

2022 No. 1300

EXITING THE EUROPEAN UNION

CUSTOMS

TRADE

The Export Control (Amendment) (EU Exit) Regulations 2022

Made - - - - *6th December 2022*

Coming into force - - *7th December 2022*

The Secretary of State, in exercise of the powers conferred by sections 8(1), 8C(1) and (5) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a), and Article 9(1) of 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)(b), makes the following Regulations.

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraphs 1(1), 8F(1)(c) and 38(1) to (3) of Schedule 7 to that Act.

PART 1

Preliminary provisions

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Export Control (Amendment) (EU Exit) Regulations 2022 and come into force on the day after the day on which they are made.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(a) 2018 c. 16; section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and further amended by section 55(3) of the United Kingdom Internal Market Act 2020 (c. 27); paragraph 21 of Schedule 7 was amended by section 41(4) of, and paragraph 53 of Schedule 5 to, the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(b) EUR 2009/428. Article 9(1) was amended by S.I. 2019/771.

(c) Paragraph 8F was inserted by paragraph 51 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).

PART 2

Amendment of the Export Control Order 2008

Amendment of the Export Control Order 2008

2. The Export Control Order 2008(a) is amended in accordance with regulations 3 to 17.

Amendment of article 2 (interpretation)

3. In article 2(1)—

- (a) for the definition of “the dual-use Regulation”, substitute—
 - “the dual-use Regulation”, in relation to—
 - (a) England and Wales and Scotland, means the retained dual-use Regulation;
 - (b) Northern Ireland, means the EU dual-use Regulation;”;
- (b) before the definition of “exportation”, insert—
 - “the EU dual-use Regulation” means 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)(b) as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;”;
- (c) for the definition of “general export authorisation”, substitute—
 - “general export authorisation” means—
 - (a) in relation to England and Wales and Scotland, a retained general export authorisation within the meaning given in Article 2(9) of the retained dual-use Regulation;
 - (b) in relation to Northern Ireland, a Union general export authorisation within the meaning given in Article 2(15) of the EU dual-use Regulation;”;
- (d) before the definition of “scheduled journey”, insert—
 - “the retained dual-use Regulation” means 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)(c);”.

Amendment of article 8 (transit controls supplementing the dual-use Regulation)

4. In article 8(2), in each instance, for “Article 4(1) of that Regulation (WMD purposes end-use control)”, substitute “Article 4(1) (WMD purposes end-use control) of the retained dual-use Regulation or Article 4(1)(a) (WMD purposes end-use control) of the EU dual-use Regulation”.

Amendment of article 26 (licences)

5. For article 26(4), substitute—

- “(4) The Secretary of State may grant authorisations for the purposes of—
- (a) Article 9 (rules about export authorisations) of the retained dual-use Regulation;
- and

(a) S.I. 2008/3231, amended by S.I. 2009/1304, S.I. 2009/2151, S.I. 2017/85, S.I. 2019/137 (as amended by S.I. 2020/1502 (as amended by S.I. 2020/1510)), S.I. 2020/1502, S.I. 2022/491 and S.I. 2022/500; there are other amending instruments, but none is relevant.

(b) OJ No. L 206, 11.6.2021, p. 1; relevant amending instruments are OJ No. L 3, 6.1.2022, p.1 and OJ No. L 130I, 4.5.2022, p.1.

(c) EUR 2009/428; amended by S.I. 2019/771. There is another amending instrument but it is not relevant.

- (b) Articles 12 (rules about export authorisations) and 13 (rules about authorisations for brokering and technical assistance) of the EU dual-use Regulation.”.

Amendment of article 28 (registration with the Secretary of State)

6.—(1) In article 28(1), for “Article 20(1) (record-keeping)”, substitute “the record-keeping provision”.

(2) After article 28(2), insert—

“(3) In this article, the “record-keeping provision” means—

- (a) for the retained dual-use Regulation, Article 20(1);
- (b) for the EU dual-use Regulation, Article 27(1).”.

Amendment of article 31 (inspection of records)

7. In article 31—

- (a) in paragraph (1), for “Order or under Article 20 (record-keeping) of the dual-use Regulation”, substitute “Order, or Article 20(1) or (2) (record-keeping) of the retained dual-use Regulation or Article 27(1) or (2) (record-keeping) of the EU dual-use Regulation”;
- (b) in paragraph (2)(b), for “Article 20 of the dual-use Regulation”, substitute “Article 20(1) or (2) (record-keeping) of the retained dual-use Regulation or Article 27(1) or (2) (record-keeping) of the EU dual-use Regulation”.

