EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (RUSSIA, CRIMEA AND SEVASTOPOL SANCTIONS) (AMENDMENT) ORDER 2015

2015 No. 1933

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 (Russia, Crimea and Sevastopol Sanctions) (Amendment) amends the Export Control (Russia, Crimea and Sevastopol Sanctions) Order 2014 ("the Russia and Crimea Sanctions Order")(S.I. 2014/2357) to make provision relating to the enforcement of amended trade restrictions against Russia set out in Council Regulation (EU) No 2015/1797 (OJ L 263, 8.10.2015, p10) ("the Amending Regulation"), amending Council Regulation (EU) No 833/2014 (OJ No L 229, 31.7.2014, p1) ("the Russian Sanctions Regulation") of 31 July 2014.

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 the amendment to the Russia Sanctions Regulation made by the Amending Regulation. The amendment contains a paragraph that imposes an authorisation requirement for the provision of both technical assistance and financing and financial assistance in relation to export etc. of hydrazine for certain launchers. It is not usual practice in EU legislation that these two different activities are restricted by a single authorisation requirement covering both of the activities. More usually, a separate authorisation requirement for each activity would be set out in two separate paragraphs of the EU Regulation.

3.2 This is relevant because the Department usually uses two different powers to implement restrictions in relation to these two different activities. In relation to restrictions in EU Regulations relating to the provision of technical assistance, the Department usually uses the powers in the Export Control Act 2002 (c.28) to provide for enforcement. This Act allows the Department to impose penalties of up to 10 years for offences relating to such restrictions. It is the Department's policy to provide for the maximum penalty of 10 years in such circumstances. However, the Export Control Act 2002 does not contain powers relating to the imposition of controls on the provision of financing or financial assistance. Therefore, enforcement of restrictions in EU Regulations relating to the provision of financing or financial assistance are made under the power in section 2(2) of the European Communities Act 1972, which allows the imposition of a maximum penalty of 2 years.

3.3 In order to maintain consistency with the existing penalties for breaches of other prohibitions and restrictions in the Russia Sanctions Regulation, the Department has decided to implement the new authorisation requirement as follows:

(i) insofar as it concerns the provision of technical assistance, using the powers under the Export Control Act 2002, and by imposing the maximum penalty of 10 years;

(ii) insofar as it concerns the provision of financing or financial assistance, using the powers in the European Communities Act 1972, and by imposing the maximum penalty of 2 years.

4. Legislative Context

4.1 On 1 October 2015, the Council of the European Union adopted new restrictive measures against Russia by means of Council Decision (CSFP) 2015/1764 (OJ L No 257, 2.10.2015, p43) amending Council Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L No 229, 31.7.2014, p13). On 7 October 2015 the Council adopted the Amending Regulation, amending the Russia Sanctions Regulation, so as to implement all those elements of that Decision which fall within EU competence.

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.

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 government's policy is to support EU legislation concerning restrictive measures against Russia in view of Russia's actions destabilising the situation in Ukraine and EU legislation concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol.

7.2 The Order amends the Russia and Crimea Sanctions Order to provide for offences, penalties and licensing provisions to supplement the new and amended restrictive measures set out in the Amending Regulation. The new restriction imposes a requirement for authorisation for the provision of technical assistance, financing or financial assistance for:

- the sale, supply, transfer or export or the import, purchase or transport of Hydrazine;
- the import, purchase or transport of Unsymmetrical dimethyl hydrazine; and
- the sale, supply, transfer or export or the import, purchase or transport of Monomethyl hydrazine.

7.3 Article 2 of the Order amends the Russia and Crimea Sanctions Order to amend certain definitions, create offences for breach of the new restriction in Article 4(2b) of

the Russian Sanctions Regulation, insofar as it concerns the provision of technical assistance and insofar as it concerns the provision of financing or financial assistance, and for circumvention of the restriction, and provide penalties for commission of those offences.

8. Consultation outcome

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

9. Guidance

9.1 A Notice to Exporters will be published on http://blogs.bis.gov.uk/exportcontrol/ explaining the purpose and effect of the Amending Regulation.

10. Impact

10.1 There is minimal impact on business, charities or voluntary bodies. The impact is that business must apply for authorisation (an export licence) for the provision of technical assistance, financing or financial assistance for the compounds referred to in 7.2 above.

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.

12. Monitoring & review

12.1 The Department will monitor the developments in Russia, Ukraine and Crimea and Sevastopol, 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.