

**EXPLANATORY MEMORANDUM TO**  
**THE TRADE IN DUAL-USE ITEMS (COUNCIL REGULATION (EC) NO 428/2009)**  
**(AMENDMENT) REGULATIONS 2022**

**2022 No. 410**

**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 These Regulations amend retained Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (“the retained Dual-Use Regulation”).

**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 is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

**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 Regulations 2(2) and (3) amend Annexes I and IV to the retained Dual-Use Regulation, which lists dual-use goods, software and technology subject to export controls. The new text also addresses earlier minor drafting errors.

6.2 The United Kingdom as a participating state of the various international export control regimes, wishes to align her export control lists with those regimes. These Regulations amend lists of dual-use goods, software and technology subject to export controls within the Wassenaar Arrangement (an international export control regime). Although the scope of export controls in participating states is determined by the international regimes’ lists, practical implementation will vary from country to country.

**7. Policy background**

*What is being done and why?*

7.1 The retained Dual-Use Regulation sets up a regime for the control of exports, transfer, brokering and transit of dual-use items.

7.2 The changes being made by these Regulations to the control lists in the retained Dual-Use Regulation are a direct consequence of the United Kingdom’s membership of the

Wassenaar Arrangement. The Wassenaar Arrangement control lists are kept up to date to reflect changing circumstances and technological developments. The United Kingdom negotiates her position with respect to these lists within the Wassenaar Arrangement.

- 7.3 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 and Future Relationship**

- 8.1 These Regulations do not relate to withdrawal from the European Union but, for completeness, we note the relevant arrangements in Northern Ireland.
- 8.2 Annex 2 of the Protocol on Ireland/Northern Ireland in the European Union Withdrawal Agreement (“the NI Protocol”) provides that Council Regulation (EC) No. 428/2009 continues to apply in Northern Ireland. In May 2021, the EU replaced Council Regulation (EC) No 428/2009 with a new Dual-Use Regulation (EU) 2021/821. The amendments to Annexes I and IV of the retained Dual-Use Regulation contained in regulation 2 reflect control list amendments introduced by the new Regulation (EU) 2021/821.
- 8.3 EU Council replaced the EU’s 2009 Dual-Use Regulation in May 2021 with a new Dual-Use Regulation (EU) 2021/821. The new Regulation applies in Northern Ireland by virtue of the NI Protocol.

## **9. Consolidation**

- 9.1 This is not considered to be required. The changes made under these Regulations are few and do not warrant a complete substitution of the Annexes being amended.

## **10. Consultation outcome**

- 10.1 This is not considered to be required. The changes made by these Regulations are few and technical.

## **11. Guidance**

- 11.1 Comprehensive guidance on strategic export controls 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 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 to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses, 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 because of these Regulations.

#### **14. Monitoring and 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 As indicated above, 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 Peter Monday at the Department for International Trade, Telephone: 07391 864808 or email: [peter.monday@trade.gov.uk](mailto:peter.monday@trade.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Georgina Balmforth, Deputy Director for 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 of State (Minister for International Trade) at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.