

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (SOMALIA) (AMENDMENT) ORDER 2020
2020 No. 572

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 instrument provides for the enforcement of new European Union trade restrictions set out in Council Regulation (EU) 2020/169 of 6 February 2020 amending Regulation (EC) No 147/2003 concerning restrictive measures in respect of Somalia (“the 2020 Regulation”).
- 2.2 The instrument amends the Export Control (Somalia) Order 2011 (“the 2011 Order”) to provide penalties and offences for the new EU prohibition on the sale, supply, or transfer of improvised explosive device components to Somalia. It also makes provision to ensure that a non-ambulatory reference in the 2011 Order to Council Regulation (EU) No 356/2010 (“the 2010 Regulation”) has ambulatory effect.

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 United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.
- 4.3 The offence provisions also apply to a United Kingdom person (as defined in section 11 of the Export Control Act 2002) in relation to acts done by that person outside 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 United Nations (UN) imposed an arms embargo on Somalia in 1992 through UN Security Council Resolution (UNSCR) 733. This prohibition on the export of arms to

Somalia has been elaborated and amended by subsequent UNSCRs in 2001, 2002, 2006, and 2007. In 2008, UNSCR 1844 imposed an additional targeted arms embargo and financial asset freezes against persons or entities designated by the UN Sanctions Committee (“targeted sanctions”).

- 6.2 On 26 April 2010 the Council of the European Union adopted Council Decision 2010/231/CFSP concerning restrictive measures against Somalia and repealing Common Position 2009/138/CFSP (“the 2010 Decision”). The 2010 Decision sets out both the prohibition on the export of arms to Somalia and the targeted sanctions (i.e. those against designated persons or entities) in accordance with the UNSCRs. Following the 2010 Decision, the EU adopted Council Regulation (EC) No 147/2003 (“the 2003 Regulation”) imposing prohibitions on financing, financial assistance and technical assistance related to arms or to military activities. The targeted sanctions are given effect through the 2010 Regulation.
- 6.3 The prohibition on the export of arms to Somalia and corresponding penalties and offences are set out in the Somalia (United Nations Sanctions) Order 2002. Offences and penalties for breaches of EU prohibitions relating to the targeted sanctions are set out in the 2011 Order.
- 6.4 In 2019, the final report of the UN Panel of Experts on Somalia noted the increasing use by Al-Shabaab of improvised explosive devices. The report recommended that the UN Security Council call upon Member States to undertake appropriate measures to promote the exercise of vigilance by those that are involved in the production, sale, supply, or transfer of chemical precursors to Somalia that may be used in the manufacture of improvised explosive devices.
- 6.5 On 15 November 2019, the UN Security Council adopted UNSCR 2498. UNSCR 2498 introduced a new prohibition on the export of components for improvised explosive devices (listed in Part I of Annex C to UNSCR 2498) where there is sufficient evidence to demonstrate that the items will be used, or a significant risk that they may be used, for the manufacture of improvised explosive devices in Somalia. This UNSCR also called upon Member States to promote the exercise of vigilance by those that are involved in the production, sale, supply, or transfer of explosive precursors and materials (listed in Part II of Annex C to UNSCR 2498) to Somalia.
- 6.6 Following this, the Council of the European Union adopted Council Decision (CFSP) 2020/170 of 6 February 2020 amending the 2010 Decision concerning restrictive measures against Somalia. The Council of the European Union also adopted Council Regulation (EU) 2020/169 of 6 February 2020 amending the 2003 Regulation concerning restrictive measures in respect of Somalia. These amendments give effect to the UN prohibition on improvised explosive device components and extend the prohibition to include the explosives precursors and materials listed in Part II of Annex C to UNSCR 2498. These improvised explosive device components, explosives precursors and materials are listed in Annex III to the 2003 Regulation.

7. Policy background

What is being done and why?

- 7.1 The United Kingdom is required to impose penalties for infringements of EU sanctions which are ‘effective, proportionate and dissuasive’. For sanctions measures relating to trade in goods, this is done via offences and penalties laid down in legislation made under the Export Control Act 2002.

