

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (AMENDMENT) ORDER 2019
2019 No. 989

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 This instrument will update three areas of export control legislation operated in the UK. The Export Control (Amendment) Order 2019 (“the 2019 Order”) updates and amends those Articles in the Export Control Order 2008 (“the 2008 Order”), concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, following the replacement of Council Regulation (EC) No 1236/2005 of 27 June 2005 as amended with Regulation (EU) 2019/125 of the European Parliament and the Council.
- 2.2 Schedule 2 to the 2008 Order which lists the military goods, software and technology subject to export controls (“the UK list”) has been amended to implement changes to the European Common Military List as required by Commission Directive (EU) 2019/514 of 14 March 2019 (the “2019 Directive”) that in turn amends the annex to Directive 2009/43/EC (“the ICT Directive”) that simplifies the terms and conditions of transfers within the European Union of defence-related products. These changes were adopted following agreement in the Wassenaar Arrangement (an international export control regime).
- 2.3 The 2019 Order also amends Schedule 4 to the 2018 Order to remove Eritrea from the list of countries and destinations that are embargoed and subject to transit control for military goods and provides for the revocation of the Export Control (Eritrea and Miscellaneous Amendments) Order 2011 to the extent the 2011 Order provides for the penalties and offences applicable to breaches of the sanctions measures set out in Council Regulation (EU) No. 667/2010 of 26 July 2010. This follows the lifting of sanctions by the United Nations and the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The UK is obliged to implement the 2019 Directive to meet EU commitments. The UK also participates in the underlying Wassenaar Arrangement and has international commitments in respect of the changes made to that international export control regime.

6.2 The 2019 Order implements the changes made to the European Common Military List (“the EU CML”) following the agreement of technical changes made in the international export control regime known as the Wassenaar Arrangement. These changes are included in the updated EU CML which is annexed to the 2019 Directive. Copy out has been used wherever possible. This has not occurred where the text of the CML is either inconsistent with the language in the 2008 Order and copy out would create confusion, or where our judgement is that the text used is superfluous (e.g. many technical notes are not included as we believe they are adequately covered by the entry control headings in the 2008 Order). In either case, no additional burdens are placed on UK industry by the approach taken.

6.3 The 2019 Order also updates the 2008 Order to reflect the replacement of Council Regulation (EC) No 1236/2005 as amended with a new codifying Regulation (EU) 2019/125 and to update the references to prohibitions and restrictions to ensure they are correctly referenced in the 2008 Order.

6.4 The 2008 Order is further updated to remove Eritrea from the list of countries and destinations subject to transit control for military goods. This follows the lifting of UN and EU sanctions. The 2019 Order revokes the Export Control (Eritrea and Miscellaneous Amendments) Order 2011 save for the amendment made to Schedule 2 of the 2008 Order by Article 8 (Amendment to the 2008 Order).

6.5 An impact assessment has not been deemed necessary as the changes are of a technical nature and will only have a minimum impact.

7. Policy background

What is being done and why?

7.1 The need to make these changes to the UK military list are a consequence of the UK’s membership of the European Union and the requirement to implement changes made to EU legislation.

7.2 The opportunity is taken to make changes to the outdated reference to Council Regulation (EC) No 1236/2005 in the 2008 Order (Article 2(2) update refers) to refer to the new codifying legislation Regulation (EU) 2019/125. Furthermore, Articles 2(3) and 2(4) amend Article 36 and 36A of the 2008 Order to ensure accurate cross-references to the relevant prohibitions and restrictions in Regulation (EU) 2019/125.

7.3 The lifting of sanctions against Eritrea by the United Nations and the European Union requires the UK to revoke the related Export Control (Eritrea and Miscellaneous Amendments) Order 2011 save for the amendment made to Schedule 2 of the 2008

Order by Article 8 (Amendment to the 2008 Order). Article 2(6) also amends Schedule 4 of the 2008 Order (Countries and destinations subject to stricter export or trade controls) to remove Eritrea from the list to reflect the lifting of sanctions.

- 7.4 The changes to the UK list in Schedule 2 are of a technical nature and seek to clarify and amend existing controls. They derive from changes made in the Wassenaar Arrangement and the need to keep the control lists up to date and relevant. The 2019 Directive is required to be implemented following amendments made to the annex of defence-related products contained in the ICT (Intra-Community Transfer) Directive that in turn incorporates those changes previously made to the EU CML. The specific changes can be found in the following control entries: ML1, ML8, ML10, ML13, ML17 and ML20.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This is not considered to be required. The changes made under this Order are limited in number and do not warrant a complete substitution of the relevant text in the 2008 Order.

10. Consultation outcome

- 10.1 There was no formal consultation undertaken with respect to any of the changes in the 2019 Order.
- 10.2 The nature of the changes in respect of the replacement of Council Regulation (EC) No 1236/2005 as amended, the removal of Eritrea as an embargoed destination and the changes required as a result of the implementation of the 2019 Directive do not require consultation. The changes under the 2019 Directive need to be incorporated into UK control lists to comply with EU law and to meet the UK commitment to the Wassenaar Arrangement. UK officials do consult appropriate industry sectors prior to agreeing the adoption of technical changes to the regime control lists. Wherever possible, industry comments are incorporated into the UK negotiating position in order to achieve an acceptable level of change and to ensure that burdens on business are minimised. In negotiations it is always necessary to ensure that counter-proliferation concerns are considered before the removal of any 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.

11. Guidance

- 11.1 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 containing the details of these latest changes. These notices are circulated to those circa 20,000 organisations and individuals registered with the Export Control Joint Unit within the Department for International Trade.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because these are technical changes to the controls and reflect minor adjustments to the scope of UK strategic export controls.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken was to have regard to the concerns of small businesses during the negotiations of proposals during international meetings. There are no burdens on business introduced through the 2019 Order.
- 13.3 The basis for the final decision on what action to take to assist small businesses is not applicable as there are no burdens or costs introduced through the 2019 Order.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is to monitor closely any representations that are received in the Export Control Joint Unit. Any issues that are raised will be fully considered with a view to finding an acceptable solution.
- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Graham Stuart has made the following statement “The changes made to the scope of existing strategic export controls by this Order are minimal. In the circumstances, it would not be appropriate to make provision for a review. This would be disproportionate given the absence of any discernible economic impact on the activities of business”.

15. Contact

- 15.1 Dean Gallacher at the Department for International Trade Telephone: Direct line 44 2072154755 or email: Dean.Gallacher@trade.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Amanda Brooks, Director for Trade Remedies, Access and Controls, at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Graham Stuart at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.