EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) (NO. 2) REGULATIONS 2023

2023 No. 1048

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. Purpose of the instrument

2.1 These Regulations amend 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") and Schedule 4 to the Export Control Order 2008 (S.I. 2008/3231) ("the 2008 Order"). The amendments made by these Regulations fix minor drafting errors and provide greater clarity on existing controls.

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 The retained Dual-use Regulation and 2008 Order apply controls on the trade in certain strategic items. These Regulations make relatively minor amendments to the existing regulations to provide greater clarity on how the controls apply.

7. Policy background

What is being done and why?

7.1 Regulation 2 omits Syria from the list in Part 2 of Schedule 4 to the 2008 Order. Following the revocation of S.I. 2011/1304, Syria was intended to have been removed from Part 2 of Schedule 4 as a result of the EU arms embargo being lifted. The intention was to reinstate it to its original position in Part 4 of Schedule 4. However, the way this change was made at the time has meant that Syria incorrectly appears in

both Part 2 and Part 4 of Schedule 4, resulting in an ambiguity in its position in Schedule 4. This change is to remedy this ambiguity, reflecting the fact that Syria is not an embargoed destination. This change does not reflect a change in policy and Syria's position in Part 4 of Schedule 4 remains unchanged.

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 changes are to correct two minor drafting errors introduced by the Export Control (Amendment) Regulations 2023 (S.I. 2023/695) in which words already contained in the retained Dual-Use Regulation were inserted, resulting in duplication.

7.3 These changes seek to clarify the scope of existing controls.

Explanations

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

7.4 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.

7.5 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?

7.6 The 2008 Order and the retained Dual-Use Regulation are being amended to fix minor drafting errors and to clarify the scope of controls.

What will it now do?

7.7 The 2008 Order and the retained Dual-Use Regulation will continue to apply as they currently do. These amending Regulations will 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 virtue of the Windsor Framework, Council Regulation (EC) No 428/2009 continued to apply 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 (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 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 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 provide greater clarity on existing controls.

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 The instrument does not include a statutory review clause as 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@businessandtrade.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Matt Sheldon, Deputy Director for Export Control and Sanctions Policy at the Department for Business and Trade, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Dominic Johnson, Minister for Investment at the Department for Business and Trade, can confirm that this Explanatory Memorandum meets the required standard.