EXPLANATORY MEMORANDUM TO

THE EXPORT CONTROL (AMENDMENT) REGULATIONS 2025

2025 No. 532

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 Douglas Alexander 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 with 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 2025 (the "2025 Regulations") amend the Export Control Order 2008 (S.I. 2008/3231) (the "2008 Order") and assimilated 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 428/2009) (the "assimilated Dual-Use Regulation").

4.2 The 2025 Regulations amend the provisions in Part 6 of the 2008 Order relating to offences and penalties. The amendments increase the maximum level of fine that may be imposed under the 2008 Order for certain offences on summary conviction, from level 3 on the standard scale (currently £1,000) to level 4 (currently £2,500).

4.3 The 2025 Regulations also implement changes agreed at international export control regimes, mainly the Wassenaar Arrangement but also the Australia Group, Nuclear Suppliers Group and the Missile Technology Control Regime. The United Kingdom is a participating state of these regimes and is committed to aligning its export control lists with them. Accordingly, the 2025 Regulations make changes to the list of items subject to export controls in the 2008 Order and the assimilated Dual-Use Regulation, adopting domestic drafting preferences where appropriate.

4.4 The 2025 Regulations also makes administrative amendments to national controls on specific emerging technologies which the United Kingdom implemented in April 2024 along with a number of like-minded countries.

Where does the legislation extend to, and apply?

4.5 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.

4.6 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 3 increases the maximum level of fine that may be imposed on summary conviction for certain offences under the 2008 Order. The maxima is increased from level 3 on the standard scale to level 4. That increase is intended to promote regulatory compliance and bring the maximum fine level closer to that which may be imposed under section 68 of the Customs and Excise Management Act 1979, which HMRC use to prosecute offences related to the exportation of prohibited or restricted goods. That provision cannot be relied on to prosecute offences related to intangible exports. Instead HMRC rely on the offence set out in Article 34(1) of the 2008 Order to prosecute offences such as trafficking, brokering, technology transfers and technical assistance. The increase therefore brings the fine levels for the two related offences closer together. For consistency within the 2008 Order, the maximum has also been increased for those other summary offences in Articles 35, 36, 36A and 37(7) which prescribed a maximum fine of level 3.

5.2 Regulation 4 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 Arrangements Munitions List (covering conventional weapons), which the United Kingdom is committed to align with as a participating state of the Wassenaar Arrangement. These changes are of a technical nature and seek to update and clarify the scope of existing controls.

5.3 Regulation 5 makes administrative amendments to the technical parameters of controls on specific emerging technology in Schedule 3 to the 2008 Order, which the UK implemented in April 2024.

5.4 Regulations 6 to 17 amend 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, in line with UK's commitments as a member of these regimes. Those are the Australia Group, Nuclear Suppliers Group and the Missile Technology Control Regime. These changes are of a technical nature and seek to update and clarify the scope of existing controls.

What was the previous policy, how is this different?

5.5 The 2008 Order and the assimilated Dual-Use Regulation 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 This instrument is made under powers in the Export Control Act 2002 and the assimilated Dual-Use Regulation.

6.2 The powers under the Export Control Act include provision to create offences. Under those powers, the 2008 Order includes offences for breach of certain provisions of the 2008 Order, the Dual-Use Regulation and Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment ("the torture Regulation"). Certain of those offences provide for a fine not exceeding level 3 on the standard scale on summary conviction (currently £1,000). This instrument increases the maximum level of fine for those offences to level 4 on the standard scale (currently £2,500).

6.3 The offences subject to that increase are: (a) breach of the export, transfer and trade controls in Parts 2 and 4 of the 2008 Order (set out in Article 34(1) of the 2008 Order); (b) breach of the dual-use controls and military end-use controls in Articles 3(1), 4(2) and 4(3) of the assimilated Dual-Use Regulation (Article 35(1)); (c) breach of the information and record-keeping provisions in Article 9(2), 10(2) and 20 of the assimilated Dual-Use Regulation (Article 35(6) and (7)); (d) breach of the export or import prohibition of Article 3(1) or 4(1) of the torture Regulation in respect of the supply or acceptance of technical assistance (Article 36(1) and (4)); (e) breach of the information provision of Article 20(8) of the torture Regulation (Article 36(7)); (f) breach of certain service related provisions of the torture Regulation (Article 36A(2), (3) and (6)).

6.4 The Export Control Act also contains powers to make provision for export controls in relation to goods and transfer controls in relation to technology. Under those powers, the 2008 Order provides controls on the export of and trade in military goods and technology, as well as national controls on certain dual-use items. The 2025 Regulations update the list of military goods and technology to reflect changes agreed to the Wassenaar Arrangement Munitions List.

6.5 The 2025 Regulations also make administrative amendments to national controls relating to specific emerging technology. The Export Control Act provides the Secretary of State the power 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. Under those powers, Schedule 3 to the 2008 Order includes controls on certain emerging technology; the 2025 Regulations amend the technical parameters of certain of those controls.

6.6 The assimilated Dual-Use Regulation sets up a regime for the control of exports, transfer, brokering and transit of dual-use items. The 2025 Regulations update the list of dual-use items subject to export control to reflect changes the United Kingdom is committed to apply as a participant of the multilateral export control regimes.

Why was this approach taken to change the law?

6.7 To uphold the United Kingdom's commitments to implement changes made to the control lists agreed at various multilateral export control regimes and to update and clarify existing controls, adopting domestic drafting preferences.

7. Consultation

Summary of consultation outcome and methodology

7.1 There was no formal consultation undertaken with respect to the changes made by the 2025 Regulations. The nature of the majority of changes made by these Regulations seek to update the existing controls in line with United Kingdom's commitments in relation to the international arrangements. 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 at https://www.gov.uk/government/organisations/export-control-joint-unit. 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 multilateral 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.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or 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.

9.4 There is no, or no significant impact on small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because the changes implemented by this legislation seek to update the controls that are already in operation.

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 2025 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 the withdrawal from the European Union, however 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.