

**EXPLANATORY MEMORANDUM TO**  
**THE EXPORT CONTROL (AMENDMENT) ORDER 2021**

**2021 No. 586**

**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 will update the list of military items that require a licence to be exported from the United Kingdom. Specifically, the Export Control (Amendment) Order 2021 (“the 2021 Order”) amends Schedule 2 to the Export Control Order 2008 (“the 2008 Order”), which lists the military goods, software and technology subject to export controls (“the military list”) and Schedule 3 to the 2008 Order, which lists United Kingdom controlled dual-use goods, software and technology. The military list is being updated to reflect changes to the Wassenaar Arrangement munitions list, as well as to address minor drafting errors. The amendments to Schedule 3 of the 2008 Order aim to provide further clarity relating to the interpretation of national controls.
- 2.2 The Wassenaar Arrangement is an international export control regime established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies. There are 42 participating states, including the United Kingdom. The Wassenaar Arrangement munitions list is drawn together by consensus among experts within the participating states and is regularly reviewed and updated so as to take into account changes in technological advances as well as technical updates. As a participating state of the Wassenaar Arrangement, the United Kingdom is committed to reflecting the changes made in the Wassenaar Arrangement munitions list in our own national control lists. Typically, the Wassenaar Arrangement munitions list is updated annually; the updates made in this instrument will bring the United Kingdom into alignment with the Wassenaar Arrangement. In doing so we ensure the military list is up to date and that it maintains a level playing field for our exporters. The changes being made to both Schedules 2 and 3 of the 2008 Order are of a minor and/or technical nature.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

#### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Legislative Context**

- 6.1 As set out in Section 2, as a participating state of the various international export control regimes, the United Kingdom has committed to align its export control lists with those of the international export control regimes. With regard to the 2021 Order, this means the munitions list within the Wassenaar Arrangement. Although the scope of export controls in participating states is determined by the international regimes' lists, practical implementation will vary from country to country. In addition, there are instances where the wording used in the 2021 Order differs in very minor ways from that used in the Wassenaar Arrangement list. For example, where the text used by the Wassenaar Arrangement munitions list is either inconsistent with the language of the 2008 Order and copy out would create confusion, or where our judgment is that the text used is superfluous (e.g. some technical notes are not included as we believe they are adequately covered by the entry control headings in the 2008 Order). In either case, no additional burdens are placed on United Kingdom industry by the approach taken.
- 6.2 In addition to the above, the 2021 Order contains some minor amendments to Schedule 3, which aim to provide further clarity relating to the interpretation of national controls.
- 6.3 An impact assessment has not been deemed necessary as the changes are of a technical nature and will only have a minimal impact.

#### **7. Policy background**

##### *What is being done and why?*

- 7.1 The changes being made to the control lists by the 2021 Order are a direct consequence of the United Kingdom's membership of the Wassenaar Arrangement (an international export control regime). The Wassenaar Arrangement control lists are kept up to date to reflect changing circumstances and technological developments. The United Kingdom negotiates its position with respect to these lists within the Wassenaar Arrangement.
- 7.2 These changes are technical and minor in nature – for the most part they add new definitions and clarify the scope of existing controls.

#### **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union, but for completeness we note that the EU Council updated the Common Military List ("CML") on 17<sup>th</sup> February 2020 to reflect the most recent changes made to the Wassenaar Arrangement munitions list. In accordance with the usual practice, we

anticipate that the EU Commission will issue an amending directive to the list of defence-related products set out in the Annex to Directive 2009/43/EC in order to reflect the updated CML. This effectively means that our respective military lists will continue to align.

## **9. Consolidation**

- 9.1 This is not considered to be required. The changes made under the 2021 Order are few in number and do not warrant a complete substitution of either Schedule 2 or Schedule 3 of the 2008 Order.

## **10. Consultation outcome**

- 10.1 There was no formal consultation undertaken with respect to the implementation of the update of the military list, at Schedule 2. The views of our industry are sought on a regular basis to feed into the United Kingdom's position during our negotiations within the Wassenaar Arrangement.
- 10.2 Our officials consult appropriate industry sectors prior to making a decision to agree the adoption of changes to the regime. Industry comments are incorporated into the United Kingdom's negotiating positions in order to achieve an acceptable level of change and to ensure that burdens on business are minimised. The amendments clarify existing text, remove ambiguity and ensure consistent interpretation amongst participating states and as such no formal consultation was considered necessary.
- 10.3 There was no formal consultation undertaken with respect to the changes made to Schedule 3, as these are only minor and only clarify the scope of the control.

## **11. Guidance**

- 11.1 Comprehensive guidance on the 2008 Order and subsequent amendments 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 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 current control lists 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 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to have regard to the concerns of small businesses in

the Wassenaar Arrangement negotiations. The Department does not consider that new burdens are placed on business as a consequence of the 2021 Order.

**14. Monitoring & review**

- 14.1 The approach to monitoring 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 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 Dean Gallacher at the Department for International Trade. Telephone: 0207 215 4755 or email: dean.gallacher@trade.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Georgina Balmforth, Deputy Director for the Export Control Joint Unit, at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Ranil Jayawardena MP, Parliamentary Under-Secretary at the Department for International Trade, can confirm that this Explanatory Memorandum meets the required standard.