, accessed 22 January 2019.

92. DFID is therefore formally excluded from giving an opinion on the sustainable development implications of the arms transfers from the UK which have had arguably the most impact on a country's sustainable development since the Export Control Act entered into force, i.e. the transfer of aircraft and ordnance that have been used in the war in Yemen. This highlights the absurdity of the current system.
93. The EU Common Position is currently under review. We are advocating among Member States for a change to criterion 8 such that risk assessments take account of the impact of the likely use of the items in question, including not just in the recipient state but in other jurisdictions where those arms might be used.
94. The UK however should not wait for the EU to act, because it is far from assured that the EU will make this change, and because when the UK leaves the EU, it may no longer be bound by the EU Common Position.
95. *Control Arms UK recommends that:*
- The government amends criterion 8 of the Consolidated Criteria so that licensing assessments include risks associated with the potential *use* of the prospective export in the recipient or in any other country, and encourages the adoption of a similar amendment to the EU Common Position.
 - The role of DFID in the assessment process is expanded to include cases where the possible use (as well as the purchase) of the items raises developmental concerns around the impact on development.

Section 9: 'Special measures'

Presumption of denial and Human Rights Priority Countries

96. Control Arms UK repeats last year's recommendation that a presumption of denial (PoD) should apply with respect to arms transfers to Human Rights Priority Countries in the FCO's Annual Human Rights and Democracy Report.
97. For the avoidance of doubt, we wish to make clear that a PoD should not be confused with an embargo or other prohibition. A PoD does not prevent a licence being issued, it simply strengthens the precautionary principle that underpins the UK's entire strategic export control system with respect to a pre-defined list of countries which the government has concluded pose serious human rights challenges. It is entirely consistent with the application of the criteria, that for these countries, the default position for the supply of strategic goods would be not to supply them, unless there are strong grounds to confident that they would not be used in the commission of human rights violations. Depending on the circumstances it might indeed be entirely justifiable to approve licences to these countries and would be entirely possible under the PoD system as described above.

Special restrictions on transfers of production capacity

98. The transfer of production capacity creates additional downstream risks in that the recipient is gaining the ability to manufacture and export strategic goods to other destinations. Putting to one side whether it is sensible to be creating additional future competitors in this area, such transfers should only take place to countries that have themselves declared their willingness to play by the agreed global trade rules. In this regard, we would argue that special restrictions should apply to the transfer of production capacity to those states that have not at least signed the ATT. Beyond its practical, operational value, establishing such a policy also makes a clear political statement about the importance the government attaches to the international rules governing the trade in conventional arms and to its commitment to strengthening adherence to the ATT.
99. In these cases, transfers should only be allowed following:
- Consideration of
 - whether the proposed transfer has a civilian or military/security application
 - and, if the latter, whether the proposed transfer is helping to meet a clear and legitimate defence/security need
 - A detailed assessment of any future re-export risks associated with any transferred production capability, factoring in the willingness of the recipient to comply with relevant ATT risk assessment requirements, including the risk of diversion
100. If the government determines the transfer passed those tests, the licence application would then be subject to the usual assessment against the Consolidated Criteria.
101. In its response to the CAEC's last report, the government presented ATT non-signatory Canada and ATT signatory Central African Republic (CAR) as examples of why such a proposal was flawed. This ignores the fact that this is not an embargo, and that a licence could still be awarded to Canada and could still be refused to CAR, but only following the appropriate process. This could also function as a spur to Canada (and others) to join the ATT.

Exclusion from Open General Export Licences

102. Just as we argue that a failure to sign the ATT or being included in the UK's list of Human Rights Priority Countries should have implications when it comes to the licence assessment process, so we maintain that states falling into one or both of these categories should not be eligible to be on the lists of countries included as destinations on Open General Export Licences (OGELs), and on much the same operational and political grounds. Again this does not amount to an embargo, or indeed anything close to it. Exporters would still be able to apply for and potentially receive (following a full risk assessment) SIELs and/or OIELs for transfers to these destinations.

103. *Control Arms UK recommends that:*

- The government operates a presumption of denial for the transfer of any controlled items to any of the Human Rights Priority Countries in the FCO's Annual Human Rights and Democracy Report.
- The government operates similar restrictive measures with regards to transfers of production capacity to recipients that are not States Parties or signatories to the ATT.
- Countries are excluded from the lists of destinations on OGELs unless they have
 - signed the ATT, and
 - are not among the Human Rights Priority Countries in the FCO's Annual Human Rights and Democracy Report.

Section 10: Clarion Events Limited and arms fairs

104. Clarion Events Ltd is a UK-based company that organises arms and security fairs around the world.⁴⁶ Its portfolio of fairs includes the Defence and Security Equipment International (DSEI) exhibition (UK). It has recently established the Bahrain International Defence Exhibition & Conference (BIDEC), held for the first time October 2017, and Egypt Defence Expo (EDEX), held for the first time in December 2018. Both new fairs will be held every two years.

