

Re-Export Controls Bill [HL]: General Briefing November 2010

Effective, comprehensive arms transfer controls are important in order to ensure that UK arms exports do not fuel armed conflict, facilitate human rights abuses or threaten UK national security. Despite a proud record as an international leader on many aspects of arms transfer controls, the absence of adequate controls on the re-export of UK controlled items by the original recipient is not consistent with the practice of most other major exporters and creates a significant loophole.

Introduction

The UK has been at the forefront of conventional arms transfer controls internationally. However, in one area – re-export controls – the government has been lagging behind. Re-export controls¹ are conditions included in export agreements requiring the importer state to seek the permission of the exporter before re-exporting the products on to a third party. Buyers may decide to re-export arms for any number of reasons, such as ‘selling off’ old equipment after upgrading, in response to changing strategic circumstances or priorities, or a change in government. Re-export controls enable the exporter to retain a say in the eventual destination of its goods.

The UK Government has so far been reluctant to apply re-export controls as a matter of routine. However, this is not about tightening controls on where and when the UK is willing to export; it is about making sure that UK arms exports do not end up in places where the UK Government does not want them to, where they may inflame conflict or even be used against UK troops abroad.

The UK Government has acknowledged the principle of controlling re-exports, by introducing a clause on ‘end-use declarations’ stating that the buyer will not re-export to any destination which is under embargo. Although this is a step in the right direction, there are states which are not under embargo but to which the UK would have serious concerns about its arms being re-exported. The Re-Export Controls Bill [HL] is a timely initiative which would extend the application of re-export controls and give them legislative protection. This briefing sets out arguments in support of the Bill.

Key arguments in favour of re-export controls

- When buyers decide to re-export conventional arms, it is very often fragile and conflict-affected states to which they are re-exported², where they may fuel conflict or human rights abuses.
- It would not harm the UK’s ability to export – in fact, it would help strengthen UK exporters’ reputation as responsible sources of military equipment.
- It would bring UK arms export policy in line with that of other arms exporting states – for instance, the US, France, Russia and China (all other P5 states, i.e. permanent members of the UN Security Council) already apply re-export controls and attest to their utility.
- Introducing re-export controls would be easy and inexpensive with little added administrative cost (this will in fact require the simplification of existing end-use documentation), although processing requests for permission to re-export would create some extra bureaucratic burden.
- It would reinforce a developing international norm supporting re-export controls as an important component of arms transfer control, and strengthen the UK’s legitimacy in persuading other, more problematic states to improve their arms transfer controls.

¹ The term “re-export controls” is one of a number of post-export controls which also include delivery verification and end-use monitoring.

² Not least because re-exported arms are, by definition, ‘second-hand’ and as such tend to be at the cheaper end of the market.

Background

The UK has been at the forefront of developments in arms transfer controls in recent years:

- its licensing process is among the most thorough in the world, with all applications to transfer arms subject to detailed evaluations against a set of eight criteria concerned with issues such as human rights, international humanitarian law, regional peace and security and sustainable development, among others;
- transparency within the UK system is also among the best in the world – the Department of Business Innovation and Skills (BIS) publishes quarterly and annual reports on strategic export controls, and has recently introduced a searchable database on arms licensing decisions;
- legislation, policy and licensing decisions are subject to detailed parliamentary oversight by the Committee on Arms Export Controls (the CAEC, comprising the Committees for: Business, Innovation and Skills; Defence; Foreign Affairs; and International Development);
- the UK led the way on the EU Code of Conduct on Arms Exports (now the Common Position);
- the UK also continues to champion a strong and robust legally-binding international Arms Trade Treaty within the UN, and
- the UK is promoting the use of end-use catch-all clauses within the EU to control the trade in non-listed items where they are destined for torture or for military end-use.

In the area of post-export controls, the UK lags behind in relation to other major arms-exporting states, however this is easily fixed.

