



DIT-137-0000050-A

Date: 15 December 2016  
From: Bell Edward, Head of Export Control Joint Unit

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Minister/Sp/Ad	To Note/Comment	To Approve/Decide
Secretary of State		X
Mark Garnier	X	
David Goss	X	
Perm Sec	X	

## Update on military exports (combat aircraft and components) to Saudi Arabia

### Purpose

To agree export licensing policy for Saudi Arabia following the Foreign Secretary's letter of 15 December.

### Recommendation

That you agree to the continued assessment of licence applications for military exports to Saudi Arabia on a case-by-case basis.

That you respond to the Foreign Secretary's letter of 15 December (see draft in Annex).

You should read this submission in conjunction with:

- Foreign Secretary's letter to you of 15 December.

- FCO IHL<sup>1</sup> Update of 13 December (classified Confidential/Secret).

### Timing

By midday 19 December.

### Detail/background

1. The key consideration in relation to exports to Saudi Arabia which might be used in the conflict in Yemen<sup>2</sup> is Criterion 2c of the Consolidated EU

<sup>1</sup> International humanitarian law (IHL) regulates the conduct of war. It seeks to limit the effects of armed conflict by protecting persons who are not participating in hostilities, and by restricting and regulating the means and methods of warfare available to combatants.

<sup>2</sup> The focus of the assessment is on combat aircraft and components, including airborne munitions.

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and National Arms Export Licensing Criteria<sup>3</sup>: "The Government will... not grant a licence if there is a clear risk that the items might be used in the commission of a serious violation of international humanitarian law."

**Foreign Secretary's assessment**

2. The Foreign Secretary, in his letter of 15 December, updates you on progress [REDACTED] [REDACTED] as well as on broader efforts to ensure compliance with international humanitarian law (IHL)". [REDACTED]

3. He concludes that although not all the requirements identified [REDACTED] [REDACTED] have been met in full, the progress is significant enough to be "satisfied that issuing export licences for air combat platforms and associated items... would be consistent with the requirements of Criterion 2c".

4. The Foreign Secretary's assessment is informed by his Department's IHL Update of 13 December and advice [REDACTED] [REDACTED] You should read this update to help you reach your decision. The update is prefaced by an export policy assessment (pages 1-4) with the IHL report on which it is based following on (page 5 onwards).

5. [REDACTED] Appendix 1 of the export policy assessment (pages 2-3) refers directly to [REDACTED]

<sup>3</sup> The eight Consolidated Criteria are used to assess each export licence application covering: international obligations, human rights, armed conflicts, regional peace and security, national security of the UK and its allies, terrorism, diversion risk and the capacity of the recipient nation.

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6. I would also draw your attention to paragraphs 22-24 of the IHL report which follows (pages 11-12). The FCO assessment is that "significant changes" have been made since the last update and the MOD advises that these represent a "significant step-change in Saudi efforts to improve their targeting and maintain compliance with IHL".
7. You will need to consider whether this progress is enough to satisfy you that the Foreign Secretary's Criterion 2c judgment is a sufficient basis on which to continue to assess licence applications for military exports to Saudi Arabia on a case-by-case basis. My judgment is that it is sufficient,

[REDACTED]

[REDACTED]

10. On the basis of [REDACTED] advice and the Foreign Secretary's assessment I consider that you may, at this time, continue to grant export licences for combat aircraft and components (including airborne munitions) for Saudi Arabia, as long as each application is considered carefully against the Consolidated Criteria and that other factors, including the UK's strategic economic and diplomatic interests, do not influence this assessment.

**Cluster munitions**

11. The MOD has investigated Amnesty International's allegations that UK-supplied BL-755 cluster munitions have been used in Yemen.

[REDACTED]

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12. In the light of information and analysis provided by the UK Government, the Saudi-led Coalition has - following its own investigations - concluded that BL755 cluster munitions were dropped in Yemen by Coalition aircraft

[REDACTED]

13. Although the use of these weapons by the Coalition would not necessarily breach international humanitarian law, we have made it clear to the Saudis that we cannot condone the use of cluster munitions. We have called on them, as non-signatories to the Convention on Cluster Munitions, to accede without delay.

