EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) (EU EXIT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 These Regulations make the necessary changes to the Export Control Order 2008 to ensure that the new 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) ("the EU dual-use Regulation") operates effectively in Northern Ireland in accordance with the requirements of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement ("the Protocol"). They also make amendments to 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") to correct a deficiency arising from the United Kingdom's withdrawal from the EU and to remove the Russian Federation as a permitted destination from the scope of certain general export authorisations.

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.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 Minister of State at the Department for International Trade, James Duddridge MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Export Control (Amendment) (EU Exit) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations amend legislation implementing the strategic export controls of the United Kingdom, including the Export Control Order 2008 and the retained dual-use Regulation.

6.2 The EU dual-use Regulation replaced Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, brokering,

technical assistance, transit and transfer of dual-use items. The EU dual-use Regulation applies to and in the United Kingdom in respect of Northern Ireland by virtue of section 7A of the European Union (Withdrawal) Act 2018 and Articles 5(4), 13(3) and Annex 2 of the Protocol.

6.3 The Export Control Order 2008 includes provisions that ensure that the EU legislation applicable via the Protocol operates effectively in Northern Ireland. These provisions include, but are not limited to, those set out in Part 6A of the Order.

6.4 The EU dual-use Regulation applies alongside the retained dual-use Regulation. The Export Control Order 2008 similarly includes provisions that ensure that the retained dual-use Regulation operates effectively in Great Britain.

6.5 Commission Delegated Regulation (EU) 2022/699 of 3 May 2022 removed the Russian Federation as a permitted destination from the Union General Export Authorisations, as set out in Annexes IIc, IId, and IIe of the EU dual-use Regulation. Union General Export Authorisations apply in the United Kingdom only in relation to exports from Northern Ireland. These Regulations similarly provide for the removal of the Russian Federation as a permitted destination from the Retained General Export Authorisation as set out in Annexes IIc, IId and IIe of the retained dual-use Regulation.

7. Policy background

What is being done and why?

7.1 These Regulations make the necessary changes to the Export Control Order 2008 to ensure that the EU dual-use Regulation operates effectively in Northern Ireland. They also make amendments to the retained dual-use Regulation to correct a deficiency arising from the United Kingdom's withdrawal from the EU concerning the Secretary of State's powers to refuse, annul, suspend, modify or revoke brokering authorisations, and to remove the Russian Federation as a permitted destination with respect to certain general export authorisations which apply in Great Britain.

Explanations

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

7.2 Prior to IP completion day, 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 applied directly to and in the UK by virtue of the UK's membership of the EU.

7.3 Following the UK's withdrawal from the EU, and until the recast EU dual-use Regulation came into force, Council Regulation (EC) No 428/2009 continued to apply to and in the United Kingdom in respect of Northern Ireland in accordance with Article 5(4) of, and Annex 2 to, the Protocol. The Export Control Order 2008 made the provisions of Council Regulation (EC) No 428/2009 operable in Northern Ireland, including through ensuring that the licensing and enforcement provisions operated consistently with the rest of the United Kingdom's export control regime.

7.4 The retained dual-use Regulation is the retained EU law version of Council Regulation (EC) No 428/2009, as amended to ensure operability and correct deficiencies following the UK's withdrawal from the EU. The retained dual-use Regulation includes a number of general export authorisations in its Annexes, which

before this instrument authorised exports of certain dual-use items to the Russian Federation.

Why is it being changed?

7.5 In relation to Part 2 of these Regulations, following a review of export control policy initiated by the European Commission in 2014 (*Ensuring Security and Competitiveness in a Changing World*), in September 2016 the Commission adopted a proposal to modernise the EU export control system. On 20 May 2021, the European Parliament and the Council adopted the recast EU dual-use Regulation, replacing Council Regulation (EC) No 428/2009.

7.6 As the recast EU dual-use Regulation replaced Council Regulation (EC) No 428/2009, the recast EU dual-use Regulation applies to and in the United Kingdom in respect of Northern Ireland in accordance with Articles 5(4) and 13(3) of, and Annex 2 to, the Protocol. This instrument makes the recast EU dual-use Regulation operationally effective in Northern Ireland.

7.7 As regards regulation 19 in Part 3 of these Regulations, as a result of the UK's withdrawal from the EU, the retained dual-use Regulation was amended to address inoperabilities and deficiencies arising from that withdrawal. Article 13 of the retained dual-use Regulation was amended by the Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019. Those Regulations removed, in error, a provision that extended the power to refuse, annul, suspend, modify or revoke export authorisations to brokering authorisations. These Regulations correct that error.

7.8 In relation to regulations 20 to 22 in Part 3 of these Regulations, the Retained General Export Authorisations in Annexes IIc, IId and IIe of the retained dual-use Regulation set out general export authorisations in respect of certain items to listed countries. Regulations 20 to 22 remove the Russian Federation from the lists of permitted destinations in those general export authorisations.

