EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) (NO. 2) ORDER 2019

2019 No. 1159

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 introduce a new national export control that covers submersible vessels and related equipment, software and technology intended for export to Russia. The Export Control (Amendment) (No. 2) Order 2019 (the "2019 Order") adds to the Export Control Order 2008 at Schedule 3 (UK controlled dual-use goods, software and technology), a new entry PL9012 for "Submersible Vessels and related goods, software and technology". This new control is being introduced to mitigate the national security risk presented by the uncontrolled export of this equipment to Russia given the Russian government's underwater capabilities. The new control introduces the need for an export licence for certain equipment, meaning the government can assess on a case by case basis whether or not a proposed export will pose a threat to national security.

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 2019 Order brings into force a new national export control on submersible vehicles and related equipment being exported to Russia.

6.2 The Export Control Act 2002 gives the Secretary of State powers to impose export controls in relation to goods of any description within one or more categories set out

in the Schedule to the Act. These categories include goods capable of having a relevant consequence – which is defined in the Schedule to the Act and includes goods having an adverse effect on the national security of the United Kingdom (or any dependency), any European Union Member state or any other friendly State.

6.3 The 2019 Order implements these national export controls in relation to goods determined to have a relevant consequence as set out in the 2002 Act. Schedule 3 of the Export Control Order 2008 will be updated.

7. Policy background

What is being done and why?

7.1 The 2019 Order updates the UK controlled dual-use goods, software and technology control list found in Schedule 3 of the Export Control Order 2008.

7.2 The need to make changes to the control lists on a national basis is a direct consequence of Russia's development of unconventional warfare equipment and capabilities. Russia has been active in tracking undersea communication cables, which carry the bulk of the world's telecommunications data. This activity could pose a potential threat to our national security and prosperity given our dependence on this infrastructure.

7.3 Specifically, this has led to the creation of a new national control (PL9012) which lists the equipment that would help Russia develop, operate and maintain its capability, thereby posing a risk to national security, in particular subsea communication cables. This new control means all exports of this equipment to Russia are prohibited unless a licence is granted. It therefore allows the UK to control the export and transfer of such goods, software and technology where it is for the development, production or use of such goods, where they are destined for Russia.

7.4 The obligation to require an export licence for this equipment, when being exported to Russia, allows Government to assess on a case by case basis whether a proposed export will pose a threat to national security. If it does, then we can refuse the licence, if it does not we would issue a licence.

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 2019 Order adds one additional control to the existing list of controlled goods and does not warrant a complete substitution of the relevant text in the Export Control Order 2008.

10. Consultation outcome

10.1 There was no formal consultation undertaken with respect to the changes made under the 2019 Order.

10.2 The nature of the changes made under the 2019 Order have been taken to address an emerging threat to our security and prosperity. Specifically, this has led to the creation of a new focussed national control (PL9012) which lists the equipment that would be

of utility to support Russian activity, in particular to underwater cables raising national security risks. A consultation was not appropriate given both the significance of the threat to National Security and, in line with the Consultation Principles, the fact that there are no other policy options which would achieve the same result.

11. Guidance

11.1 Comprehensive guidance on the Export Control Order 2008 and subsequent amendments is already available on the www.gov.uk website. A further Notice to Exporters will be published with details of these latest changes. These notices are widely circulated to those circa 15,000 organisations and individuals who are 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 the impact of the regulation is below the de minimis threshold of +/- £5m annual cost to business.

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 effective operation of the 2019 Order, in addressing the emerging national security threat, would be undermined by any mitigation of the controls as they apply to small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to closely monitor 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 Controls, Remedies, EU Exit and WTO Directorate, 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.