EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (IRAN SANCTIONS) ORDER 2016

2016 No. 503

1. Introduction

1.1 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 (Iran Sanctions) Order 2016 makes provision relating to the enforcement of amended trade restrictions against Iran set out in Council Regulation (EU) No 267/2012 (OJ No L 88, 24.3.2012, p1), as last amended by Council Regulation (EU) No 2015/1861 of 18 October 2015 (OJ L 274, 18.10.2015, p1), ("the Iran Sanctions Regulation"). The Order also provides for the enforcement of Council Regulation 359/2011 (the "Iran Human Rights Regulation").

2.2 The Order revokes and replaces the Export Control (Iran Sanctions) Order 2012 (S.I. 2012/1243) (the "2012 Order") and amending instruments (the Export Control (Iran Sanctions) (Amendment) Order 2013 and the Export Control (Iran Sanctions) (Amendment) Order 2015), which implemented the Iran Sanctions Regulation (before it was recently amended) and the Iran Human Rights Regulation. The relevant provisions of the Iran Human Rights Regulation have not been amended. The 2012 Order has been revoked and replaced in the interests of clarity due to the volume of the amendments that would have needed to have been made to the 2012 Order to implement the amended export and trade restrictions in the Iran Sanctions Regulation.

2.3 The Order prohibits the procurement of military goods from Iran as required by Article 1(4) of Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ No L 195, 27.7.2010, p.39) and creates an offence for breach of that prohibition.

2.4 The Order makes a minor amendment to the Export Control (Russia, Crimea and Sevastopol Sanctions) Order 2014 (S.I. 204/2357) to correct a drafting error noted by the Joint Committee on Statutory Instruments. A minor amendment to the Export Control Order 2008 is also made to place the Central African Republic in the list of embargoed destinations in Schedule 2 to that Order, correcting a previous oversight.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department wishes to bring the JCSI's attention to the way in which it has provided for the enforcement of Article 4a(1) of the Iran Sanctions Regulation. This Article prohibits the sale, supply, etc. of the goods and technology listed in Annex III *or* any other item that the Member State determines could contribute to the development of nuclear weapon delivery systems, to any Iranian person or entity or for use in Iran. The Order provides for the enforcement of this Article only insofar as it concerns the goods and technology listed in Annex III. The prohibition on the

export of items that the UK determines could contribute to the development of nuclear weapon delivery systems is not enforced in this Order because there is already a similar and wider prohibition in Council Regulation (EC) No 428/2009 that could be used to prohibit the export of any such item. This wider prohibition prohibits the export, without authorisation, of any dual-use item that might be used in connection with the development of nuclear weapons and of missiles capable of delivering such weapons, if the exporter has been informed by the national competent authority that the item might be used for that purpose. The offences and penalties that attach to a breach of this prohibition are set out in the Export Control Order 2008 (S.I. 2008/3231). The Department considers that it is therefore unnecessary to provide, in this Order, for the enforcement of Article 4a(1), with regard to items that the member State determines could contribute to the development of nuclear weapon delivery systems, because pre-existing national legislation already provides for the enforcement of a wider mechanism that can be used for this purpose.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 On 18 October 2015, the Council of the European Union amended trade restrictions against Iran by means of Council Decision (CSFP) 2015/1863 (OJ L No 274, 18.10.2015, p174) amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ L No 195, 27.7.2010, p39). On 18 October 2015 the Council adopted the Iran Sanctions Regulation, so as to implement all those elements of that Decision which fall within EU competence. The measures contained in the Decision and Regulation have been applied since 16 January 2016.

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

5.3 The instrument also applies to UK nationals outside 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 Order, concerning restrictive measures against Iran, implements the provisions of a directly applicable EU Regulation which applied from the 16 January 2016, commonly known as the Iran "Implementation Day". On this day the International Atomic energy Agency (IAEA)) issued its final report to confirm that Iran has met its commitments under the Joint Comprehensive Plan of Action (JCPOA) to ensure that Iran's nuclear programme is entirely peaceful in nature.

7.2 The Order makes provision for the enforcement of: (i) amended trade restrictions against Iran as specified in the Iran Sanctions Regulation as amended, and (ii) trade restrictions concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran as specified in the Iran Human Rights Regulation. The relevant provisions of the Iran Human Rights Regulation have not been amended.