Amendment of article 32 (amendment, suspension and revocation of licences)

8. In article 32(2), for “Article 13(1) (suspension, revocation, etc. of export authorisations) or (4) (suspension, revocation, etc. of authorisations for brokering services) of the dual-use Regulation”, substitute “Article 13 (suspension, revocation, etc. of authorisations) of the retained dual-use Regulation, under Article 16(1) (suspension, revocation, etc. of export authorisations) or (4) (suspension, revocation etc. of brokering and technical assistance authorisations) of the EU dual-use Regulation”.

Amendment of article 35 (offences relating to prohibitions and restrictions in the dual-use Regulation)

9.—(1) In the heading to article 35, for “dual-use Regulation”, substitute “retained dual-use Regulation”.

(2) In article 35—

- (a) in each instance, for “dual-use Regulation”, substitute “retained dual-use Regulation”;
- (b) for paragraph (3)(a), substitute—
 - “(a) on summary conviction in England and Wales or Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both; or”;
- (c) for paragraph (5)(a), substitute—
 - “(a) on summary conviction in England and Wales or Scotland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding twelve months, or to both; or”.

Amendment of article 40 (customs powers relating to dual-use goods)

10. In article 40—

- (a) for paragraph (1)(b), substitute—
 - “(b) as provided in—

- (i) Article 4(2) (military end-use control) or (3) (end-use control relating to use in items exported or transferred without authorisation) of the retained dual-use Regulation; or
 - (ii) Articles 4(1)(b) (military end-use control) or (c) (end-use control relating to use in items exported or transferred without authorisation), 5(1) (cyber-surveillance end-use control) or 10(1) (national control lists pursuant to Article 9) of the EU dual-use Regulation; or”;
- (b) in paragraph (2)—
- (i) before “dual-use Regulation” insert “retained”;
 - (ii) for “any place in the United Kingdom” substitute “any place in Great Britain”.
- (c) before paragraph (3), insert—
- “(2A) Any dual-use goods in relation to which a licence has been granted which are brought to any place in Northern Ireland for the purpose of being exported to a destination outside the United Kingdom may be detained by a proper officer of Her Majesty’s Revenue and Customs for a period of ten working days as if they were liable to forfeiture where that officer or the Secretary of State has—
- (a) grounds for suspicion that—
 - (i) relevant information was not taken into account when the licence was granted;
 - (ii) circumstances have materially changed since the grant of the licence; or
 - (b) relevant information regarding the potential application of measures under Article 4(1) of the EU dual-use Regulation.
- (2B) For the purposes of paragraph (2A), the period of ten working days shall be extended to 30 working days where the Secretary of State certifies that a request for such an extension in accordance with Article 21(4) (consultation requirement) of the EU dual-use Regulation has been received from the member State which granted the licence.”.

Amendment of article 42A (interpretation)

11. In article 42A, omit the definition of “the EU dual-use Regulation”.

Amendment of article 42K (exception in relation to Northern Ireland: European firearms pass holders)

12. In article 42K—
- (a) in paragraph (2)(a), for “Article 12(2)”, substitute “Article 17(2)”; and
 - (b) in paragraph (4), for “Council Directive of 18 June 1991 on control of the acquisition and possession of weapons (91/477/EEC)”, substitute “Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons (codification)”(a).

Amendment of article 42L (export and transfer control in relation to Northern Ireland: dual-use goods, software, and technology)

13. For article 42L(5)(b), substitute—
- “(b) that, if the export or transfer were from Northern Ireland to a country or territory other than the EU customs territory, would require an authorisation granted by the Secretary of State under Article 3 (export control on specified dual-use items), Article 4 (export control on unspecified dual-use items), Article 5 (end-use control on cyber-surveillance items) or Article 10 (national control lists pursuant to Article 9) of the EU dual-use Regulation.”.

(a) OJ No. L 115, 6.4.2021, p. 1.

Amendment of article 42O (exception in relation to Northern Ireland: EU goods in transit)

14. In article 42O, before paragraph (2), insert—

“(1A) Article 40(2) (customs detainment power supplementing the dual-use Regulation) does not apply in relation to EU goods that are entering Northern Ireland from the EU customs territory and passing through Northern Ireland to the EU customs territory.”.

