EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) (No. 2) ORDER 2011

2011 No. 580

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Export Control (Amendment) (No.2) Order 2011 ("the 2011 Order") revokes the Export Control (Amendment) Order (S.I. 2011/543) and further amends the Export Control Order 2008 (S.I. 2008/3231) to control the export of unissued Libyan coins as well as unissued Libyan bank notes.

This control is the response to the risk posed to the national interest of the United Kingdom by the risk of money-laundering activity by certain individuals in Libya.

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

3.1 The Order is made, laid in Parliament and comes into force at consecutive times on the same day as it is considered essential for it to come into force as soon as possible.

3.2 It revokes and replaces the Export Control (Amendment) Order (S.I. 2011/543) to control both the export of unissued Libyan coins and unissued Libyan bank notes and to correct some minor defective drafting.

4. Legislative Context

4.1 The Export Control Act 2002 allows the Secretary of State to make provision by Order for or in connection with the imposition of export controls in relation to goods of any description. Section 6 of this Act allows for Orders to be made to impose controls for any purpose, provided that the Order is not in force for longer than 12 months as from the date it is made. The Order controls Libyan Bank notes and coins which have not been issued and therefore are not in circulation.

4.2 This Order adds a new category of control to the 2008 Order. It is unusual for export controls to extend non-strategic/defence related goods, but there is nothing in the 2002 Act which prevents this. The control imposed by the new Article 4B is similar in nature to the controls imposed upon UK military goods Article 3 of the 2008 Order. However, unlike the goods covered by Articles 3 and 4 of the 2008 Order, the goods here do not constitute "military" or "dual-use" within the meaning of that Order.

4.3 The Order will cease to have effect on 1st March 2012.

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 Business and Enterprise has made the following statement regarding Human Rights:

In my view the provisions of the Export Control (Amendment) (No.2) Order 2011 are compatible with the Convention rights.

7. Policy background

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

7.1 The purpose of the 2011 Order is to control the export of unissued Libyan Bank notes and coins from the United Kingdom to prevent money laundering operations and the appropriation of those assets by the current Libyan regime.

7.2 Export Control (Amendment) Order (S.I. 2011/543) introduced a control on the export of uncirculated Libyan Bank Notes. The present Order extends that control to also cover unissued Libyan coins, which as with bank notes, could be used for money laundering operations or be appropriated by certain individuals in Libya.

- ***Consolidation***

7.2 No consolidation of the 2008 Order is planned.

8. Consultation outcome

8.1 This is an urgent measure. There has been no time for general industry consultation.

9. Guidance

9.1 Comprehensive guidance on the 2008 Order is available on the BIS website (http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/licensing-policy/index.html).

10. Impact

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

10.2 The impact on the public sector is difficult to quantify.

10.3 An Impact Assessment is currently being prepared.

11. Regulating small business

11.1 The number of companies with contractual orders to print Libyan money in the UK is very limited.

12. Monitoring & review

12.1 This Order will cease to have effect after 12 months. The Department will monitor the developments in Libya, the actions taken by the United Nations and the EU and the impact of the Order. It will then determine whether a further Order is required or whether the 2011 Order ought to be revoked before the expiry date.

12.2 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: 020 7215 8088 or email: christopher.chew@bis.gsi.gov.uk can answer any queries regarding the instrument.

Department for Business, Innovation and Skills
2 March 2011