105. Clarion Events claims on the EDEX website that it “supports the application and enforcement of both UK and other relevant international arms control and arms export legislation wherever we operate” and requires of exhibitors at its events that “all equipment, services, documentation and all other forms of visual promotion and display, exhibited or proposed, must comply with UK law and UK international undertakings, EU/UN Law and EU/UN international undertakings”.⁴⁷ Both the EDEX and BIDEC website clearly state these undertakings and that “[c]ompliance audits will take place before and throughout the event to ensure that equipment, services, documentation and all other forms of visual promotion and display exhibited comply with the above-mentioned undertakings”.⁴⁸

106. In addition, as a UK-based company, Clarion Events must abide by the UK Export Control Act (2002) which classifies cluster munitions as Category A goods and states that a trade licence is required for a UK person to be involved in “[s]upplying or delivering, agreeing to supply or deliver, or doing any act calculated to promote the supply or delivery of Category A goods where that person knows or has reason to believe that their action or actions will, or may, result in the removal of those goods from one third country to another.” This includes general advertising and promotion.⁴⁹

⁴⁶ For a full list of Clarion's arms and security fairs visit <https://clarionevents.com/sectors/defence-security/>, accessed 16 January 2019.

⁴⁷ 'Compliance', Egypt Defence Expo, <https://www.egyptdefenceexpo.com/compliance>, accessed 22 January 2019.

⁴⁸ Ibid., and 'Compliance and eligibility to exhibit', BIDEC, <https://www.bahraindefence.com/compliance-and-eligibility-to-exhibit>, accessed 22 January 2019.

⁴⁹ 'Guidance on "trafficking and brokering" (trade controls) of controlled military goods (Review of Export Control Legislation 2007)', Export Control Organisation, March 2010, p. 6,

107. However, at BIDEC 2017, the Poongsan Corporation (South Korea) included cluster munitions in its promotional materials available on its exhibition stand.⁵⁰ To the best of our knowledge the compliance officers at BIDEC did not identify the promotional materials, the stand was not closed and no action has been taken against Poongsan. At EDEX 2018 Poongsan were listed as exhibitors as were other companies that produce cluster munitions, though Control Arms UK does not know if any prohibited equipment was on display or promoted at EDEX 2018.
108. Control Arms UK is concerned that Clarion Events appears not to have identified breaches of their own compliance rules. Furthermore, unless the government has granted Clarion Events a trade control licence to promote Category A goods, the company is in breach of the Export Control Act on the grounds that organising an exhibition where companies distribute promotional materials to prospective buyers is an action or actions that “will, or may, result in the removal of those goods from one third country to another”.
109. *Control Arms UK recommends that CAEC asks the government:*
- if it has granted Clarion Events a licence to promote Category A goods;
 - how it ensures that UK companies organising overseas arms and security fairs comply with the UK Export Control Act;
 - how it identifies events that risk breaching the provisions of the Act;
 - whether any relevant enforcement action has taken place and if so against which companies or individuals;
 - whether it will investigate Clarion Events for breaches of the Act during BIDEC 2017.

Section 11: Corruption

110. Responding to the CAEC’s request to the government last year to consider establishing an additional criterion on corruption (para. 229), the government stated that its position is to make sure that the Bribery Act 2010 is properly enforced, rather than conflating it with the Export Control Act 2002, and that where the government becomes aware of corruption in arms deals, it will take the appropriate action under Bribery Act’s provisions. The response is inadequate, and suggests an unwillingness to acknowledge the clear distinction between securing a criminal prosecution and reasonably assessing risks.
111. Arms transfer licensing is a proactive, forward-looking, risk-based assessment process, where the consequent decision *precedes* the transaction. This is the opposite of the Bribery Act, which involves establishing corruption beyond reasonable doubt *after* the fact (and in all likelihood, in the case of arms transfers, long after transactions have taken place). In addition, proving corruption in this area is typically complicated by difficulties in

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/15216/Trafficking_and_Brokering_Guidance_-_URN_10-664_-_new_logo_-_2012.pdf, accessed 22 January 2019.

⁵⁰ Poongsan Catalogue, Ammunition and Explosives, obtained from BIDEC 2017, on file in the Omega Research Foundation archive.

sourcing sufficient evidence in foreign jurisdictions—potentially with non-compliant government or prosecution authorities—sufficient to secure a criminal conviction.

112. Introducing a corruption criterion would, most simply, involve the government denying an export licence for military technology or equipment if there is a clear risk that the deal might involve a significant level of corrupt practices. Just as with the existing criteria, this would not be about establishing what has already happened to a degree of certainty beyond reasonable doubt. It is about assessing risk and making decisions about whether to authorise a future act based on that assessment.
113. In the event that there might also be a case to be answered under the Bribery Act, then that would of course be up to government to decide, but that would function at a very different level to the export control system.
114. *Control Arms UK recommends that:*
 - The government introduces a new corruption criterion to the Consolidated Criteria, and encourages other states to introduce a formal obligation to consider corruption risk in their licensing assessments, either unilaterally or through regional mechanisms.