

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (AMENDMENT) ORDER 2017

2017 No. 85

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 The Export Control (Amendment) Order 2017 (“the 2017 Order”) amends the Export Control Order 2008 (“the 2008 Order”). This 2017 Order implements amendments to Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 (“the ICT Directive”) made by (EU) Directive 2016/970 (“the 2016 Directive”) as regards the list of defence-related products covered by that Directive. The 2017 Order incorporates technical changes to the control lists that have been updated in the Common Military Control List of the EU. These changes were adopted following agreement in the Wassenaar Arrangement (an international export control regime). The 2017 Order also makes a number of other changes to the UK Military List to ensure that it is consistent with the Common Military Control List of the EU. Furthermore the 2017 Order makes some amendments to the 2008 Order to ensure that a UK licence authorises the export or transfer of minimum technology required for the installation etc of goods and software listed in Schedules 2 and 3 of the 2008 Order; removes the registration and record keeping reporting requirement for information security items requiring some consequential amendments 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 2016 Directive to meet international and EU commitments.
- 4.2 The 2017 Order implements the changes made to the European Common Military Control List following the agreement of technical changes made in the Wassenaar Arrangement. These are annexed to the 2016 Directive. Copy out has been used wherever possible. This has not occurred where the text of the Common Military List is either inconsistent with the language in the 2008 Order and would create confusion to use it, or where our judgement states the text used is superfluous (e.g. many

technical notes are not included as we believe they are covered by the entry control headings). In both cases, there are no additional burdens placed on UK industry.

- 4.3 An impact assessment has not been deemed necessary as the changes are of a technical nature and will only have a minimum impact.
- 4.4 An Explanatory Memorandum on 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.
- 4.5 The UK implementing legislation Export Control (Amendment) (No.2) Order 2012 (SI 2012 No.1910) was designated as an “instrument of interest” in the House of Lords Secondary Legislation Scrutiny Committee Report published on 11 October 2012 (10th Report of Session 2012/13).

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 Changes to the control lists are a direct consequence of the UK’s membership of the international export control regime (the Wassenaar Arrangement) and the need to keep the control lists up to date and relevant to changing circumstances and technological developments. These changes are largely technical in nature and seek to clarify and amend existing controls. The changes made to the European Common Military List are annexed to the 2016 Directive. The 2016 Directive amends the ICT Directive, which simplifies terms and conditions of transfers of defence-related products within the European Union by amending the list of defence-related products in the Annex to the ICT Directive.
- 7.2 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply European Union legislation.

Consolidation

- 7.3 None required – the Export Control (Amendment) Order 2015 replaced Schedule 2 to the 2008 Order to consolidate all previous changes to the list of military goods, software and technology which are subject to export controls. The Export Control (Amendment) (No.2) Order 2015 (SI 2015 No.940) subsequently made some amendments to Schedule 2 of the 2008 Order to correct an error introduced by the

Export Control (Amendment) Order 2015 (SI 2015 No.351). There have been no further amendments since this change.

8. Consultation outcome

- 8.1 There was no formal consultation undertaken with respect to the implementation of the 2016 Directive as the views of UK industry had been sought on a regular basis during negotiations in the Wassenaar Arrangement.
- 8.2 The nature of the changes made at the Wassenaar Arrangement are technical amendments to the existing control lists that are contained in Schedule 2 of the 2008 Order. These Wassenaar Arrangement technical reviews are ongoing and conducted on an annual basis. The changes which are agreed need to be incorporated into UK control lists to reflect the UK commitment to the international non-proliferation regime. UK officials consulted appropriate industry sectors prior to agreeing the adoption of changes to the regime. Industry comments were incorporated into the UK negotiating position in order to achieve an acceptable level of change and to ensure that burdens on business would be minimised. It was also necessary to ensure that counter-proliferation concerns were 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 the latest changes. These notices are circulated automatically to those organisations and individuals registered with the Export Control Joint Unit.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal (no costs) as the changes being implemented do not significantly alter the scope of strategic export controls already in operation in the UK.
- 10.2 The impact on the public sector is minimal with existing export control arrangements used to implement the Directive with changes to the scope of the control lists incorporated into the existing control lists.
- 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 respective negotiations. There are no burdens on business introduced through the 2017 Order.
- 11.3 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 2017 Order.

12. Monitoring & review

- 12.1 The changes arising from the 2016 Directive are linked to the ICT Directive. The ICT Directive will be reviewed before the end of five years beginning 30 June 2012 and will cover the changes necessitated by the 2016 Directive.

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.