
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend legislation implementing the strategic export controls of the United Kingdom.

Part 2 of these Regulations amends the Export Control Order 2008 ([S.I. 2008/3231](#)) to implement, in relation to Northern Ireland, the European Union’s Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) (OJ L 206, 11.6.2021, p.1) (“the EU dual-use Regulation”). The EU dual-use Regulation applies directly to and in the UK in respect of Northern Ireland by virtue of section 7A of the European Union (Withdrawal) Act 2018 and Articles 5(4), 13(3) of, and Annex 2 to, the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (“the Northern Ireland Protocol”).

The EU dual-use Regulation has been recast. As well as renumbering various provisions, the recast introduces new controls on cyber-surveillance items (in Article 5), technical assistance (in Article 8) and member State national control lists (Articles 9 and 10) (collectively, the “new controls”). These Regulations implement these new controls in the United Kingdom’s export control regime insofar as they apply to and in the United Kingdom in respect of Northern Ireland.

The Export Control Order 2008 contains export, transfer, trade and technical assistance controls on military and dual-use and certain other goods and technology. The 2008 Order also contains licensing provisions and sets out the offences and penalties for breach of the controls (except for offences relating to exportation out of the United Kingdom without a licence which are dealt with in the Customs and Excise Management Act 1979). Certain of these provisions on licensing, penalties and offences are used to implement the controls set out in the EU dual-use Regulation.

In these Regulations, regulation 3 updates and clarifies definitions relating to the EU dual-use Regulation and Council Regulation ([EC](#)) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Recast)(1) (“the retained dual-use Regulation”).

Regulations 4 to 8 and 15 to 16 update various references to the EU dual-use Regulation.

Regulations 9 and 17 modify the application of existing offences in the Export Control Order 2008. Regulation 9 limits the application of article 35 to offences relating to the retained dual-use Regulation as they apply in England and Wales and Scotland. Regulation 17 then moves the equivalent offences relating to the EU dual-use Regulation as they apply in Northern Ireland into Part 6A (provisions relating to the Northern Ireland Protocol) of the Export Control Order 2008, as well as creating new offences in Northern Ireland in respect of the new controls in the recast EU dual-use Regulation. The changes in regulation 17 are necessary for the United Kingdom to continue to implement its Northern Ireland Protocol commitments.

Regulation 10 updates certain cross-references to the recast EU dual-use Regulation and extends Her Majesty’s Revenue and Customs’ customs powers in Northern Ireland in respect of the new controls.

Regulation 12 replaces the reference to Council Directive of 18 June 1991 on control of the acquisition and possession of weapons ([91/477/EEC](#)) (OJ L 256, 13.9.1991, p.51) with a reference to Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on

(1) EUR 2009/428, amended by [S.I. 2019/771](#) and [S.I. 2022/410](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

control of the acquisition and possession of weapons (codification) (OJ L 115, 6.4.2021, p.1), in accordance with Article 13(3) of the Northern Ireland Protocol.

Regulation 13 extends the Northern Ireland-specific export and transfer control to apply with respect to exports and transfers that, if they were from Northern Ireland to a country or territory other than the EU customs territory, would require an authorisation under the new end-use control on cyber-surveillance items (in Article 5 of the EU dual-use Regulation) or the control reflecting member States' national control lists (in Article 10 of that Regulation).

Regulation 14 disapplies the customs detainment power in Article 40(2) of the Export Control Order 2008 with respect to goods merely passing through Northern Ireland on the way to and from the EU customs territory.

Part 3 of these Regulations make amendments to the retained dual-use Regulation.

Regulation 19 corrects a deficiency that arose during the withdrawal of the United Kingdom from the EU by reinstating the application of Article 13 of the retained dual-use Regulation to brokering services authorisations.

Regulations 20 to 22 amend annexes IIc to IIe of the retained dual-use Regulation to remove references to the Russian Federation as a permitted destination with respect to certain retained general export authorisations (which apply in Great Britain). These amendments mirror the effect of Commission Delegated Regulation (EU) 2022/699 of 3 May 2022 amending Regulation (EU) 2021/821 of the European Parliament and of the Council by removing Russia as a destination from the scope of Union general export authorisations (OJ L 130I, 4.5.2022, p.1) in relation to Union general export authorisations (which apply in Northern Ireland).

All other regulations make minor or technical amendments in consequence of the amendments set out above.

Authorisation, if required under retained EU law or EU law as it has effect by virtue of the Northern Ireland Protocol, may be obtained by application to the Export Control Joint Unit (a part of the Department for International Trade) using the SPIRE online licensing system. Further information may be found online at: <https://www.gov.uk/government/organisations/export-control-joint-unit>.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary, or public sector is foreseen. An Explanatory Memorandum is available from the Export Control Joint Unit, Old Admiralty Building, London SW1A 2DY and, also, is published alongside the instrument on the www.legislation.gov.uk website. In addition, a copy has been placed in the Libraries of both Houses of Parliament.