7.9 Following its illegal annexation of Crimea in 2014, Russia continued a pattern of aggressive action towards Ukraine until 24 February 2022 when it invaded Ukraine's sovereign territory. This was announced by President Putin as a "special military operation", included recognising the "Donetsk People's Republic" and "Luhansk People's Republic" as independent states and deployed Russian troops to those regions.

7.10 The UK has called on Russia to cease its military activity, withdraw its forces from Ukraine and Crimea, end its support for the separatists, and fulfil its international commitments including under the 1975 Helsinki Final Act, the 2014 and 2015 Minsk Protocols and the 1994 Budapest memorandum. UK policy remains focussed on ending the crisis in Ukraine and on assisting Ukraine to secure its borders against Russia's aggressive actions, ensuring a stable, prosperous and democratic future for all its citizens.

7.11 The removal of the Russian Federation from the scope of the Retained General Export Authorisations is part of a broader policy of measures which includes diplomatic pressure; trade sanctions; economic and financial sanctions; and designations.

What will it now do?

7.12 Part 2 of the Regulations provides for certain definitions in relation to England and Wales and Scotland to reference the retained dual-use Regulation and in relation to

Northern Ireland to reference the EU dual-use Regulation, as that Regulation has effect by virtue of the Protocol.

7.13 The recast EU dual-use Regulation contains many similar provisions to the old regulation. Significant changes include the introduction of new controls for cyber-surveillance items (Article 5), technical assistance (Article 8), and items in the national control lists of EU member States (Articles 9 and 10). The numbering for many of the provisions has also changed and now varies in relation to similar provisions in the retained dual-use Regulation. These Regulations correct the cross-references to that numbering and make a number of new cross-references to ensure the effective and consistent operation of the record-keeping, licensing and enforcement provisions in the Export Control Order 2008.

7.14 Regulation 19 in Part 3 of these Regulations corrects the deficiency identified in paragraph 7.7 above by reinstating the Secretary of State's power to refuse, annul, suspend, modify or revoke export authorisations to brokering authorisations.

7.15 Regulations 20 to 22 in Part 3 of these Regulations remove Russia as a permitted destination from the scope of the Retained General Export Authorisations in Annexes IIc, IId and IIe of the retained dual-use Regulation.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the powers in section 8C(1) and (5) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 to implement the United Kingdom's commitments under the Protocol. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Alongside the European Union (Withdrawal) Act 2018 powers the instrument is also being made using the power in Article 9(1) of the retained dual-use Regulation to remove destinations from Retained General Export Authorisations.

9. Consolidation

9.1 This is not considered to be required. The changes made under these Regulations are few and do not warrant a complete consolidation. The Department for International Trade will keep the need for consolidation under review

10. Consultation outcome

10.1 No consultation has been carried out in relation to this instrument, and a consultation is not considered to be required. The changes made by these Regulations are few, technical and/or required by the Protocol.

11. Guidance

11.1 Comprehensive guidance on strategic export controls is already available on the GOV.UK website. A further 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 International 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 EU withdrawal agreement.

13.3 The Department does not consider that new burdens are placed on business because of these Regulations.

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 this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

15.1 Peter Monday at the Department for International Trade Telephone: 07391 864808 or email: peter.monday@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 International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 James Duddridge MP, Minister of State for International Trade can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 2

Statements required under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister of State at the Department for International Trade, James Duddridge MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Export Control (Amendment) (EU Exit) Regulations 2022 does no more than is appropriate".

1.2 This is the case because these Regulations are made to implement the UK's obligations under the EU dual-use Regulation, which applies to and in the United Kingdom in respect of Northern Ireland by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, as well as to correct a deficiency of retained EU law arising from the withdrawal of the United Kingdom from the EU.

2. Good reasons

2.1 The Minister of State at the Department for International Trade, James Duddridge MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are that they ensure that the EU dual-use Regulation operates effectively in Northern Ireland and to correct a deficiency arising from the UK's withdrawal from the European Union. This is set out in more detail in paragraphs 7.1 to 7.7.

3. Equalities

3.1 The Minister of State at the Department for International Trade, James Duddridge MP, has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Minister of State at the Department for International Trade, James Duddridge MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, James Duddridge MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.

5. Criminal offences

5.1 The Minister of State at the Department for International Trade, James Duddridge MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the creation of a criminal offence and for the penalty in respect of it in the Export Control (Amendment) (EU Exit) Regulations 2022."

5.2 These are: that the instrument modifies the application of existing offences in the Export Control Order 2008. This is necessary for the United Kingdom to continue to have these offences in place in respect of the EU dual-use Regulation as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.