EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) (NO. 3) ORDER 2011

2011 No. 1127

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. 3) Order 2011 ("the 2011 Order") revokes the Export Control (Amendment) (No.3) Order 2010 (S.I. 2010/2843) and further amends the Export Control Order 2008 (S.I. 2008/32) ("the 2008 Order") to introduce new controls on the export to the United States of certain medicinal products which could be used in various States to execute prisoners in death row by lethal injection.

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

3.1 None

4. Legislative Context

4.1 The 2011 Order revokes the Export Control (Amendment) (No.3) Order 2010 (S.I. 2010/2843) which amended the 2008 Order to insert article 4A controlling the export of pharmaceutical goods containing sodium thiopental to the United States of America.

In addition, the 2011 Order makes a new amendment to the 2008 Order to insert a new article 4A which provides for a control on the export of human and veterinary medicinal products containing sodium thiopental, pancuronium bromide, potassium chloride concentrate or sodium pentobarbital. The control will only apply to the export of any of these products where they are in a form suitable for injection or for preparation of an injection and the final destination is the United States of America.

4.2 The Order is made under section 6 of the Export Control Act 2002 (2002 c. 28) which requires that any control order made under that section will expire no later than the end of the period of 12 months beginning with the day on which it is made. The 2011 Order will therefore cease to have effect on 13 April 2012.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Business and Enterprise has made the following statement regarding Human Rights:

In my view the provisions of the Export Control (Amendment) (No. 3) Order 2011 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The purpose of the 2011 Order is to control the export to of certain human and veterinary medicinal products which are used in a number of US states for the purpose of executing prisoners in death row by lethal injection. The United Kingdom firmly opposes the use of the death penalty in all circumstances. Because of the very limited trade between the UK and the US on these substances, it is not expected that this control will impact on either US patients or UK businesses.

- ***Consolidation***

7.2 No consolidation of the 2008 Order is planned.

8. Consultation outcome

8.1 Following a short general industry consultation, the trade between the UK and the US on these products appears to be negligible, and therefore no impact on UK businesses or US patients is expected.

9. Guidance

9.1 Comprehensive guidance on the 2008 Order is available on the BIS website:
http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1079717544&r.l2=1084228483&r.s=tl&topicId=1084484283

10. Impact

10.3 A Regulatory Impact Assessment has not been prepared for this instrument as it has no or minimal impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is difficult to quantify.

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11. Regulating small business

11.1 This legislation applies to small business.

12. Monitoring & review

12.1 This Order will cease to have effect after 12 months. The Department will monitor the position in the US and the impact of the Order. It will then determine whether a further Order is required.

12.2 The explanatory memorandum to the 2008 Order contained the following commitment: “Within three to five years of the legislation coming into effect, we will review the legislation internally which may lead to further public consultation and, if appropriate, changes to the legislation.”

13. Contact

13.1 Russell Jenkins at the Department for Business, Innovation and Skills, Tel: 0207 215 5883 or email: Russell.jenkins@bis.gsi.gov.uk can answer any queries regarding the instrument.

Department for Business, Innovation and Skills
14th April 2011