

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (AMENDMENT) (No. 2) ORDER 2015

2015 No. 940

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) (No. 2) Order 2015 (“the No. 2 Order”) amends the Export Control Order 2008 (“the 2008 Order”). This amendment is necessary to correct an error in The Export Control (Amendment) Order 2015 (“the 2015 Order”). The 2015 Order amended Schedule 2 of the 2008 Order (the UK’s list of military products subject to export control - “the UK Military List”) to more closely align it with the Common Military List of the EU. In doing so, however, national controls on transfers and exports of certain civilian firearms (such as shotguns) and certain older firearms were inadvertently removed. The 2015 Order also had the unintended effect of removing these particular firearms from the scope of the UK’s controls on the overseas trade (i.e. brokering) of military goods. The No. 2 Order re-applies controls to these items. The No. 2 Order also makes a number of other corrections to the UK Military List to ensure that it is consistent with the Common Military List of the EU.

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

3.1 Although the 21-day rule will be complied with, the Department regrets that scrutiny of the No. 2 Order by Parliament will be limited by the fact that a large part of the 21-day period will fall after the prorogation of Parliament. The reason for this is that the Department has regrettably only recently established that these particular firearms have been decontrolled and it considers that the re-application of these controls should be done as soon as possible in order to ensure that the UK’s export control regime is returned to its status quo and that the UK is meeting its EU law obligations.

4. Legislative Context

4.1 Transfers of firearms between Member states of the EU, and exports of firearms from the EU to third countries, are subject to a number of different controls depending on the nature of the firearm concerned. These controls are set out in the following instruments:

- Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (“the ICT Directive”). The list of defence-related products to which this Directive applies is set out in the Common Military List of the EU which is annexed to the Directive. The Common Military List is updated annually.
 - Council Directive 91/477/EEC of 18 June 1991 on the acquisition and possession of weapons (“the weapons Directive”). This Directive requires, *inter alia*, that the transfer of firearms and ammunition between Member States be subject to prior authorisation in the Member State from which they are to be transferred, with special arrangements for hunters and sports shooters. The list of firearms to which the weapons Directive applies is broader than that in the EU Common Military List.
 - Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (“the Common Position”). The Common Position requires Member States to apply national export controls to at least all the items listed in the EU Common Military List.
 - Regulation (EU) No. 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (“the Regulation”). The Regulation requires member States to provide for the appropriate enforcement of these measures. The Regulation classifies firearms in a similar way to the weapons Directive.
- 4.2 Historically, the UK implemented controls on the transfer and export of all firearms – under the ICT and weapons Directives and the Common Position – through the 2008 Order. As a result the UK Military List included a range of firearms that were excluded from the EU Common Military List.
- 4.3 As a result of the implementation of the Regulation, and in order to rationalise and simplify the various controls on firearms, it was decided to more closely align the UK Military List and EU Common Military List. Therefore the 2015 Order copied the relevant parts of the EU Common Military List (i.e. entries ML1 and ML2) into the UK Military List.
- 4.4 However by aligning the two lists we removed certain firearms from the UK Military List which meant the 2008 Order no longer applied to those particular firearms. Unfortunately, this meant that we could no longer apply the transfer provisions of the weapons Directive to these firearms because they are implemented through the 2008 Order and that the Government could no longer enforce the measures in the

Regulation in relation to these firearms. This potentially puts us in breach of our obligations under the Directive and the Regulation and, if not corrected, could lead to enforcement action by the European Commission. A further unintended consequence of removing certain firearms from the UK Military List was that they were no longer subject to the UK's controls on overseas trade in military goods.

- 4.5 Rather than return the UK Military List to its previous form – which would negate the simplifications intended to be achieved by aligning the UK list with the EU Common Military List – the No. 2 Order adds a new entry – PL9010 – to Schedule 3 of the 2008 Order to re-apply export controls and also adds a new paragraph 10a to Schedule 1 to re-apply the trade controls. A number of consequential changes have been made to the articles of the 2008 Order as a result of certain items now being listed in Schedule 3 rather than Schedule 2, in particular to provide for enforcement of the Regulation.
- 4.6 An Impact Assessment has not been deemed necessary as the changes are of a technical nature and will only have a minimum impact.

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 No. 2 Order corrects an error in the 2015 Order. There was never any intention that certain civilian and older firearms should be exempted from controls on transfers between Member States or from controls on overseas trade. A number of other small corrections are also being to Schedule 2 of the 2008 Order.

- *Consolidation*

- 7.2 None required – the No. 2 Order simply corrects an error in the 2015 Order.

8. Consultation outcome

- 8.1 No consultation was necessary as the No. 2 Order corrects an error in the 2015 Order.

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 simply correct an error in the 2015 Order and 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 as the changes simply correct an error in the 2015 Order and do not significantly alter the scope of strategic export controls already in operation in the UK.
- 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 No. 2 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 No. 2 Order.

12. Monitoring and review

- 12.1 The No. 2 Order corrects an error in the 2015 Order, which itself amended the 2008 Order in order to implement the ICT Directive. The ICT Directive came into force in 2012 and its implementation will be reviewed within 5 years.

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.