

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)

CHAPTER II

SCOPE

Article 4

1 An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the [^{F1}Secretary of State] that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.

2 An authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an arms embargo [^{F2}imposed [^{F3}through its listing as an embargoed destination in Part 1 or 2 of Schedule 4 to the Export Control Order 2008, as amended from time to time, or by]] a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the [^{F4}Secretary of State] that the items in question are or may be intended, in their entirety or in part, for a military end-use. For the purposes of this paragraph, ‘military end-use’ shall mean:

- a incorporation into military items listed in [^{F5}Schedule 2 to the Export Control Order 2008];
- b use of production, test or analytical equipment and components therefor, for the development, production or maintenance of military items listed in the abovementioned list;
- c use of any unfinished products in a plant for the production of military items listed in the abovementioned list.

3 An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the [^{F6}Secretary of State] that the items in question are or may be intended, in their entirety or in part, for use as parts or components of military items listed in [^{F7}Schedule 2 to the Export Control Order 2008, as amended from time to time,] that have been exported [^{F8}without authorisation or in violation of an authorisation granted by the Secretary of State].

4 If an exporter is aware that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraphs 1, 2 and 3, he must notify the [^{F9}Secretary of State], which will decide whether or not it is expedient to make the export concerned subject to authorisation.

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8 This Regulation is without prejudice to [^{F11}Article 10 of Regulation (EU) 2015/479].

Changes to legislation: This version of this Regulation was derived from EUR-Lex on IP completion day (31 December 2020 11:00 p.m.). It has not been amended by the UK since then. Find out more about legislation originating from the EU as published on legislation.gov.uk. (See end of Document for details)

Textual Amendments

- F1** Words in Art. 4(1) substituted (31.12.2020) by [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(a)** (with reg. 5) (as amended by [S.I. 2020/1502](#), regs. 2(3), 10); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Substituted by [Regulation \(EU\) No 1232/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation \(EC\) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.](#)
- F3** Words in Art. 4(2) substituted (31.12.2020) by [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(b)(i)** (with reg. 5) (as amended by [S.I. 2020/1502](#), regs. 2(3), 10); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 4(2) substituted (31.12.2020) by [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(b)(ii)** (with reg. 5) (as amended by [S.I. 2020/1502](#), regs. 2(3), 10); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 4(2)(a) substituted (31.12.2020) by [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(b)(iii)** (with reg. 5) (as amended by [S.I. 2020/1502](#), regs. 2(3), 10); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 4(3) substituted (31.12.2020) by [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(c)(i)** (with reg. 5) (as amended by [S.I. 2020/1502](#), regs. 2(3), 10); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 4(3) substituted (31.12.2020) by [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(c)(ii)** (with reg. 5) (as amended by [S.I. 2020/1502](#), regs. 2(3), 10); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in Art. 4(3) substituted (31.12.2020) by [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(c)(iii)** (with reg. 5) (as amended by [S.I. 2020/1502](#), regs. 2(3), 10); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 4(4) substituted (31.12.2020) by [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(d)** (with reg. 5) (as amended by [S.I. 2020/1502](#), regs. 2(3), 10); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Art. 4(5)-(7) omitted (31.12.2020) by virtue of [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(e)** (with reg. 5) (as amended by [S.I. 2020/1502](#), regs. 2(3), 10); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in Art. 4(8) substituted (31.12.2020) by [The Trade etc. in Dual-Use Items and Firearms etc. \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/771\)](#), regs. 1, **3(5)(f)** (as substituted by [S.I. 2019/806](#), regs. 1, **2(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**

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