EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) (NO. 3) ORDER 2009

2009 No. 2151

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.

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

2. Purpose of the instrument

2.1 The Export Control (Amendment) (No.3) Order 2009 ("the 2009 Order") amends the Export Control Order 2008 ("the 2008 Order"). The principle changes relate to the implementation in part of Council Regulation (EC) No.428/2009 ("the Regulation") and concern licensing, enforcement and penalties in respect of brokering services of dual-use items.

2.2 Other amendments include updates to the control lists appearing in the schedules to the 2008 Order.

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

3.1 None.

4. Legislative Context

4.1 The Schedule to the 2009 Order makes a number of changes to the 2008 Order, including the lists of controlled items for export control purposes. The principle changes to the 2008 Order are made to implement in part European obligations emanating from the Regulation. These obligations concern mainly brokering and transit controls of dual use goods. Implementing provisions are required in particular to ensure the proper enforcement of the provisions of the Regulation. Others are required to ensure compatibility of existing provisions with the Regulation.

4.2 In addition, 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. Paragraphs 10 to 12 of the Schedule to the 2009 Order makes a number of changes to those lists which are a result of changes in the international non-proliferation regimes or to correct existing entries.

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 The 2009 Order implement certain provisions of the Regulation relating to brokering and transit which is required to satisfy EU Member States obligations under United Nations Security Council Resolution 1540 relating to Weapons of Mass Destruction (WMD). The Government is also ensuring it is up to date with its international obligations regarding export controls on military and dual use goods and also removing any overlap between national controls and those which will now fall within the scope of the Regulation.

- ***Consolidation***

7.2 No consolidation of the 2008 Order is planned.

8. Consultation outcome

8.1 This is a purely technical amendment to primarily implement provisions contained in the Regulation which is directly applicable in all European Union Member States, so no consultation was necessary.

9. Guidance

9.1 Comprehensive guidance on the 2008 Order and additional guidance on the new brokering services will be available on the BIS website (http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/licensing-policy/index.html).

10. Impact

10.1 There is minimum impact on business, charities or voluntary bodies.

10.2 There is minimum impact on the public sector.

10.3 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.