7.3 Regarding the restrictions specified in the Iran Sanctions Regulation, the Order provides for offences, penalties and licensing provisions that imposes a requirement for authorisation for the provision of:

- the sale, supply, transfer or export or the import of items listed in Annex I (NSG-listed items) to any person, entity or body in Iran or for use in Iran
- technical or financial assistance or brokering services related to the sale, supply, etc., of items listed in Annex I
- acceptance of any investment or participation by an Iranian person or entity in any commercial activity involving uranium mining and the production or use of items listed in Annex I
- the sale, supply, transfer or export or import of items listed in Annex II to any person, entity or body in Iran or for use in Iran
- technical or financial assistance or brokering services related to the sale, supply, etc., or the items listed in Annex II
- acceptance any investment or participation by an Iranian person or entity in any commercial activity involving items in Annex II
- the sale, supply, transfer or export of enterprise resource planning software as listed in Annex VIIA to any person, entity or body in Iran or for use in Iran
- technical or financial assistance or brokering services related to the items listed in VIIA
- the sale, supply, transfer or export of raw and semi-finished metals and graphite as listed in Annex VIIB to any person, entity or body in Iran or for use in Iran
- technical or financial assistance or brokering services related to the sale, supply, etc., of the items listed in VIIB

7.4 The Order also provides for the enforcement of the following activities, which are prohibited by the Iran Sanctions Regulation:

- the sale, supply, transfer or export of items listed in Annex III to any Iranian person, entity or body in Iran or for use in Iran
- the provision of technical or financial assistance or brokering services related to the sale, supply, etc., of the items listed in Annex III to any Iranian person, entity or body for use in Iran
- the acceptance of any investment or participation by an Iranian person or entity in any commercial activity involving items in Annex III
- the provision of technical or financial assistance, brokering services and other services related to the goods and technology listed in the Common Military List to any Iranian person, entity or body or for use in Iran

- the entering into any arrangement for the participation or increase in participation in any Iranian person, entity or body engaged in the manufacture of goods or technology listed in the Common Military List

7.5 Regarding the restrictions in the Iran Human Rights Regulation, the Order provides for offences, penalties and licensing provisions that imposes a requirement for authorisation for the provision of:

- the sale, supply, transfer or export of items listed in Annex III to any person, entity or body in Iran or for use in Iran that might be used for internal repression
- technical of financial assistance or brokering services related to any of the items listed in Annex III to any person, entity or body in Iran for use in Iran which might be used for internal repression
- the sale, supply, transfer or export of items, technology or software listed in Annex IV to any person, entity or body in Iran or for use in Iran
- technical or financial or brokering services related to any forms of the items listed in Annex IV
- telecommunications or internet monitoring or interception services of any kind to, or for the direct or indirect benefit or, Iran's government, public bodies, corporations and agencies or any person or entity acting on their behalf or at their direction

7.6 The Order prohibits the procurement of military goods from Iran and creates an offence for breach of the prohibition. This prohibition and offence replace those currently in article 3 of the Iran (United Nations Sanctions) Order 2009 (S.I. 2009/886), which is soon to be repealed by an Order in Council, being prepared by the Foreign and Commonwealth Office, amending the Iran (United Nations Sanctions) Order 2009.

8. Consultation outcome

8.1 The Order consists of a technical implementation of two directly applicable EU Regulations. Accordingly, no consultation was necessary.

9. Guidance

9.1 A Notice to Exporters has been published on http://blogs.bis.gov.uk/exportcontrol/ explaining the purpose and effect of the Iran Regulation.

10. Impact

10.1 There is minimal impact on business, charities or voluntary bodies. The impact is that a range of activities and services are now permitted in relation to Iran. However, business must apply for authorisation (an export licence) for the activities referred to in 7.3 and 7.5 above and the activities referred to in 7.4 above are prohibited.

10.2 There is no 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 activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people).

11.3 No mitigating action is proposed before deciding to regulate small businesses because this Order relates to directly applicable EU Regulations and the impact on business is minimal for the reasons set out in section 10.1 above.

12. Monitoring & review

12.1 The Department will monitor the developments in Iran, the actions taken by the EU and the impact of the Order and give effect to any necessary changes if the sanctions are reviewed.

13. Contact

13.1 Christopher Chew at the Department for Business, Innovation and Skills, Tel: 020 7215 8088 or email: chris.chew@bis.gsi.gov.uk can answer any queries regarding the instrument.