

EXPLANATORY MEMORANDUM TO THE
EXPORT OF GOODS, TRANSFER OF TECHNOLOGY AND PROVISION
OF TECHNICAL ASSISTANCE (CONTROL) (AMENDMENT) ORDER 2005

2005 No. 468

1. The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Amendment) Order 2005 ('the Order').

1.2. This explanatory memorandum has been prepared by the Department of Trade & Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The Order amends the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 ('the 2003 Order'). The amendments provides that the offences contained in article 16(4) and (5) shall be arrestable offences. This Order also provides that section 138 of the Customs and Excise Management Act 1979 ('CEMA') (provision as to arrest of persons) shall also apply to persons arrested for offences under article 16(4) and (5) of the Order. It further provides that section 77A of CEMA (provision as to information powers) applies to transfers of software or technology and the provision of technical assistance controlled by the Order. Finally, the Order makes an amendment clarifying the definition of transfer in the 2003 Order.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Background

4.1. The Order is made under sections 1, 2, 3, 5 and 7 of the Export Control Act 2002 and amends the 2003 Order.

4.2. The Order brings Customs powers in relation to controls on the intangible transfer of technology and on the provision of technical assistance in line with those in the Customs and Excise Management Act relating to the export of controlled goods.

5. Extent

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. In the view of Mr. Nigel Griffiths, the Order is compatible with the European Convention on Human Rights.

7. Policy Background

7.1. HMCE is responsible for enforcing the provisions of the 2003 Order. Where a breach of the controls relates to the export of controlled goods then Customs use their powers under the Customs and Excise Management Act. Customs need similar powers in relation to breaches of controls on the intangible transfer of technology and on the provision of technical assistance. Offences carrying a penalty of more than 10 years imprisonment are arrestable offences under PACE. The amendments provide that the arrest can be made by a Customs officer.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact or minimal impact on business, charities or voluntary bodies.

8.2. The impact on the public sector is assessed as minimal.

9. Contact

9.1. Jason Simons at the Department of Trade and Industry, 4 Abbey Orchard Street, London, SW1P 2HT, on telephone number 0207 215 0518 can answer any queries regarding this instrument.

DEPARTMENT OF TRADE AND INDUSTRY

March 2005