[REDACTED]

**US decision to limit military exports to Saudi Arabia**

14. [REDACTED] The decision to limit supplies of Precision Guided Munitions (PGM) relates to a single 'direct commercial sale'

15. This is not a block on all PGMs [REDACTED] The US is going ahead with supplies of Chinooks, tanks and F15s.

[REDACTED]

16. Although we understand many of the US concerns it is right that we apply our own statutory and regulatory framework to our decision making, in particular in relation to Criterion 2c.

**Risks inherent in a decision to continue licensing**

[REDACTED]

[REDACTED]

### Responding to the Foreign Secretary

18. The Foreign Secretary advises that "the issue of export licensing continues to be very finely balanced [REDACTED] [REDACTED] You should hold him to this and insist that he carry out a further assessment and make updated recommendations to you in the second half of January. In the event that the Foreign Secretary's assessment of the Criterion 2c clear risk threshold remains the same you should ask that he seeks advice [REDACTED] before making his recommendation to you.

### Alternative courses of action

19. You must take the Foreign Secretary's advice into account in reaching a decision about my recommendation to continue to assess licence applications on a case-by-case basis. This is because the FCO is the competent authority to advise you on international humanitarian law in relation to export licensing decisions.
20. If, having done so, you judge that the clear risk threshold has already been crossed then we would need to stop licensing combat aircraft and components, including munitions, for export to Saudi Arabia. We would also need to revoke or suspend extant licences.
21. Alternatively, if you judge that the situation is so uncertain that it would be difficult to continue to assess licence applications against Criterion 2c, you would need to *consider* both suspending the processing of new licences and suspending extant licences.

[REDACTED]

23. I am not recommending suspension at this time but if you were to decide to do so you would want to consult Cabinet colleagues and the Prime Minister about your decision. I would then provide advice on the steps we would need to take, including an announcement to Parliament.

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ANNEX

Draft response to the Foreign Secretary

SAUDI ARABIA: EXPORT LICENSING

Thank you for your letter of 15 December updating me on the recent progress to ensure Saudi compliance with international humanitarian law. [REDACTED]

[REDACTED]

[REDACTED]

I further note that, [REDACTED] you are satisfied that issuing licences to export air combat platforms 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 of the Consolidated EU and National Arms Export Licensing Criteria.

On the basis of your assessment [REDACTED] I will continue *for the present* to assess licence applications on a case-by-case basis against these Criteria.

I remain concerned that the issue of export licensing to Saudi Arabia continues to be very finely balanced. We must keep the situation under constant review [REDACTED]

[REDACTED], as well as broader efforts to ensure Saudi compliance with international humanitarian law. I therefore ask that you commission a further detailed assessment of

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Criterion 2c and send me updated recommendations in the second half of January.

In the event that your assessment of the Criterion 2c clear risk threshold remains the same I ask that you seek advice [REDACTED] before making your recommendations.

I am copying this letter to Secretaries of State for Defence and International Development.



## Submission Checklist (please retain)

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SCS Lead: Edward Bell

### Classification

Classification chosen (use dropdown at top right of submission)

### Special Advisors

Either  Special advisors in copy (private office to coordinate)  
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### Finance

Either  Financial implications: sub cleared with [enter name of finance lead]  
or  No financial implications

### Legal

Either  Legal consulted: sub cleared with Jamie Munk  
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### Press/Comms

Either  Comms consulted: sub cleared with [enter name of comms lead]  
or  Sub is for info only and there are no public ramifications

(For Private office use):

Title: Update on military exports (combat aircraft and components) to Saudi Arabia  
Author: Bell Edward, Head of Export Control Joint Unit)

Copy to: John Alty, Amanda Brooks, Shasa Behzadi-Spencer, Elisabeth Jenkinson, Jamie Munk, Chris Chew.

