EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) ORDER 2015

2015 No. 351

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 2015 ("the 2015 Order") amends the Export Control Order 2008 ("the 2008 Order"). The 2015 Order implements Directive 2014/108/EU ("the 2014 Directive") that amends Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 (the "ICT Directive") as regards the list of defence-related products covered by that Directive. The 2015 Order implements technical changes to the control lists that have been updated in the Common Military List of the EU. These changes were adopted following agreement to changes in the Wassenaar Arrangement (an international export control regime).

2.2 The 2015 Order also amends a UK national control (PL5001) in Schedule 2 to the 2008 Order in order to reflect changes in Commission Implementing Regulation (EU) No 775/2014 ("the Implementing Torture Regulation").

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

3.1 None.

4. Legislative Context

4.1 The UK is obliged to implement the Directive to meet international and EU commitments.

4.2 The 2015 Order implements the changes made to the European Common Military Control List following the agreement of technical changes made in the Wassenaar Arrangement. These are annexed to the 2014 Directive. Copy out has been used wherever possible. This has not occurred where the text of the Common Military List is either inconsistent with the language in the 2008 Order and would create confusion to use it, or where our judgement states the text used is superfluous (e.g. many technical notes are not included as we believe they are covered by the entry control headings). In both cases, there are no additional burdens placed on UK industry.

4.3 The 2015 Order also amends a UK national control (PL5001) in Schedule 2 to the 2008 Order to ensure this is consistent with changes made by the Implementing Torture Regulation.

4.4 An Impact Assessment has not been deemed necessary as the changes are of a technical nature and will only have a minimum impact.

4.5 An Explanatory Memorandum on the Draft Directive on Simplifying Terms and Conditions of Transfers of Defence-Related Products within the Community (16534/07 + ADD 1-2 / COM (07) 765) was cleared from scrutiny by the House of Commons European Scrutiny Committee on 17 December 2008 and the House of Lords Select Committee on the European Union on 18 December 2008.

4.6 The UK implementing legislation, Export Control (Amendment) (No.2) Order 2012 (SI 2012/1910), was designated as "an instrument of interest" in the HOL Secondary Legislation Scrutiny Committee Report published 11 October 2012 (10th Report of Session 2012/13).

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 Changes to the control lists are a direct consequence of the UK's membership of the international export control regime (Wassenaar Arrangement) and the need to keep the control lists up to date and relevant to changing circumstances and technological developments. These changes are largely technical in nature and seek to clarify and amend existing controls. The changes made to the European Common Military List are annexed to the 2014 Directive. The 2014 Directive amends the ICT Directive, which simplifies terms and conditions of transfers of defence-related products within the Community by amending the list of defence related products in the Annex to the ICT Directive.

7.2 The change to the UK national control entry (PL5001) is required to ensure consistency with changes introduced by the Implementing Torture Regulation. These changes are to correctly identify the cross-

references to goods listed in the Annex to Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, to specifically reference in a Note that Water Cannon is covered by this Regulation and to adjust some technical parameters to some control text entries.

- ***Consolidation***

7.3 None required – the Export Control (Amendment) Order 2013 (SI 2013/428) replaced Schedule 2 to the 2008 Order to consolidate all previous changes to the list of military goods, software and technology which are subject to export controls.

8. Consultation outcome

8.1 There was no formal consultation undertaken with respect to the implementation of the 2014 Directive as the views of UK industry had been sought on a regular basis during negotiations in the Wassenaar Arrangement.

8.2 The nature of the changes made at the Wassenaar Arrangement are technical amendments to the existing control lists that are contained in Schedule 2 to the 2008 Order. These Wassenaar Arrangement technical reviews are ongoing and conducted on an annual basis. The changes which are agreed need to be incorporated into UK control lists to reflect the UK commitment to the international non-proliferation regime. UK officials consulted appropriate industry sectors prior to agreeing to the adoption of changes to the regime. Industry comments were incorporated into the UK negotiating position in order to achieve an acceptable level of change and ensure that burdens on business would be minimised. It was also necessary to ensure that counter-proliferation concerns were considered before removing licensing requirements on certain goods. The amendments clarify existing text, remove ambiguity and ensure consistent interpretation amongst participating states and as such no formal consultation was considered necessary.

9. Guidance

9.1 Comprehensive guidance on the 2008 Order and subsequent amendments is already available on the www.Gov.uk website. A further notice will be published giving details of the latest changes. Notices are circulated automatically to those organisations and individuals registered with the Export Control Organisation.

10. Impact

10.1 The impact on business, charities and voluntary bodies is minimal (no costs) as the changes being implemented do not significantly alter the scope of strategic export controls already in operation in the UK.

10.2 The impact on the public sector is minimal with existing export control arrangements used to implement the Directive with changes to the scope of the control lists incorporated into the existing control lists.

10.3 An Impact Assessment has therefore not been prepared.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to have regard to the concerns of small business in the respective negotiations. There are no burdens on business introduced through the 2015 Order.

11.3 The basis for the final decision on what action to take to assist small business is not applicable as there are no burdens or costs introduced through the 2015 Order.

12. Monitoring and review

12.1 The changes arising from the 2014 Directive are linked to the ICT Directive. The ICT Directive will be reviewed before the end of five years beginning 30 June 2012 and will cover the changes necessitated by the 2014 Directive.

13. Contact

13.1 Ian Bendelow at the Department for Business, Innovation and Skills, Tel: 0207 215 8692 or e-mail Ian.Bendelow@bis.gsi.gov.uk can answer any queries regarding this instrument.