

EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) REGULATIONS 2024

2024 No. 346

1. Introduction

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

2. Declaration

- 2.1 Nusrat Ghani MP, Minister of State at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Matt Sheldon, Deputy Director for Export Control and Sanctions Policy at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Vikura Parmar at the Department for Business and Trade (Telephone: 07391 864866 or email: vikura.parmar@businessandtrade.gov.uk) can be contacted for any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 The Export Control (Amendment) Regulations 2024 (the “2024 Regulations”) amend the Export Control Order 2008 (S.I. 2008/3231) (the “2008 Order”) 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) (EUR 2009/428) (the “assimilated Dual-Use Regulation”).
- 4.2 The 2024 Regulations implement changes to the list of items subject to export controls which the United Kingdom has committed to apply as a participant of the international export control regimes. They update and clarify existing controls, adopting domestic drafting preferences.
- 4.3 The 2024 Regulations also introduce new controls on specific emerging technologies, which the United Kingdom, along with a number of like-minded countries, has committed to implement in order to strengthen the export controls for national security purposes.

Where does the legislation extend to, and apply?

- 4.4 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 assimilated Dual-Use Regulation.
- 4.5 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 assimilated Dual-Use Regulation.

5. Policy Context

What is being done and why?

- 5.1 Regulation 2 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, most recently agreed in December 2023, which the United Kingdom has committed to align with as a participating state of the Wassenaar Arrangement.
- 5.2 Regulation 2 also amends Schedule 3 to the 2008 Order, which lists dual-use goods, software and technology subject to export controls. These amendments introduce new controls on certain specific emerging technologies which the United Kingdom, along with a number of other like-minded countries, has committed to implement in order to strengthen the national controls. The new controls relate to quantum technologies, including dilution refrigerators, semiconductor technologies, and advanced materials.
- 5.3 Regulation 3 amends Annex I to the assimilated 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, Nuclear Suppliers Group and the Missile Technology Control Regime, as agreed in December 2023. The United Kingdom has committed to align with these changes as a participating state of these regimes.
- 5.4 Regulation 3 also makes a minor administrative amendment to the text in control entries 9E001 and 9E002 in Annex I to the assimilated Dual-Use Regulation to ensure consistency with a change made in a previous SI. In S.I. 2023/695 the text in 9A001b was replaced with 'Not used'. As a consequence, reference to 9A001b in 9E001 and 9E002 is being removed.

What was the previous policy, how is this different?

- 5.5 The assimilated Dual-Use Regulation and the 2008 Order provide the legal framework for the United Kingdom's export controls. These amendments update the lists of items subject to control in line with international agreements to ensure they are kept up to date to reflect changing circumstances and technological developments.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The 2008 Order, which is the main Order made under The Export Control Act 2002, provides controls on the export of and trade in military goods and technology, as well as national controls on certain dual-use items. The 2024 Regulations update the list of military goods and technology to reflect changes agreed to the Wassenaar Arrangement munitions list, which the UK has committed to apply as a participant in the Wassenaar Arrangement.
- 6.2 The 2024 Regulations also introduce new national controls relating to specific emerging technologies. The Export Control Act 2002 provides the Secretary of State the powers to impose export controls in relation to goods of any description within one or more categories set out in the Schedule to the Act. These categories include goods capable of having a relevant consequence – which is defined in the Schedule to

the Act and includes goods having an adverse effect on the national security of the United Kingdom (or any dependency), or any other friendly State. The 2024 Regulations implement new national controls that related to items determined to have a relevant consequence as set out in the 2002 Act.

- 6.3 The assimilated Dual-Use Regulation sets up a regime for the control of exports, transfer, brokering and transit of dual-use items. The 2024 Regulations update the list of dual-use items subject to export control to reflect changes the United Kingdom has committed to apply as a participant of the international export control regimes.

Why was this approach taken to change the law?

- 6.4 To uphold the United Kingdom's commitments to implement changes made to the control lists agreed at various international export control regimes and to update the export controls to keep pace with changing circumstances and technological developments.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 There was no formal consultation undertaken with respect to the changes made by the 2024 Regulations. The nature of changes made by these Regulations seek to update the existing controls in line with international arrangements and implement new controls on a specific range of technologies that could present a threat to UK's national security. A consultation was therefore not appropriate given both the significance of the threat to national security and, in line with the Consultation Principles, the fact that there are no other policy options which would achieve the same result.

8. Applicable Guidance

- 8.1 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.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because of the low regulatory impact on business.
- 9.2 The routine control lists changes agreed through the international export control regimes will have a limited impact on business, as these amendments are largely technical in nature and seek to amend and clarify existing controls.
- 9.3 The new controls on emerging technologies are likely to have a higher impact on a small number of companies who operate in the quantum sector, who will now need to apply for an export licence before exporting these items overseas. The addition of these products to the Control List will provide greater clarity on what items are controlled and will improve the predictability of when licences are required.

Impact on businesses, charities and voluntary bodies

- 9.4 There is no significant impact on business, charities or voluntary bodies as the effect of the majority of changes being implemented on the scope of strategic export controls already in operation in the United Kingdom is negligible. The introduction of the new controls is likely to have a higher impact on a small number of companies that operate in the specific emerging technologies sector.
- 9.5 The legislation applies to activities that are undertaken by small businesses. The effective operation of the 2008 Order in addressing the emerging national security threat would be undermined by any mitigation of the controls as they apply to small businesses.
- 9.6 There is no, or no significant, impact on the public sector as the changes to the control lists will have minimal effect on the administration of the existing export control regime.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring of this legislation is to monitor closely any representations that are received by the Export Control Joint Unit. Any issues that are raised will be fully considered with a view to finding an acceptable solution.
- 10.2 The 2008 Order does not contain a statutory review clause. The 2024 Regulations amend and update the scope of existing export controls and implement the United Kingdom's commitments in relation to international arrangements. A review would be disproportionate given the absence of any discernible economic impact on activities of business. In the circumstances, it would not be appropriate to make a provision for a review.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

- 12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

- 13.1 This instrument does not relate to withdrawal from the European Union, but for completeness, we note the relevant arrangements in Northern Ireland.
- 13.2 By the virtue of the Windsor Framework, Council Regulation (EC) No. 428/2009 applied 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.