EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) ORDER 2012

2012 No. 929

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.

2. Purpose of the instrument

2.1 The Export Control (Amendment) Order 2012 ("the 2012 Order") maintains the controls on the export to the United States of the medicinal product pancuronium bromide 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 Export Control (Amendment) (No.3) Order 2011 (S.I. 2011/1127) ("the 2011 Order") amended the Export Control Order (S.I. 2008/3231) to insert article 4A controlling the export of certain pharmaceutical goods to the United States of America. These goods were human and veterinary medicinal products containing sodium thiopental, pancuronium bromide, potassium chloride concentrate or sodium pentobarbital. The control only applied 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 2011 Order was 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. The 2012 Order is being made under section 5 of the 2002 Act. There is no expiry date for the 2012 Order.

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 Universities and Science has made the following statement regarding Human Rights:

In my view the provisions of the Export Control (Amendment) Order 2012 are compatible with the Convention rights.

7. Policy background

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

7.1 The purpose of the 2011 Order was to control the export 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.

7.2 Since that Order came into force, two of the products (sodium thiopental and sodium pentobarbital) have been made subject to control from the European Union through their addition to Annex III of Council Regulation (EC) 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. This amendment was made by Commission Implementing Regulation (EU) 1352/2011 of 20 December 2011.

7.3 Of the other two drugs, there is currently a shortage of pancuronium bromide in the USA and there remains a risk that US states may seek to procure the drug overseas, including from the UK, for use in executions. It is therefore considered necessary to retain the control on this drug. However, potassium chloride is very widely available worldwide and there is no evidence of a shortage in the USA. The risk that US states would seek to procure this drug overseas for use in executions is therefore considered to be very low and it is not considered appropriate to retain controls on the export of potassium chloride.

7.4 We have seen no evidence of any impact on either US patients or UK businesses as result of the controls introduced by the 2011 Order. We do not expect the 2012 Order to have any such impact.

- ***Consolidation***

7.5 No consolidation of the 2008 Order is planned.

8. Consultation outcome

8.1 The 2011 Order was introduced following a short general industry consultation, which indicated that 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 was 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.

11. Regulating small business

11.1 This legislation applies to small business.

12. Monitoring & review

12.1 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 Christopher Chew at the Department for Business, Innovation and Skills, Tel: 0207 215 8088 or email: chris.chew@bis.gsi.gov.uk can answer any queries regarding the instrument.

Department for Business, Innovation and Skills
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