

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN

on the application of

CAMPAIGN AGAINST ARMS TRADE

Claimant

-and-

THE SECRETARY OF STATE FOR INTERNATIONAL TRADE

Defendant

SECOND WITNESS STATEMENT OF EDWARD BELL

I EDWARD THOMAS BELL, OF THE DEPARTMENT FOR INTERNATIONAL TRADE, 1 VICTORIA STREET, LONDON, SW1H 0ET, SAY AS FOLLOWS

1. This statement is supplementary to my statement dated 5 August 2016 and is made pursuant to the terms of the order of Mr Justice Cranston sealed on 23 November 2016. I remain the Head of the Export Control Organisation ("ECO") in the Department for International Trade ("DIT"), which is the UK's export licensing authority.

2. I am duly authorised to make this statement on behalf of the Secretary of State for International Trade. In making this statement I am drawing on my own knowledge of the matters in issue as well as matters that I am aware of having read the documents exhibited.

The Secretary of State

3. In paragraph 3 of my statement of 5 August 2016 I referred to the transfer, by administrative means, of responsibility for export controls from the Secretary of State for Business, Innovation and Skills to the new Secretary of State for International Trade. I can now confirm that, as of 9 November 2016, arrangements for transferring the relevant legal rights, liabilities and obligations to the Secretary of State for International trade have been completed. All references to the "Secretary of State" in this statement therefore refer to the Secretary of State for International Trade.

The scope of this statement

4. I am making this statement to assist the Court in relation to DIT's decisions since my earlier statement.

I. CONTINUATION OF PROCESS AND POLICY

5. Since 5 August 2016 DIT has continued to apply the process outlined in paragraphs 5-12 of my earlier statement. The role of each advisory Government Department with respect to assessing the Consolidated EU and National Arms Export Licensing Criteria ("the Criteria") continues as set out in paragraphs 13-16 on 5 August. Similarly the policies on the suspension mechanism and revocations, set out in paragraphs 17-22 on 5 August, remain in effect. In addition I have continued to attend fortnightly briefings at the Foreign and Commonwealth Office ("FCO") on the situation in Yemen so that

I could advise the Secretary of State of any changes which might impact on licensing decisions (paragraph 34 of my earlier statement).

II. LICENSING DECISIONS SINCE 5 AUGUST 2016

6. In applying these processes and policies the central issue in relation to export licensing decisions remains Criterion 2c of the Criteria (whether there is a clear risk that the items might be used in the commission of a serious violation of international humanitarian law), with advice and licensing recommendations on this point provided to DIT by the FCO.
7. A number of licensing cases for the Kingdom of Saudi Arabia ("KSA") have been referred directly to Ministers for a final decision about whether to grant or refuse a licence since 5 August, because of the highly sensitive nature of the exports. The cases were all for components for airborne munitions.
8. On my instruction, Mr Richard Hickman, then Acting Head of Licensing Operations for ECO, sought approval on 10 August from Mr Mark Garnier MP, Parliamentary Under Secretary with responsibility for export controls, to grant two export licences for components for airborne munitions for eventual use by the Royal Saudi Air Force ("RSAF"). FCO had recommended granting the licences having assessed the applications against the Criteria, including Criterion 2c. FCO advised that the tests set out in Criterion 2 (human rights and international humanitarian law) and Criterion 4 (preservation of regional peace, security and stability) were met. In addition the Ministry of Defence ("MOD") had raised no concerns under Criterion 5 (national security) or Criterion 7 (risk of diversion). A copy of the submission to Mr Garnier is at **EB1**.
9. I met with Mr Garnier on 11 August to brief him about the licence applications and explained that a decision to grant the licences would be entirely consistent with my witness statement of 5 August, just a few days

prior to our meeting. I advised that I had no basis to question or reject the FCO's recommendations to approve the licences, although I informed Mr Garnier that a cessation of hostilities in Yemen had recently come to an end. Mr Garnier asked whether it would be appropriate to wait for the IHL update, but I informed him that the update may take some time. Mr Garnier approved the licences at the meeting. A record of the meeting is at **EB2**. The Secretary of State's office confirmed his approval to grant the licences on 15 August, having considered the advice from Mr Hickman and points raised in my meeting with Mr Garnier (**EB3**).

10. On 19 August I sought approval from the Secretary of State to grant four further export licences for components for airborne munitions, alongside an update on the political and military situation in Yemen (**EB4**). As with the 10 August applications, the FCO and MOD recommended approval having assessed them against the Criteria.
11. Although I recommended granting these licences on the basis of advice from the FCO and MOD, I advised the Secretary of State that he might wish, in the light of increased military activity in Yemen, to wait until FCO officials had updated their advice on the international humanitarian law (IHL) situation for the Foreign Secretary. At the time this was expected within ten days.
12. In my submission of 19 August I also suggested that the Secretary of State consider asking the Foreign Secretary to review his IHL assessment with senior government lawyers.
13. On 24 August the Secretary of State's office informed me that he wanted further "due diligence" before making a decision about the licence applications and that this was to include reviewing the assessment with senior government lawyers (**EB5**). In subsequent correspondence with the Secretary of State's office (**EB6**) it was agreed that the sequence of the

additional due diligence would be for the Foreign Secretary to seek advice from senior government lawyers on the licensing assessment (Criterion 2c), on the heels of the expected advice on the IHL position, before advising the Secretary of State on his current judgment in relation to the clear risk test in Criterion 2c.

