

## **Explanatory Memorandum to Tynwald Members**

Issued by the Department of the Treasury

**To The President of Tynwald and the Hon Council and Keys in Tynwald assembled**

**1. TITLE OF THE MEASURE**

Export Control (Amendment) Order 2022 (Application) Order 2022

**2. CHANGE IN POLICY**

None.

**3. EFFECT OF THE MEASURE**

This Order has the effect of amending the Export Control Order 2008, as it has effect in the Island ("the 2008 Order")<sup>1</sup>, to update those articles in the 2008 Order concerning strategic export controls. The Order achieves this by applying a United Kingdom statutory instrument to the Island.

Certain goods and technology require an export licence or a trade licence before they can be exported to a country outside of the common customs area of the United Kingdom and the Isle of Man. These goods include military goods, dual-use goods (i.e. those that can be used for military and civilian use), firearms and torture equipment<sup>2</sup>. The list of goods subject to export controls are common around the globe, often derived from international conventions, and are designed to contribute to international security and stability and prevent the proliferation of weapons of mass destruction. Certain countries are considered to be embargoed destinations, and goods subject to trade controls defined within the 2008 Order are prohibited from being supplied or delivered to those countries.

This Order inserts a new prohibition on certain exports and transfers. The prohibition applies where the Secretary of State or the Treasury has informed a person that the goods, software or technology are or may be intended for use by military, para-

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<sup>1</sup> The Export Control Order 2008 was originally applied in the Island by the Export Control Order 2008 (Application) Order 2009 [SD 104/09] and amended on a number of occasions, most recently by SD 2021/0180.

<sup>2</sup> <https://www.gov.im/media/88875/notice-279-man-export-licensing-controls-100322.pdf>

military, police, security or intelligence services of an embargoed destination or of a country subject to an arms embargo by the Organization for Security and Co-operation in Europe ("OSCE")<sup>3</sup> or the United Nations Security Council ("UNSC")<sup>4</sup>.

The Order 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.

#### **4. REASON FOR THE MEASURE**

Under the terms of the Customs and Excise Agreement the Island is obliged to maintain its export control legislation and procedures so that they correspond to those in place in the UK.

The Order introduces the new prohibition as a consequence of programmes of concern in embargoed countries procuring goods and technology from the United Kingdom, which are 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 Isle of Man to control the export and transfer of such goods, software and technology where the ultimate end use is assessed as:

- a) a threat to 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.

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 OSCE or the UNSC, allows the Treasury to assess on a case-by-case basis. The Treasury (assigned to the Customs and

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<sup>3</sup> <https://www.osce.org/>

<sup>4</sup> <https://www.un.org/securitycouncil/>

Excise Division) 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 it can refuse the licence, if it does not the Treasury would issue a licence.

**5. RESOURCES IMPLICATIONS**

There are not considered to be any revenue or resource implications for Government arising from this Order.

**6. TYNWALD PROCEDURE**

This Order is made under sections 1 and 3 of the Customs and Excise Act 1993 which, *inter alia* provide for the application in the Island of such legislation, and is subject to the positive resolution of Tynwald.