

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (MILITARY AND DUAL-USE LISTS) (AMENDMENT)
REGULATIONS 2023

2023 No. 302

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 These Regulations amend Schedule 2 and 3 to the Export Control Order 2008 (“the 2008 Order”) and Annex I to the retained 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) (“the retained Dual-Use Regulation”). These amendments reflect changes to the UK’s international export control commitments and addresses minor drafting errors and preferences.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom for amendments to the 2008 Order, and Great Britain for amendments to the retained Dual-Use Regulation.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom for amendments to the 2008 Order, and Great Britain for amendments to the retained Dual-Use Regulation.

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 These Regulations amend the control lists in the 2008 Order and the retained Dual-Use Regulation. The amendments in these Regulations reflect recent changes to the control lists administered by the Wassenaar Arrangement, as well as other international regimes such as the Australia Group and the Missile Technology Control Regime.
- 6.2 The Wassenaar Arrangement is an international export control regime in respect of which the UK has international commitments. The UK, as a participating state of the various international export control regimes, has committed to align its export control lists with those regimes. These Regulations amend lists of military goods, software and technology and dual-use goods, software and technology subject to export

controls within the Wassenaar Arrangement. Although the scope of export controls in participating states is determined by the international regimes lists, practical implementation will vary from country to country.

7. Policy background

What is being done and why?

- 7.1 Regulation 3 amends Schedule 2 to the 2008 Order, which lists military goods, software and technology subject to export controls. These amendments reflect changes to the Wassenaar Arrangement munitions list, which were most recently agreed in December 2022.
- 7.2 Regulation 4 corrects a minor drafting error in Schedule 3 of the 2008 Order, which lists dual-use goods, software and technology subject to export controls. This amends the title of the control entry to be consistent with its description and the term used by the Wassenaar Arrangement.
- 7.3 Regulation 5 amends Annex I to the retained Dual-Use Regulation which lists dual-use goods, software and technology subject to export controls. These amendments reflect changes to the Wassenaar Arrangement dual-use list as well as changes to the control lists administered by other multilateral export control regimes, including the Australia Group and the Missile Technology Control Regime, most recently agreed in December 2021.
- 7.4 The changes being made by these Regulations to these control lists are a direct consequence of the UK's membership of the Wassenaar Arrangement and other multilateral export control regimes, such as the Australia Group and the Missile Technology Control Regime. The Wassenaar Arrangement control lists are kept up to date to reflect changing circumstances and technological developments. The UK negotiates its position with respect to these lists within the Wassenaar Arrangement.
- 7.5 These changes are of a technical nature and seek to clarify the scope of existing controls.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6 The 2008 Order consolidated the main Orders made under the Export Control Act 2002. It rationalised and enhanced trade controls (controls on activities relating to the movement of goods and technology between third countries). It enhanced transit controls (goods passing through the UK) on goods including small arms and light weapons.
- 7.7 The retained Dual-Use Regulation sets up a regime for the control of exports, transfer, brokering and transit of dual-use items.

Why is it being changed?

- 7.8 To uphold the UK's international obligation to implement changes made to the Wassenaar Arrangement munitions list, the Wassenaar Arrangement dual-use list, as well as changes to the control lists administered by other multilateral export control regimes, including the Australia Group and the Missile Technology Control Regime.

What will it now do?

- 7.9 The 2008 Order will continue to do everything listed above and will continue to apply in the United Kingdom. These amending Regulations make minor technical adjustments to Schedule 2 and Schedule 3 of the 2008 Order.
- 7.10 The retained Dual-Use Regulation will continue to do everything listed above and continue to apply in Great Britain. These amending Regulations make technical changes to Annex I of the retained Dual-Use Regulation to clarify the scope of existing controls.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union, but for completeness, we note the relevant arrangements in Northern Ireland.
- 8.2 Annex 2 of the Protocol on Ireland/Northern Ireland in the European Union Withdrawal Agreement (“the NI Protocol”) provides that Council Regulation (EC) No. 428/2009 continues to apply to and in the UK in respect of Northern Ireland. In May 2021, the EU replaced Council Regulation (EC) No 428/2009 with a new Dual-Use Regulation (EU) 2021/821 (Recast), which continues to apply to and in the UK in respect of Northern Ireland by virtue of the NI Protocol.

9. Consolidation

- 9.1 This is not considered to be required. The limited changes made by these Regulations do not warrant a complete consolidation.

10. Consultation outcome

- 10.1 This is not considered to be required. The changes made by these Regulations are small in number and technical.

11. Guidance

- 11.1 Comprehensive guidance on strategic export controls is already available on the GOV.UK website. A Notice to Exporters will be published giving details of these latest changes. These notices are circulated automatically to those organisations and individuals registered with the Export Control Joint Unit within the Department for Business and 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 A full Impact Assessment has not been prepared for this instrument because of the low level of impact on any business.

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 is only to make changes required to implement the changes to the Wassenaar Agreement munitions list and the dual-use list.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to monitor closely any representations that are received in the Export Control Joint Unit. Any issues that are raised will be fully considered with a view to finding an acceptable solution.
- 14.2 As indicated above, the changes made to the scope of existing export controls by these Regulations are minimal. In the circumstances, it would not be appropriate to make a provision for a review which would be disproportionate given the absence of any discernible economic impact on activities carried out by businesses for the purposes of their businesses.

15. Contact

- 15.1 Vikura Parmar at the Department for Business and Trade. Telephone: 07391 864866 or email: vikura.parmar@trade.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ros Lynch, Deputy Director for Export Control Joint Unit, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nigel Huddleston, Minister of State at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.