

2022 No. 491

CUSTOMS

The Export Control (Amendment) Order 2022

| | | |
|-------------------------------|---------|------------------------|
| <i>Made</i> | - - - - | <i>27th April 2022</i> |
| <i>Laid before Parliament</i> | | <i>28th April 2022</i> |
| <i>Coming into force</i> | | <i>19th May 2022</i> |

The Secretary of State, in exercise of the powers conferred by sections 1, 2, 4, 5 and 7 of the Export Control Act 2002(a), makes the following Order.

To the extent that this Order regulates any of the activities listed in section 8(1) of the Export Control Act 2002, the Secretary of State, having considered the reasons for the relevant controls and the need to respect the freedom to carry on the relevant activities, has determined that such regulation is necessary in the circumstances prevailing at the time of this Order.

Citation, commencement and extent

1.—(1) This Order may be cited as the Export Control (Amendment) Order 2022 and comes into force on 19th May 2022.

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

Amendments to the Export Control Order 2008

2.—(1) The Export Control Order 2008(b) is amended as follows.

(2) In article 9A, after “3 to 9” insert “or 12A”.

(3) After article 12, insert—

“ Military end-use control supplementing the dual-use Regulation

12A.—(1) This article applies where a person (“a relevant person”)—

- (a) has been informed by the Secretary of State that dual-use goods, software or technology are, or may be intended, in their entirety or in part, for use by a relevant entity, and
- (b) the dual-use goods, software or technology in question are not specified in Annex I to the dual-use Regulation.

(2) Subject to articles 12B, 18 and 26, a relevant person shall not—

(a) 2002 c. 28; sections 1(5), 2(5), 5(2) and 7(2) were amended by S.I. 2011/1043; section 5 was amended by S.I. 2019/771.
(b) S.I. 2008/3231, amended by S.I. 2009/1852, S.I. 2010/615, S.I. 2011/825, S.I. 2011/1304, S.I. 2011/2010, S.I. 2011/2925, S.I. 2014/2357, S.I. 2015/1546, S.I. 2016/503, S.I. 2017/83, S.I. 2018/108, S.I. 2019/989; there are other amendments to the Order but none is relevant.

- (a) export the goods in question, or
 - (b) transfer the software or technology in question by electronic means to a destination outside the United Kingdom.
- (3) In this article, “relevant entity” means—
- (a) any military forces, para-military forces, police forces, security services or intelligence services of a country that is one or more of the following—
 - (i) an embargoed destination,
 - (ii) subject to an arms embargo imposed by a decision of the Organization for Security and Co-operation in Europe, or
 - (iii) subject to an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or
 - (b) any person involved in the procurement, research, development, production or use of dual-use goods, software or technology on behalf, or at the direction, of any of the entities mentioned in subparagraph (a).

Exceptions to military end-use control supplementing the dual-use Regulation

12B.—(1) Nothing in article 12A shall be taken to prohibit—

- (a) the export of medical goods, including medicines and medical devices, for the benefit of the civilian population of a country;
- (b) the export of consumer goods generally available to the public, or
- (c) the transfer of software or technology generally available to the public.

(2) For the purposes of paragraph (1), goods, software or technology are generally available to the public if they are—

- (a) sold from stock at retail selling points without restriction, by means of—
 - (i) over the counter transactions,
 - (ii) mail order transactions,
 - (iii) electronic transactions, or
 - (iv) telephone order transactions, and
- (b) designed for installation by the user without further substantial support by the supplier.”.

(4) In article 18(2), for “11 or 12” substitute “11, 12 or 12A”.

(5) In article 34, after paragraph (3), insert—

“(3A) A person who contravenes a prohibition in Part 2 of this Order that is engaged because the person has been informed by the Secretary of State that dual-use goods, software or technology are or may be intended, in their entirety or in part, for use by a relevant entity referred to in article 12A (military end-use control supplementing the dual-use Regulation), commits an offence and may be arrested.”.

(6) In article 34, in paragraph (4), after “paragraph (3)” insert “or (3A)”.

(7) In article 40—

- (a) in paragraph (1)(a), after “purposes;” omit “or”,
- (b) in paragraph (1)(b), for “Regulation.” substitute “Regulation; or”, and
- (c) after paragraph (1)(b), insert—

“(c) that the goods are or may be intended, in their entirety or in part, for use by a relevant entity referred to in article 12A (military end-use control supplementing the dual-use Regulation).”.

(8) In article 41,—

- (a) in paragraph (1)(a)(i), after “12,” insert “12A,” and

(b) in paragraph (2)(a), after “12,” insert “12A,”.

(9) In article 42N, in paragraph (1), for “Article 6 (WMD purposes end-use control supplementing the dual-use Regulation) does not” substitute “Articles 6 (WMD purposes end-use control supplementing the dual-use Regulation) and 12A (military end-use control supplementing the dual-use Regulation) do not”.

(10) In Part 2 of Schedule 4, at the appropriate places,—

(a) insert “China (People’s Republic other than the Special Administrative Regions)”,

(b) insert “Hong Kong Special Administrative Region”, and

(c) insert “Macao Special Administrative Region”.

(11) In Part 3 of Schedule 4—

(a) omit “China (People’s Republic other than the Special Administrative Regions)”, and

(b) omit “Macao Special Administrative Region”.

(12) In Part 4 of Schedule 4, omit “Hong Kong Special Administrative Region”.

Signed by authority of the Secretary of State for International Trade

27th April 2022

Penny Mordaunt
Minister of State for Trade Policy
Department for International Trade

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Export Control Order 2008 (S.I. 2008/3231) (“the 2008 Order”), which implements the strategic export controls of the United Kingdom.

Articles 2(2) and (3) amend articles 9A and 12 of the 2008 Order and insert articles 12A and 12B to create: a military end-use control supplementing the dual-use Regulation; and exceptions to military end-use control supplementing the dual-use Regulation. Article 2(4) amends article 18 of the 2008 Order to provide for an exception to article 12A in respect of software and technology in the public domain.

Articles 2(5) and (6) amend article 34 of the 2008 Order to extend the provisions about offences and penalties concerning contraventions of export and transfer controls to the new military end-use controls.

Article 2(7) amends article 40 of the 2008 Order, extending the application of customs powers relating to dual-use goods to the new military end-use control.

Article 2(8) amends article 41 of the 2008 Order and extends the application of the Customs and Excise Management Act 1979 information powers with respect to the new military end-use control.

Article 2(9) amends article 42N of the 2008 Order to include an exception in relation to the export or transfer from Northern Ireland to the EU customs territory for the new military end-use control.

Articles 2(10) to (12) amend Parts 2, 3 and 4 of Schedule 4 to the 2008 Order to move China, the Hong Kong Special Administrative Region and the Macao Special Administrative Region into the list of countries and territories that are embargoed destinations and subject to transit control for military goods.

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; it is published

alongside the instrument at legislation.gov.uk also. In addition, a copy has been placed in the Libraries of both Houses of Parliament.

© Crown copyright 2022

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.90

<http://www.legislation.gov.uk/id/uksi/2022/491>

ISBN 978-0-34-823477-0



9 780348 234770