



# Government Legal Department

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Your ref: [REDACTED]  
Our ref: [REDACTED]

24 July 2020

Dear Sirs

## Pre-Action: R (oao [REDACTED]) v Secretary of State for International Trade

1. We refer to our letter of 30<sup>th</sup> June 2020 and our email of 14<sup>th</sup> July 2020.
2. As explained in that correspondence, officials in the Export Control Joint Unit (“ECJU”) have been carrying out a reassessment of whether the events in the USA, since George Floyd was killed on 25<sup>th</sup> May 2020, give rise to a “clear risk” that crowd control equipment exported to the USA might be used for “internal repression”. This reassessment has now been completed and a decision has been made as follows:
  - there is no clear risk under Criterion 2a of the Consolidated Criteria that such equipment might be used for internal repression; and
  - not to suspend, amend or revoke existing licences; and
  - to recommence the assessment of pending licence applications.
3. As noted in our letter of 30<sup>th</sup> June 2020, a search of extant licences covering crowd control equipment to the USA was commissioned on 1<sup>st</sup> June 2020. This identified eight standard individual export licences (“SIELs”) and open individual export licences (“OIELs”) and fifteen open general export licences (“OGELs”).
4. The equipment that is covered by these licences includes items such as tear gas, smoke canisters, smoke/pyrotechnic ammunition and CS hand grenades. Items of this nature have been used by several different police forces and National Guards in the USA and it is a matter of fact that their use has attracted criticism from some quarters. The licences also cover equipment such as body armour and ballistic shields. These have been included within the scope of the reassessment, on the basis that, as indicated by the [User's Guide](#), “a wide variety of equipment has a track record of use to commit or facilitate repressive acts”.
5. Whilst there is no evidence that equipment licensed by the United Kingdom was used during the protests, given the broad list of end-users covered by the licences, the reassessment has assumed that it is possible that such equipment was and/or could be sold to and used by police forces involved in these or similar protests.

Emma Robinson - Head of Division

Elizabeth Mackie - Deputy Director, Team Leader Defence, Security & General Public Law



6. Criterion 2 of the Consolidated EU and National Arms Export Licensing Criteria (“the Consolidated Criteria”) requires HM Government to consider:

*“The respect for human rights and fundamental freedoms in the country of final destination as well as respect by that country for international humanitarian law.”*

7. Criterion 2 then provides:

*“Having assessed the recipient country’s attitude towards relevant principles established by international human rights instruments, the Government will:*

*(a) Not grant a licence if there is a clear risk that the items might be used for internal repression;*

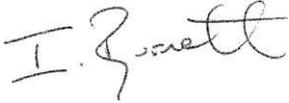
*...*

*The nature of the items to be transferred will be considered carefully, particularly if they are intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment; summary or arbitrary executions; disappearances; arbitrary detentions; and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments...*

8. The examples of “internal repression” given in Criterion 2 indicate that this is a high threshold and does not necessarily capture policing tactics that might be deemed to be heavy-handed, nor use of force that might be deemed excessive, mistakes or isolated incidents of concern. They also indicate that internal repression would be reflected in a general systemic pattern or policy of repression in a State. In applying the “clear risk” threshold in Criterion 2(a), it is also appropriate, and indeed necessary, to consider the recipient country’s broader attitude towards human rights.
9. In carrying out the reassessment, officials in ECJU have collated information from independent press coverage, social media reports, reports from NGOs and from our diplomatic missions across the USA. Account was also taken of the information referred to us in your letter of 7<sup>th</sup> July. This has included reports by Amnesty International (which alleged 125 separate incidents in 40 states) and the US Press Freedom Tracker (which highlights the alleged use of tear gas, rubber bullets, pepper spray and physical violence against journalists by both protestors and US law enforcement). The reports published by US Press Freedom Tracker have been compiled separately to those covered by Bellingcat and Forensic Architecture. However, as both focus on tracking incidents involving journalists, many are captured in both sets of data.
10. These incidents have been considered in more detail, but the analysis has also considered the broader picture and, in particular, the timescale across which the incidents referred to have occurred. Regard has also been had to the wider context of US policing architecture and general reporting on US policing practices, including the 2016 Report on Freedom of Assembly by UN Special Rapporteur Maina Kiai.
11. The conclusion that there is no clear risk that crowd control equipment exported to the USA might be used for internal repression is based, inter alia, on the following assessments by officials in ECJU:
- Whilst some of the incidents indicate heavy-handed policing tactics (and have been recognised as such by relevant authorities within the USA), the context in which they occurred indicates that they do not constitute internal repression;
  - The fact that there has been scrutiny and accountability in relation to these incidents, including several ongoing investigations and the removal of offending officers, suggests that these incidents are not indicative of a widespread breakdown of civil rights, nor of a systematic policy to quell the protestors;
  - Policing tactics and the use of items such as tear gas and rubber bullets are being challenged and reviewed through political oversight processes at national and local levels;
  - The USA has strong democratic institutions, with strong protections for freedom of speech. This has already helped to bring about demonstrable reforms to local policing and improvements in accountability of police officers;
  - The protests, which included violence from protestors initially, have become more peaceful, leading to fewer clashes between protestors and police since mid-June. Since around 8<sup>th</sup> June 2020, the number of allegations regarding disproportionate policing has decreased significantly.

12. In light of the conclusion that there is no clear risk that items permitted for export under extant licences might be used for internal repression, it is not considered necessary to suspend, amend or revoke licences under Article 32 of the Export Control Order 2008, and it is appropriate to recommence the assessment of pending licences. Export licence applications will continue to be assessed on a case-by-case against the Consolidated Criteria.
13. We will respond to your request at paragraph 6(a) of your letter of 2<sup>nd</sup> July 2020 as soon as possible.

Yours faithfully

A handwritten signature in black ink, appearing to read 'I. Burnett', written in a cursive style.

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**For the Treasury Solicitor**

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