

**EXPLANATORY MEMORANDUM TO
THE EXPORT OF RADIOACTIVE SOURCES (CONTROL) (AMENDMENT)
ORDER**

2009 No. 585

1. This explanatory memorandum has been prepared by Department for Business, Enterprise and Regulatory Reform 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 of Radioactive Sources (Control) (Amendment) Order 2009 (“the Order”) amends the Export of Radioactive Sources (Control) Order 2006 (“the 2006 Order”). The principal change is in respect of the licence appeals procedures associated with the Government’s decisions to amend licences.

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

3.1 In its Third Report of the 2006-07 session the Committee reported the 2006 Order for unexpected use of the enabling power in that it did not provide for a right of appeal from decisions to amend licences (by contrast there was a right to appeal to the Secretary of State in relation to licence refusals, suspensions or revocations). The Department pointed out that the power to amend was only used in very limited circumstances, namely when requested by the exporter, but accepted the Committee’s argument that the Order should either place limits on the power to amend or allow an appeal in the event of amendments instigated by the Department.

3.2 This problem was common to a number of export control Orders and was fixed when we consolidated those Orders at the end of last year. Article 33 of the Export Control Order 2008 (S.I. 2008/3231) (“the 2008 Order”), provides for appeals from decisions to amend licences but only in respect of amendments not requested by the licence holder. This does not apply to general licences because they are granted to the world at large and a decision to amend one should simply be subjected to judicial review in the usual way. Moreover, general licences cannot be amended in relation to a particular licence user (this contrasts with the position on suspension and revocation of general licences).

3.3 When we made the 2008 Order, we indicated our intention to make corresponding amendments to the 2006 Order and this Order does so.

4. Legislative Context

4.1 The 2006 Order and the 2008 Order are the main Orders controlling export and trade for which the Export Control Organisation in BERR is responsible. The 2006 Order remains separate because its subject matter is rather different. However, both Orders share common licensing and enforcement mechanisms.

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 The Government is responding to comments previously received from the JCSI by correcting a problem which was common to all of the main export control Orders.

- *Consolidation*

7.2 There is no intention to consolidate the Order.

8. Consultation outcome

8.1 These are purely technical amendments which will have no impact on industry or the public sector and therefore no consultation was necessary.

9. Guidance

9.1 These are purely technical amendments which would not require guidance in addition to that already provided by the Department.

10. Impact

10.1 The impact on business, charities or voluntary bodies is zero.

10.2 The impact on the public sector is zero.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 None proposed.

13. Contact

13.1 Nick Mitchell at the Department for Business, Enterprise and Regulatory Reform Tel: 0207 215 8340 or email: Nick.Mitchell@berr.gsi.gov.uk can answer any queries regarding the instrument.

DEPARTMENT FOR BUSINESS, ENTERPRISE AND REGULATORY REFORM

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