14. On 28 October I provided further advice on the situation in Yemen to the Secretary of State's office (EB7), and an update on UN peace efforts in relation to Yemen on 3 November (EB8). These updates were to ensure the Secretary of State was aware of information which might impact on licensing decisions.
15. The Foreign Secretary wrote to the Secretary of State on 8 November (EB9), outlining his judgment that the clear risk threshold for refusing export licences under Criterion 2c had not yet been reached, although he said that the issue was "extremely finely balanced". The Foreign Secretary confirmed he had sought advice from senior government lawyers in reaching this conclusion.
16. On 10 November I recommended, on the basis of the Foreign Secretary's assessment, that the Secretary of State agree to the continued assessment of export licence applications on a case-by-case basis (EB10). I also recommended that he insist the FCO reports regularly to DIT on progress with efforts to ensure Saudi compliance, improved processes, thorough investigations and transparency. Furthermore I recommended that he insist the Foreign Secretary seek further advice on Criterion 2c and come back to him with updated recommendations in early December.
17. Alongside my advice of 10 November, the Secretary of State also considered the FCO's assessment of 17 October (Yemen – Saudi led Coalition compliance with IHL, commonly referred to as the "IHL Update") which I understand is exhibited to the supplementary statement of Mr Crompton. On 11 November I met with the Secretary of State who agreed with my recommendations and

also agreed to grant the four export licences referred to in paragraph 10 above. The Secretary of State's office confirmed this by email on 16 November (EB11), although the email referred incorrectly to lifting the suspension of these licences. These were licence applications where the decision to grant or refuse licences had been previously deferred pending further "due diligence".

18. At the 11 November meeting the Secretary of State asked for a briefing note about the types of airborne munitions exported from the UK to Saudi Arabia. I sent him a note from the MOD concerning that issue on 25 November (EB12).

19. The Secretary of State replied to the Foreign Secretary on 17 November (EB13), stating we should, for the present, continue to assess export licences for Saudi Arabia on a case-by-case basis against the Criteria. He also requested that the FCO provide regular updates to DIT, as set out in paragraph 16 above, and that the Foreign Secretary provide updated recommendations about Criterion 2c in early December having sought further advice from senior government lawyers. His concern was to ensure that we would be able to respond quickly in the event of a rapid deterioration in circumstances such that the clear risk threshold in Criterion 2c was breached, and to meet our export control obligations.

20. The Secretary of State received an updated recommendation from the Foreign Secretary about Criterion 2c on 15 December (EB14). The Foreign Secretary, following advice from senior government lawyers, advised that he was "satisfied that issuing export licences for air combat aircraft and associated items which could be used by the Royal Saudi Air Force in the conflict in Yemen would be consistent with the requirements of Criterion 2c". He pointed to "an encouraging positive trend, with the Saudis taking substantive measures to improve and increase the reliability of practices and procedures in order to reduce the risks of Coalition action resulting in a serious breach of IHL". Even so he acknowledged that the "issue of export licensing to Saudi

Arabia continues to be very finely balanced” and the need to “continue to press the Saudi authorities to maintain the pace and depth of improvement”.

21. On 16 December I recommended, on the basis of the Foreign Secretary’s assessment, that the Secretary of State agree to the continued assessment of export licence applications on a case-by-case basis (EB15; advice dated 15 December but updated and delivered on 16 December). I also recommended he insist that the Foreign Secretary carry out a further assessment and make updated recommendations in the second half of January. I further recommended that he should ask the Foreign Secretary to seek advice from senior government lawyers in the event that the assessment of the Criterion 2c clear risk threshold remains the same.
22. Alongside my advice of 16 December, the Secretary of State also considered the FCO’s Arms Export Policy Assessment of 13 December with the IHL Update of 6 December, which I understand is exhibited to the supplementary statement of Mr Crompton. I met with the Secretary of State on the 16 December to review the advice. He agreed with my recommendations and this was subsequently confirmed by email from his private office (EB16).
23. The Secretary of State replied to the Foreign Secretary on 19 December (EB17; letter dated 18 December but sent on 19 December), stating we should, for the present, continue to assess export licences for Saudi Arabia on a case-by-case basis against the Criteria. He expressed his concern that the issue of export licensing continues to be finely balanced and stressed that the situation be kept under constant review. He asked that the Foreign Secretary commission a further detailed assessment of the Criterion 2c position and make updated recommendations as set out in my advice of 16 December.

III. COMMITTEES ON ARMS EXPORT CONTROL

24. Paragraphs 42-44 of my statement of 5 August refer to the Committees on Arms Export Controls' ("CAEC") inquiry into the use of UK-manufactured arms in the conflict in Yemen launched in March 2016.

25. The members of the CAEC could not agree a single report or set of recommendations following the inquiry. Two reports were issued on 15 September, one by members of the Business, Innovation and Skills and International Development Select Committees¹ and the other by members of the Foreign Affairs Committee², with differing recommendations. Members of the Defence Select Committee withdrew from the process and did not issue a report. The Government published its official responses to these reports on 14 November³.

I believe that the facts stated in this statement are true.

SIGNED



DATED

20 DECEMBER 2016

¹http://www.publications.parliament.uk/pa/cm201617/cmselect/cmbis/679/67902.htm?utm_source=679&utm_medium=fullbullet&utm_campaign=modulereports

² <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmcaff/688/68802.htm>

³ <https://www.gov.uk/government/publications/government-response-to-parliamentary-committee-reports-on-the-use-of-uk-manufactured-arms-in-yemen>