

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (AMENDMENT) REGULATIONS 2023
2023 No. 695

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 the Export Control Order 2008 (S.I. 2008/3231) (“the 2008 Order”) and 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) (EUR 2009/428) (“the retained Dual-Use Regulation”). The amendment to the 2008 Order updates the transit controls on military goods to Haiti. The amendments to the retained Dual-Use Regulation reflect changes agreed by the United Kingdom as a participant in international export control regimes.

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 same as the extent of the instruments which it amends: that is, the United Kingdom for the 2008 Order, and Great Britain for the retained Dual-Use Regulation.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is also the same as the territorial application of the instruments that it amends: that is, the United Kingdom for the 2008 Order, and Great Britain for 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 Schedule 4 to the 2008 Order, which updates the transit controls on military goods destined for Haiti. This supplements the measures introduced by Haiti (Sanctions) Regulations 2022, which introduced an arms embargo for named individuals in Haiti, and implements increased scrutiny of military goods destined for Haiti.
- 6.2 These Regulations also amend Annex I to the retained Dual-Use Regulation, which lists dual use goods, software and technology that are subject to export controls, to

reflect the changes agreed at the international export control regimes, specifically the Wassenaar Arrangement and the Australia Group.

- 6.3 The Wassenaar Arrangement and the Australia Group are international export control regimes in respect of which the United Kingdom has international commitments. The UK is a participating state of these international export control regimes and is committed to align its export control lists with them. 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 2 amends Schedule 4 to the 2008 Order, moving Haiti from Part 4 of Schedule 4 to Part 3. This updates the transit controls on military goods destined for Haiti and supplements measures introduced by Haiti (Sanctions) Regulations 2022, which introduced an arms embargo for named individuals in Haiti. Schedule 4 to the 2008 Order sets out a list of countries with stricter export, trade and transit controls. Currently, Haiti sits in Part 4 of Schedule 4 which means that it is subject to a transit control on 'Category B' goods only (as specified in Part 2 of Schedule 1 to the 2008 Order, which predominantly includes Small Arms and Light Weapons). Moving Haiti to Part 3 of Schedule 4 ensures that the control applies to the transit of all military goods (as specified in Schedule 2 to the 2008 Order) and places a requirement that all military goods destined for Haiti that transit the UK would require a licence.
- 7.2 Regulation 3 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 and the control lists administered by the Australia Group. These include certain technical amendments to the lists of controlled goods and new additions to the lists for marine toxins. The amendments also correct minor drafting errors and inconsistencies in the international lists. Regulation 3 brings the retained Dual-Use Regulation up to date with these international arrangements.
- 7.3 The changes being made by Regulation 3 are a direct consequence of the UK's membership of the multilateral export control regimes. The control lists administered by these regimes are kept up to date to reflect changing circumstances and technological developments. The UK negotiates its position with respect to these lists within the international regimes.
- 7.4 These changes are of a technical nature and seek to update and clarify the scope of existing controls.

Explanations

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

- 7.5 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.

- 7.6 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?

- 7.7 The 2008 Order changes are to ensure that appropriate transit controls are applied for military goods destined for Haiti. The retained Dual-Use Regulation changes are to uphold the UK's international commitments to implement changes made to the Wassenaar Arrangement dual-use list and the control lists administered by the Australia Group.

What will it now do?

- 7.8 The 2008 Order will continue to apply in the United Kingdom. These amending Regulations ensure that appropriate transit controls are applied to all military goods transiting the UK to Haiti.
- 7.9 The retained Dual-Use Regulation will continue to apply in Great Britain. These amending Regulations make technical changes to Annex I to implement the changes made to the Wassenaar Arrangement dual-use list and the control lists administered by the Australia Group and 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 By the virtue of the Windsor Framework, 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 Windsor Framework.

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 technical in nature and seek to clarify and update existing controls.

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 necessary to implement the changes agreed by the international regimes.

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 Kevin Hollinrake, Parliamentary Under Secretary of State at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.