Rebutting the arguments against re-export controls

Argument	Rebuttals
<p>The government has argued that there is a lack of evidence that UK arms are being re-exported, therefore controls on re-export are not needed.</p>	<p>Discussion with other EU states who have introduced a 'no re-export without permission' clause indicate that this has brought to light many instances of governments wishing to re-export their arms. Until controls are introduced, it is difficult to say how often UK arms are re-exported.</p> <p>The same argument was used against introducing brokering controls in the UK. However, following the institution of brokering controls in 2004, it has become increasingly evident that brokering activities take place within the UK (over 140 licences were issued in 2008) and we are now beginning to see prosecutions for violations of these regulations, made possible by these controls.</p>
<p>The government has defended its position on the grounds that its pre-licensing risk assessment is so thorough it has no need for re-export controls.</p>	<p>The UK Government has already acknowledged in principle the need for re-export controls, by deciding to include an undertaking not to allow the re-export military of equipment to embargoed destinations without permission in the end-use declarations made by prospective recipients of UK strategic goods. If risk assessments alone were sufficient, this measure would not have been necessary.</p> <p>Other states which have robust risk assessment protocols still find re-export controls useful. As a rule, states are reluctant to go on record regarding specific instances where re-export controls have been applied, as this tends to involve confidential discussions with the original recipient. It is well known, however, that the US Government has</p>

	<p>invoked its re-export conditions to prevent onward exports of US technology by Israel to China.³</p> <p>Many importers have no intention of re-exporting at the time of original transfer when the pre-licensing risk assessment takes place, but as political and strategic circumstances and technology change, re-export controls provide a way of managing the risks of re-export over time.</p>
<p>The UK Government already uses end-use declarations to ensure that military equipment is not re-exported to embargoed destinations.</p>	<p>This only applies in a very limited number of instances. There are states which are not under embargo but to which the UK would have serious concerns about its arms being re-exported. In addition, embargoes often only apply to certain items or particular areas of the embargoed country. This clause ensures that the buyer needs UK permission to re-export any UK armaments to an embargoed country – not just those covered by the embargo.</p> <p>This also still falls far short of the international standard set by other arms exporting states.</p>
<p>Re-export controls could not be enforced – if a state decides to re-export UK arms there is nothing we can do about it.</p>	<p>If another state is determined to re-export and in so doing to fail to honour its contractual agreements, then there is little that the UK can do to stop it. However most states, especially those to whom the UK exports most, will and do honour obligations of this type as a matter of routine.</p> <p>It is in the interests of governments which import arms from the UK to be seen as responsible trading partners, which gives them an incentive to abide by an agreement not to re-export without permission. However, if there is no contractual restriction on re-export, governments have no reason to take this into consideration.</p> <p>In practice, end-use declarations cannot be easily enforced either, but the UK Government still recognises their utility.</p>
<p>Imposing re-export controls would be too complicated or expensive.</p>	<p>This is simply not the case. Although a risk assessment would need to be carried out in response to each request for permission to re-export, the UK would not need to check up on every export to see whether it has been re-exported.</p> <p>Moreover, most states will not seek to contravene a contractual agreement to seek UK permission before re-exporting.</p>

³See, for example, *China's Missile Imports and Assistance from Israel*, Nuclear Threat Initiative, <http://www.nti.org/db/china/imisr.htm>

Annexe: About Saferworld

Saferworld is an independent international NGO that works to prevent violent conflict and promote co-operative approaches to security. We believe everyone should be able to lead peaceful, fulfilling lives free from insecurity and armed violence.

Through our work in the Horn of Africa, South and Central Asia and Eastern Europe we aim to understand what causes violence by talking to the people it affects and then bringing together communities, governments, civil society and the international community to develop solutions. Using this experience, we also work with the UK, EU, UN and others to develop ways of supporting societies address conflict and insecurity.

We always seek to work constructively with others and do not usually engage in public campaigning. While we are not a traditional development agency, we seek to understand and influence the relationship between conflict, security and international development.

We have over 60 staff based in London and abroad – with registered offices in Brussels, Colombo, Juba, Kampala, Kathmandu, Nairobi and Pristina, and a permanent staff presence in most of the countries we work in. Our funding for 2008-2009 was around £4.7million – mainly in the form of government grants from Canada, the EU, Germany, Sweden, the Netherlands, Norway and the UK.
