EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) (NO. 2) ORDER 2010

2010 No. 2007

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Export Control (Amendment) (No.2) Order 2010 ("the 2010 Order") amends the Export Control Order 2008 ("the 2008 Order"). The principal changes relate to the replacement of the existing Schedules 1, 2 and 3 with new Schedules so as to incorporate changes agreed in the international non-proliferation Regimes in 2009, implement of a commitment the Government gave to the Committees on Arms Export Control (CAEC) in December 2009 to increase the scope of the trade controls in relation to anti-vehicle landmines, reduce the scope of control on certain explosives-related goods and to consolidate other minor changes made to the Schedules since the 2008 Order entered in to force.

2.2 In addition, Eritrea is made an "embargoed destination" for the purposes of trade control in the 2008 Order following the adoption of stricter UN and EU sanctions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Schedule to the 2010 Order inserts replacement Schedules 1, 2 and 3 into the 2008 Order.

4.2 Schedule 1 to the 2008 Order contains the lists of controlled items subject to stricter export and trade controls.

4.3 Schedules 2 and 3 to the 2008 Order contain lists of controlled goods, software and technology based on internationally agreed control lists or those listed for national security concerns.

4.4. The 2010 Order also makes Eritrea an "embargoed destination" for the purposes of trade control in the 2008 Order following the adoption of stricter UN and EU Sanctions.

5. Territorial Extent and Application

5.1 This instrument applies to all 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 Schedules 1, 2 and 3 to the 2008 Order are being replaced to consolidate previous amendments and to implement the following:

7.1.1. A change to the definitions of cluster munitions and related goods contained in Schedule 1 to ensure consistency with the definitions contained in the Convention on Cluster Munitions, which the UK ratified in May 2010 following the coming into force on 25 March of the Cluster Munitions (Prohibitions) Act 2010;

7.1.2. The addition of anti-vehicle landmines (AVLMs) to the list of goods subject to extra-territorial trade controls in Category B; as a result trade (i.e. trafficking and brokering) of these goods by UK persons anywhere in the world will require a trade licence, although there are some exceptions for ancillary acts such as provision of insurance or general advertising. NGOs campaigned for stricter controls on AVLMs because their indiscriminate use can hamper humanitarian efforts during conflict and can continue to pose a threat to civilian vehicles after the conflict has ended and that this would have minimal impact on UK business;

7.1.3. Changes to Schedule 2 as a direct consequence of UK's membership of the international non-proliferation regimes and the changes derived from agreements reached and adopted in 2009; these include the introduction of new technology controls whilst at the same time removing some older technologies which have now become more widely available; and some clarification of existing control text without changing the scope of the controls;

7.1.4. Reducing the scope of control on certain non-military explosives-related goods by moving the control from Schedule 2 to Schedule 3. As a result an export licence will not now be required for the following destinations: EU Member States, Australia, Canada, Japan, New Zealand, Norway, Switzerland, USA. Also, the trade controls will no longer apply to these goods. Although they have legitimate commercial uses, for example in

industries such as mining, oil & gas, demolition etc, these goods are controlled because of their potential use to terrorists. Controls on similar items were recently adopted by the Wassenaar Arrangement (***a voluntary grouping of countries who are focused on controlling the export of conventional weapons and military goods and dual-use goods. This group is one of the export control international non-proliferation regimes in which the UK participates)*** and are implemented through the EU Dual-Use Regulation where a licence is not required for transfers to other EU MS, simplified arrangements are in place for exports to seven "most friendly" states (i.e. those listed above), and trade controls do not apply. The effect of this measure therefore is to harmonise the scope of control between those items controlled under national legislation and those controlled under EU legislation. It is a de-regulatory measure;

7.1.5. Following the adoption of further UN and EU Sanctions, Eritrea is moved from Part 4 to Part 2 of Schedule 4, making it an embargoed destination for the purposes of trade controls in the 2008 Order to enable the strictest levels of controls to apply.

- ***Consolidation***

7.2 The 2010 Order consolidates the goods schedules to the 2008 Order but there are no plans consolidate the entire 2008 Order, to which other amendments have been made since it came into force on 6th April 2009.

8. Consultation outcome

8.1 This is a purely technical amendment primarily to implement changes to the goods schedules of the 2008 Order to comply with UK commitment to the adoption of changes agreed within the international non proliferation regimes or as a consequence of those changes.

8.2 Prior to agreeing to the adoption of changes in the regimes in 2009 UK officials undertook consultation with the appropriate industry sectors feeding into the discussions any concerns which may have been raised in order to achieve an acceptable level of change to ensure that burdens on business would be minimised and to ensure that counter-proliferation concerns are considered before removing licensing requirements on certain goods. The remaining changes clarify the existing text to remove ambiguity and ensure consistent interpretation of control text amongst participating States, as such no further consultation was necessary.

9. Guidance

9.1 Comprehensive guidance on the 2008 Order is already available on the BIS website and a further Notice will be published giving details of the latest changes.
(http://www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&r.l1=1079717544&r.lc=en&r.l2=1084228483&topicId=1084302974).

10. Impact

10.1 The changes being implemented do not significantly alter the scope of strategic export controls or those affected by them, consequently there will be a minimum impact on business, charities or voluntary bodies.

10.1.1 Change to cluster munitions definition is a purely technical change to bring the drafting into line with international law and other UK law. This does not change the scope of the controls and so the impact will be negligible.

10.1.2. There have only been 2 export licence applications for AVLMs since 1999 and no trade licence applications since trade controls were introduced in 2004; we have no evidence from any source of trade in AVLMs by UK persons overseas. In addition, representatives from industry told the Parliamentary select committee that this measure would have negligible impact on legitimate UK businesses. We therefore expect there to be minimal impact.

10.1.3. There are changes to the controls on technology with some new technologies being brought under control but also older technologies being de-controlled. Also there are a number of changes for the purposes of clarification without changing the scope of the controls. The changes include both an increase and decrease in burdens on industry but taken together the balance is in favour of less of a burden on industry.

10.1.4. In 2009 there were 136 export licence applications (from 26 companies) where non-military explosives-related goods were the only licensable items. Of these, 74 (i.e. 55%) were for the destinations which are now to be removed from the scope of control, so the number of licence applications for these items would have been reduced by more than half if this measure had been in place last year. For the exporters involved this represents a significant reduction in burdens.

10.1.5. In 2009 there were no export licences for Eritrea. We therefore expect there to be minimal or no impact, but we are making the change to comply with our UN and EU obligations.

10.2 The proposed changes do not significantly change the scope of the controls and can be operated within existing licensing structures and so there will be a minimum impact on the public sector.

10.3 For these reasons an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 None proposed.

13. Contact

13.1 Jim Bouttell at the Department for Business, Innovation and Skills, Tel: 020 7215 4648 or email: jim.bouttell@bis.gsi.gov.uk. can answer any queries regarding the instrument.