Amendment of article 42P (authorisation requirement: Article 22(1) of the EU dual-use Regulation)

15.—(1) In the heading to article 42P, for “Article 22(1)”, substitute “Article 11(1)”.

(2) For article 42P(1), substitute—

“(1) The authorisation required by Article 11(1) of the EU dual-use Regulation is a licence granted by the Secretary of State.”.

Amendment of article 42Q (record-keeping requirement: Article 22(8) of the EU dual-use Regulation)

16.—(1) In the heading to article 42Q, for “Article 22(8)”, substitute “Article 27(4)”.

(2) In article 42Q—

(a) for paragraph (1), substitute—

“(1) The documents and records to be kept in accordance with Article 27(4) of the EU dual-use Regulation are the registers or records referred to in article 29(2)(a) to (i).”;

(b) in paragraph (2), for “Article 22(8)”, substitute “Article 27(4)”.

Amendment of article 42R (offences in relation to Article 22 of the EU dual-use Regulation)

17. For article 42R, substitute—

“Offences relating to prohibitions and restrictions in the EU dual-use Regulation

42R.—(1) Subject to paragraph (8), a person who contravenes a prohibition or restriction in Article 3(1) (controls on listed goods), 4(1)(b) (military end-use control) or (c) (end-use control relating to use in items exported or transferred without authorisation), 5(1) (cyber-surveillance end-use control), 8(1) (technical assistance end-use control), 10(1) (national control lists) or 11(1) (control on certain dual-use items) of the EU dual-use Regulation commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person who—

(a) contravenes a prohibition or restriction in Article 4(1)(a) (WMD purposes end-use control) or Article 6(1) (control on brokering services) of the EU dual-use Regulation; or

(b) fails to comply with a requirement in Article 4(2), 5(2), 6(2) or 8(2) of the EU dual-use Regulation (requirements to notify)

commits an offence and may be arrested.

(3) A person guilty of an offence under paragraph (2) shall be liable—

(a) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or to both.

(4) Subject to paragraph (8), a person knowingly concerned in an activity prohibited or restricted by Article 3(1), 4(1), 6(1) or 11(1) of the EU dual-use Regulation with intent to evade the relevant prohibition or restriction commits an offence and may be arrested.

- (5) A person guilty of an offence under paragraph (4) shall be liable—
- (a) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months, or to both; or
 - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding ten years, or to both.

(6) A person who fails to comply with Article 12(4) or 13(3) of the EU dual-use Regulation (requirements to provide all relevant information for authorisation application) commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and any licence which may have been granted in connection with the application shall be void as from the time it was granted.

(7) A person who fails to comply with Article 11(9) or 27 of the EU dual-use Regulation (record-keeping requirements for export or transfer of certain dual-use items) commits an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Paragraphs (1) and (4) do not create offences related to prohibitions or restrictions on the exportation of goods from the United Kingdom (as to which see CEMA).”.

PART 3

Amendment of Council Regulation (EC) No 428/2009

Amendment of Council Regulation (EC) No 428/2009

18. 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) is amended in accordance with regulations 19 to 22.

Amendment of Article 13 (suspension, revocation etc. of export authorisations)

19. For Article 13, substitute—

“Article 13

1. The Secretary of State, acting in accordance with this Regulation, may refuse to grant an export authorisation, and may annul, suspend, modify or revoke an export authorisation which the Secretary of State has already granted.
2. Paragraph 1 shall also apply to authorisations for brokering services.”.

Amendment of Annexes (retained general export authorisations)

20. In Annex IIc (Retained General Export Authorisation No 003), in Part 2 (destinations), omit the entry for “Russian Federation”.

21. In Annex IId (Retained General Export Authorisation No 004), in Part 2 (destinations), omit the entry for “Russian Federation”.

22. In Annex IIe (Retained General Export Authorisation No 005), in Part 2 (destinations), omit the entry for “Russian Federation”.

Signed by the authority of the Secretary of State for International Trade

6th December 2022

Nigel Huddleston
Parliamentary Under-Secretary of State
Department for International Trade

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)(a) ("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 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

(a) EUR 2009/428, amended by S.I. 2019/771 and S.I. 2022/410.

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.

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