- 7.2 As the EU has amended the 2003 Regulation to include new prohibitions on the sale, export, supply, or transfer to Somalia of improvised explosive device components, explosive materials and precursors as listed in Annex III to that Regulation, the United Kingdom is required by Article 7 of the 2003 Regulation to provide penalties in domestic law. This Order makes amendments to the 2011 Order to provide these penalties.
- 7.3 This Order introduces three offences and accompanying penalties related to improvised explosive device components. The first offence is committed where a person contravenes the prohibition in the 2003 Regulation to sell, export, supply, or transfer such components listed in Annex III of the 2003 Regulation without authorisation. The second offence is committed where a person makes a statement or furnishes a document or information known to be false for the purposes of obtaining authorisation. The third offence is committed where a person purports to act under authorisation but fails to comply with the requirements or conditions of that authorisation.
- 7.4 The penalty for the first offence is a maximum custodial sentence on indictment of ten years. This is the maximum available under Export Control Act 2002 powers and was chosen given the seriousness of the offence, and to ensure consistency with penalties for other sanctions Orders as well as domestic export control offences. The penalties for the second and third offences have a maximum custodial sentence on indictment of two years. This was chosen to ensure consistency with penalties for licensing offences contained within the Export Control Order 2008 and other sanctions Orders.
- 7.5 The Order also modifies the application of offence provisions in the Customs and Excise Management Act 1979 (“the 1979 Act”) in relation to the prohibition in the 2003 Regulation concerning improvised explosive device components. Penalties for offences in the 1979 Act relating to the attempted exportation of goods despite, or attempts at evasion of, the prohibition are aligned with the penalty in the Order for contravening the prohibition itself. The Order is also to be treated, for the purpose of the relevant offence provisions in the 1979 Act, as if it were the instrument imposing the prohibition. This is to give precedence to the offences in the Order for contravening the prohibition in relation to exporting goods without authorisation or with authorisation obtained fraudulently. This is necessary as these offences may be committed by a United Kingdom person (as defined in section 11 of the Export Control Act 2002) in respect of acts done anywhere in the world.
- 7.6 The Order additionally makes ambulatory references to the 2003 Regulation and the 2010 Regulation. This is to ensure that offences continue to apply in respect of the prohibitions as in force at the time a breach occurs; however, no changes to the 2003 Regulation or the 2010 Regulation will be incorporated into the Order once the transition period has ended. At the end of the transition period this position and references to EU legislation in the Order will be stopped by the European Union (Withdrawal) Act or, as is intended, the Order will be replaced in its entirety by a solely domestic instrument made under the Sanctions and Anti-Money Laundering Act 2018.

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 There are currently no plans to consolidate the legislation being amended by this Statutory Instrument.
- 9.2 The legislation being amended by this instrument will be revoked by Regulations to be made under the Sanctions and Anti-Money Laundering Act 2018, once these Regulations come into force following the end of the transition period.

10. Consultation outcome

- 10.1 This Order provides for the technical implementation of a directly applicable EU Regulation. No consultation was necessary.

11. Guidance

- 11.1 Guidance about these sanctions is available on GOV.UK.
[gov.uk/guidance/arms-embargo-on-somalia](https://www.gov.uk/guidance/arms-embargo-on-somalia)

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 it provides for the technical implementation of a directly applicable EU Regulation. Moreover, the new prohibition on the sale, supply, or transfer of improvised explosive device components to Somalia represents a minimal addition to the long-standing arms embargo on Somalia. The scope of the new measures is comparatively minor; only a small number of items are captured by the new prohibition.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was the fact that the new prohibition on the sale, supply, or transfer of improvised explosive device components to Somalia is a minimal addition to the existing arms embargo on Somalia.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for the Department to monitor the developments in Somalia, the actions taken by the EU, and the impact of the Order, and to give effect to any necessary changes if the sanctions are reviewed.
- 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, Minister Jayawardena has made the following statement: “The changes to the scope of existing export control and sanctions legislation are minimal. In the circumstances, it would not be appropriate to make a provision for a review; it would be disproportionate given the absence of any discernible economic impact on the activities of business.”

15. Contact

- 15.1 Matthew Allen at the Department for International Trade (Telephone: 0207 215 2455 or email: matthew.allen@trade.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Mark Ace, Deputy Director for Transformation and Assurance in the Export Control Joint Unit at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Ranil Jayawardena, Parliamentary Under Secretary of State at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.