

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (AMENDMENT) (NO. 2) ORDER 2018
2018 No. 939

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 In summary this instrument will update and restructure the lists of firearms that require an export licence from the UK. Specifically, the Export Control (Amendment) (No. 2) Order 2018 (“the 2018 Order”) amends parts of Schedules 2 and 3 to the Export Control Order 2008 (“the 2008 Order”). The 2018 Order implements Directive 2017/853 of 17 May 2017 (“the 2017 Directive”). This Directive updates the list of firearms that are subject to export control by amending the list originally set out in Directive 91/477/EEC of 18 June 1991 (“the 1991 Directive”).
- 2.2 Schedules 2 and 3 to the 2008 Order have also been amended on a national basis to restructure the lists of firearm controls to align with the various European and international obligations on firearms.
- 2.3 The 2018 Order also makes a change to Schedule 1, Part 2 to ensure that Trade controls apply to all non-military firearms following the restructuring of the lists of firearms.
- 2.4 There are two minor changes to the control entries in ML7 and ML10 that correct previously identified typographical errors.

3. Matters of special interest to Parliament

Matter of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The UK is obliged to implement the changes being made to the 1991 Directive by the 2017 Directive to satisfy our obligation to implement and apply EU legislation.
- 6.2 The 2018 Order implements the extension to the controls on firearms that have been added to the scope of the 1991 Directive via the 2017 Directive. This was approved by the European Parliament and the Council of the EU following a proposal by the European Commission to address the misuse of certain firearms for criminal purposes that included use in acts of terrorism (including the attacks in Paris and Brussels).
- 6.3 Schedules 2 and 3 to the 2008 Order will be updated to satisfy EU and international obligations. The opportunity has been taken to restructure the UK national controls on firearms in Schedule 3 to make them more understandable by clarifying the distinction between military and non-military firearms.
- 6.4 An impact assessment has not been deemed necessary as the new controls are minor and will have a minimum impact.

7. Policy background

What is being done and why?

- 7.1 The need to make changes to the control lists is a direct consequence of the UK's membership of the European Union and the requirement to implement EU legislation. The principal effects of the instrument are that the UK now controls devices for firing blanks, irritants or other substances or pyrotechnic rounds that are capable of being converted to a "firearm" (see paragraph f. in PL9011 introduced by Article 2), and the UK now controls devices for salute and acoustic applications that are capable of being converted to a "firearm" (see paragraph g. in PL9011 introduced by Article 2). The use of such converted devices have been used for criminal purposes and acts of terrorism.
- 7.2 Beyond these changes, the control lists have been restructured to ensure that non-military firearms to third countries, which are covered by Council Regulation (EU) 258/2012 of 14 March 2012, are clearly separated from those firearms that fall under the UK Military List (ML).
- 7.3 Specifically, this has meant changes to the control entries ML1, ML2, ML3 and the national control PL9010. A new national control PL9011 has been created to help distinguish between the differences that now exist in the controls under European legislation on non-military firearms because of the changes made to the 1991 Directive which have not yet been made to Regulation 258/2012.
- 7.4 The national control entries PL9010 and PL9011 are required in order to control non-military firearms in situations where Regulation 258/2012 does not apply.
- 7.5 An amendment to Schedule 1, Part 2 has been made to ensure that non-military firearms under the new PL9011 control entry are subject to Trade controls.
- 7.6 Two further changes to ML7 and ML10 are made to address typographical errors.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This is not required. The changes made under this Order are few in number and do not warrant a complete substitution of Schedules 2 and 3.

10. Consultation outcome

- 10.1 There was no formal consultation undertaken. There were extensive discussions (led by the Home Office) on the proposal to amend 1991 Directive with representatives of the gun trade and the shooting community including target shooters, collectors, museums, film industry re-enactment and the deactivation industry as well as law enforcement and the devolved administrations.

11. Guidance

- 11.1 Comprehensive guidance on the 2008 Order and subsequent amendments is already available on the www.Gov.uk website. A further Notice to Exporters will be published containing details of these latest changes that will contain comprehensive guidance on the new structure of the UK's firearm controls. These notices are circulated automatically to those circa 15,000 organisations and individuals registered with the Export Control Joint Unit within the Department for International Trade.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because these technical changes represent minor additions to the scope of UK strategic export controls on firearms. The restructuring of the current lists of controls on firearms represents no expansion of control or additional burden on exporters.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken was to have regard to the concerns of small businesses during the negotiations in the Council Working Group in Brussels and when restructuring the lists of our firearm controls.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is to closely monitor any representations that are received. Any issues that are raised will be fully investigated with a view to finding an acceptable solution.
- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Baroness Fairhead has made the following statement "The changes made to the scope of existing firearm controls by this Order are minimal. In the circumstances, it would not be appropriate to make a provision for a review. This would be disproportionate given the absence of any discernible economic impact on the activities of business".

15. Contact

- 15.1 Ian Bendelow at the Department for International Trade Telephone: 020 7215 8692 or email: Ian.Bendelow@trade.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Amanda Brooks at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Fairhead at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.