EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision relating to the enforcement of the elements falling within the remit of the Department for Business, Innovation and Skills ("BIS") of Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya ("the Libya Regulation").

The Libya Regulation implements, so far as is possible within the framework of the Treaty on the Functioning of the European Union, the sanctions imposed by Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya (OJ L 58, 3.3.2011, p. 53).

The measures include prohibitions on trade, technical assistance, financing, financial assistance or brokering in equipment which may be used for internal repression and restrictions on the provision of technical assistance, financing or financial assistance related to the goods and technology listed in the Common Military List of the European Union.

Article 2 creates offences for contravention of the provisions of the Libya Regulation referred to there. There are already offences relating to prohibited importation and exportation of goods in sections 50, 68 and 170 of the Customs and Excise Management Act 1979 ("the 1979 Act") (1979 c. 2).

Article 3 supplements the provisions of the Libya Regulation that allow a competent authority to authorise activities that are otherwise prohibited. Article 3(1) makes it an offence knowingly and recklessly to provide false information for the purpose of obtaining an authorisation. Authorisations may be subject to requirements or conditions which continue even after the activity authorised has been carried out. Article 3(2) makes it an offence to fail to comply with such continuing requirements or conditions unless they were imposed after the activity was carried out or amended after that time in such a way as to give rise to non-compliance.

Article 4 addresses a limited overlap with the Export Control Order 2008 ("the 2008 Order"). It provides that if someone acts in a way that would breach both the Regulation - leading to an offence under this Order – and the 2008 Order, they only commit an offence under this Order.

Article 5 contains supplementary provisions about offences. Article 5(1) and (2) provide that circumvention of the prohibitions specified in Articles 2 and 3 of the Regulation is an offence.

Article 6 sets out the penalties relating to the offences in the Order, and makes some consequential modifications to the 1979 Act to ensure that the offences covered by that Act are subject to the same penalties as those in the Order.

Her Majesty's Revenue and Customs will enforce the provisions of the Order. Article 7 ensures that the same ancillary provisions as apply to their enforcement of customs and excise legislation apply in this context.

In the United Kingdom, under the 2008 Order, a licence was already required to export military goods to Libya and for a range of trading activities involving military goods to Libya. Article 8 increases the level of control by making Libya an "embargoed destination" for the purposes of the trade controls in the 2008 Order so that stricter controls apply, including restrictions on the activities of United Kingdom persons overseas (see article 20 of the 2008 Order). It also has the effect that a number of exceptions in the 2008 Order can no longer be used in relation to exports of military goods to Libya: the exceptions for aircraft and vessels (articles 13 and 14), the exception for holders

of a firearm or shot gun certificate or permit (article 16), and the transit or transhipment exception (article 17).

A regulatory impact assessment has not been prepared for this instrument as it has no or minimal impact on business, charities or voluntary bodies. Further information is available from the Export Control Organisation, BIS, 1 Victoria Street, London SW1H 0ET and on BIS website (www.bis.gov.uk).