

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (AMENDMENT) ORDER 2018
2018 No. 165

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 In summary this instrument will update the list of military items that require an export licence from the UK. Specifically, the Export Control (Amendment) Order 2018 (“the 2018 Order”) amends Article 2 and Schedule 2 to the Export Control Order 2008 (“the 2008 Order”). The 2018 Order implements amendments to Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (“the ICT Directive”) made by Directive 2017/2054 of 8 November 2017 (“the 2017 Directive”) as regards the list of defence-related products (subject to export and similar controls) set out in the Annex to the ICT Directive. Schedule 2 to the 2008 Order reflects this list (as well as containing purely domestic controls) and changes made to the ICT Directive necessitate changes to Schedule 2 to the 2008 Order. The 2018 Order also makes one other minor change (the deletion of a redundant definition) to Part 1 (Interpretation) to the 2008 Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The UK is obliged to implement the changes being made to the ICT Directive by the 2017 Directive in order to satisfy international and EU commitments.
- 4.2 The 2018 Order implements the changes made to the European Common Military Control List (“the CML”). The CML itself was changed following the agreement of technical changes made in the Wassenaar Arrangement – an international export control regime.
- 4.3 The CML forms the Annex to the ICT Directive and the 2017 Directive substitutes a new Annex reflecting these changes. Copy out has been used wherever possible.
- 4.4 An impact assessment has not been deemed necessary as the changes are few in number and of a technical nature and will only have a minimum impact.

4.5 An Explanatory Memorandum of the Draft Directive on Simplifying Terms and Conditions of Transfers of Defence-Related Products within the Community (16534/07 + Add 1-2/ COM (07) (765) was cleared from scrutiny by the House of Commons European Scrutiny Committee on 17 December 2008 and the House of Lords Select Committee on the European Union on 18 December 2008.

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The need to make changes to the control lists are a direct consequence of the UK's membership of the Wassenaar Arrangement (an international export control regime) and of the European Union. The Wassenaar Arrangement control lists are kept up to date to reflect changing circumstances and technological developments. The UK negotiates its position with respect to the control lists within the Wassenaar Arrangement.

7.2 These changes are technical and minor in nature – for the most part they seek to clarify existing controls as in the entries covering ML7 (Chemicals and biological agents) and ML8 (Energetic materials such as explosives and propellants). There are also three new entries under ML8 – covering new explosive materials. There is a new definition on “biological agents” and the deletion of the definition for “adapted for use in war”. One other change referred to in paragraph 2.1 sees the removal of the definition for “information security items” that is now redundant following an earlier change made in amendment – the Export Control (Amendment) Order 2017 (SI 2017 No.85).

7.3 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the United Kingdom remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

7.4 In the policy area as a whole, the Government intends to use the EU (Withdrawal) Bill to preserve EU export control regulations and make consequential amendments to relevant domestic legislation. The Government will negotiate with the EU to maintain as much continuity as possible for exporters following EU exit, and to maintain close cooperation with the EU in this area.

Consolidation

7.5 This is not currently required – the Export Control (Amendment) Order 2017 (SI 2017 No.85) replaced Schedule 2 to the 2008 Order and thereby consolidated all previous changes to the list of military goods, software and technology which are the subject of

export controls and the Export Control (Amendment) (No.3) Order 2017 (SI 2017/697) made minor changes to Schedule 2 to the 2008 Order. The further changes being made to Schedule 2 under this 2018 Order are few in number and do not warrant a further substitution of Schedule 2.

8. Consultation outcome

- 8.1 There was no formal consultation undertaken with respect to the implementation of the 2017 Directive. The views of UK industry are sought on a regular basis to feed into the UK's position during our negotiations within the Wassenaar Arrangement.
- 8.2 UK officials consult appropriate industry sectors prior to making a decision to agree the adoption of changes to the regime. Industry comments are incorporated into the UK negotiating positions in order to achieve an acceptable level of change and to ensure that burdens on business are minimised. It is, however, also necessary to ensure that counter-proliferation concerns are considered before removing licensing requirements on certain goods. The amendments clarify existing text, remove ambiguity and ensure consistent interpretation amongst participating states and as such no formal consultation was considered necessary.

9. Guidance

- 9.1 Comprehensive guidance on the 2008 Order and subsequent amendments is already available on the www.Gov.uk website. A further Notice to Exporters will be published giving details of these latest changes. These notices are circulated automatically to those circa 15,000 organisations and individuals registered with the Export Control Joint Unit within the Department for International Trade.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal (no costs) as the effect of the changes being implemented on the scope of strategic export controls already in operation in the UK is negligible.
- 10.2 The impact on the public sector is minimal – these minor changes to the relevant current control lists will have little effect on the administration of the existing export control regime.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to have regard to the concerns of small businesses in the Wassenaar Arrangement negotiations. The Department does not consider that new burdens are placed on business as a consequence of the 2018 Order.
- 11.3 The basis for the final decision on what action to take to assist small business is not applicable as there are no new burdens or costs introduced through the 2018 Order.

12. Monitoring & review

- 12.1 The 2018 Order does not contain a review clause. As indicated above, the changes made to the scope of existing export controls by this Order are minimal. In the

circumstances, it would not be appropriate to make a provision for a review – a review would be disproportionate given the absence of any discernible economic impact on activities carried out by businesses for the purposes of their businesses.

13. Contact

- 13.1 Ian Bendelow at the Department for International Trade, Telephone 020 7215 8692 or email: Ian.Bendelow@trade.gsi.gov.uk can answer any queries regarding the instrument.