EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) ORDER 2022

2022 No. 491

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument is made under the Export Control Act 2002 to make amendments to the Export Control Order 2008, which implements the strategic export controls of the United Kingdom. These amendments will introduce a prohibition, where the Secretary of State has informed the relevant person, on the export or transfer of non-controlled goods, software or technology to United Kingdom embargoed destinations or a country subject to an arms embargo by the Organization for Security and Co-operation in Europe or the United Nations Security Council. The prohibition applies where the export is for, or on the behalf of, military forces, para-military forces, police forces, or security or intelligence services. This instrument also moves China (and its Special Administrative Regions, Hong Kong and Macao) into the list of countries, in Part 2 of Schedule 4, that are embargoed destinations and subject to transit control for military goods, thereby giving it the same status as other countries subject to an arms embargo.

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 territorial extent of this instrument is the same as the territorial extent of the instrument which it amends: that is, the United Kingdom.

4.2 The territorial application of this instrument is also the same as the territorial application of the instrument that it amends. That is, it applies to the United Kingdom.

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 This instrument brings into force legal powers to control the export of certain goods destined to military, para-military, police, security or intelligence end users of countries subject to a United Kingdom embargo or an arms embargo imposed by the Organization for Security and Co-operation in Europe or the United Nations Security Council and designates China (and its Special Administrative Regions, Hong Kong and Macao) as such a country.

6.2 The Export Control Act 2002 gives the Secretary of State powers to impose controls on the export and transfer in relation to goods, software and technology, of any description, within one or more categories set out in the Schedule to the Act.

6.3 This instrument implements these national export controls in relation to goods determined to have a relevant consequence as set out in the 2002 Act. Schedule 4 of the Export Control Order 2008 will be updated.

7. Policy background

What is being done and why?

7.1 This instrument relates to measures for countries subject to a United Kingdom embargo or an arms embargo imposed by the Organization for Security and Co-operation in Europe or the United Nations Security Council. It updates the Export Control Order 2008, using powers under the Export Control Act 2002, to add a new prohibition on certain exports and transfers. The prohibition applies where Secretary of State has informed the relevant person that the goods, software or technology are or may be intended for use by military, para-military, police, security or intelligence end users of concern of a United Kingdom embargoed destination or a country subject to an arms embargo by the Organization for Security and Co-operation in Europe or the United Nations Security Council.

7.2 The need to introduce this control is a consequence of programmes of concern in embargoed countries procuring goods and technology from the UK, which is being used to develop and enhance harmful capabilities intended for use against the United Kingdom, its allies, or innocent civilians. This control will allow the UK to control the export and transfer of such goods, software and technology where the ultimate end use is assessed as a) a threat to the UK's national security, b) having an adverse effect on peace, security or stability, c) an act threatening international peace and security, d) an act contravening the international law of armed conflict, e) an act of internal repression, f) an act that breaches human rights, and g) an act of carrying out (or of acts which facilitate) acts of terrorism or serious crime.

7.3 The power to require a licence for certain exports or transfers, when being exported or transferred to a relevant end-user of a country that is an embargoed destination or subject to an arms embargo imposed by the Organization for Security and Co-operation in Europe or the United Nations Security Council, allows HM Government to assess on a case-by-case basis. HM Government will consider with respect to each application whether a proposed export or transfer will pose a threat to national security or human rights. If it does, then we can refuse the licence, if it does not we would issue a licence.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This is not considered to be required. The 2022 Order expands on existing end-use controls and does not warrant a complete substitution of the relevant text in the Export Control Order 2008.

10. Consultation outcome

10.1 There was no consultation undertaken with respect to the changes made under this instrument.

10.2 The nature of the changes made under this instrument have been taken to address an emerging threat to national security and human rights. A consultation was 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.

11. Guidance

11.1 Comprehensive guidance on the Export Control Order 2008 and subsequent amendments is already available on the www.gov.uk website. A further Notice to Exporters will be published with details of these latest changes. These notices are widely circulated to those circa 15,000 organisations and individuals who are registered with the Export Control Joint Unit within the Department for International Trade.

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal as the effect of the changes being implemented on the scope of strategic export controls already in operation in the United Kingdom is negligible.

12.2 The impact on the public sector is minimal, these minor changes to the relevant powers to control non-listed goods, software and technology esports will have little effect on the administration of the existing export control regime.

12.3 An Impact Assessment has not been prepared for this instrument because of the very low-level impact per business.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The effective operation of the Export Control Order 2008 in addressing the emerging national security threat, would be undermined by any mitigation of the controls as they apply to small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to closely monitor 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 2008 Order does not contain a statutory review clause. As indicated above, the changes made to the scope of existing export controls by the 2021 Order are minimal. In the circumstances, it would not be appropriate to make a provision for a review – a review 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 Paul Nott at the Department of International Trade Telephone: 442072154481 or email: paul.nott@trade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Georgina Balmforth, Deputy Director for Policy & Operations, at the Department of International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Mordaunt MP, Minister of State (Minister for Trade Policy) at the Department of International Trade can confirm that this Explanatory Memorandum meets the required standard.