

Control of Exports Bill

Bill No. 38 of 2023

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Abstract

The Bill seeks to repeal and replace the Control of Exports Act 2008 to ensure a comprehensive and robust framework for regulating the export of controlled goods and technology.

The primary purpose of the Bill is to establish national export controls on military items, services, and technology and provide for national measures to both complement and supplement the EU Dual-Use Regulation. The EU operates a system of export controls that form part of a multilateral framework to support global security, which apply to military equipment and dual-use items. Trade and military equipment are a national competence; therefore, export controls must be provided for it in national legislation. The Bill aims to fulfil Ireland's EU obligations to have common licensing requirements and procedures for the export of dual-use items together with giving legal effect in Irish law to the Council Common Position on activities involving military items.



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Key Messages

The [Control of Exports Bill](#) (the Bill) and the [Explanatory Memo](#) were published on 4 May 2023, with the Second Stage debate scheduled for Thursday, 11 May. The purpose of the Bill is to provide an authorisation system for the export of dual-use and military items from Ireland to third countries to complement and supplement the Council Regulation (EU) No. 2021/821. The Bill provides for the control of the export of military items and the provision of brokering services and transit of those items. The Minister will be responsible for authorising certain activities relating to dual-use and military items, and there will be a process for appealing decisions made by the Minister. The Bill also includes provisions for enforcement and information sharing, as well as the repeal of the Control of Exports Act 2008.

The Bill contains eight Parts, encompassing 74 sections and is arranged to detail controls for dual-use and military items in Parts 2 and 3.

Offences for breaches of controls are threaded throughout the Bill and summarised with penalties in Part 7.

In summary, the Bill ensures that the Minister has a sound legal basis for administering export controls in Ireland by providing for:

- controls related to dual-use items;
- controls related to military items;
- the establishment of a National Military Export Control List;
- rules and conditions for obtaining and using authorisations;
- exemptions for the Defence Forces or An Garda Síochána in certain circumstances;
- the establishment of an independent adjudication panel to hear appeals and disclosure requests;
- an effective enforcement capability for Authorised Officers;
- the establishment of a comprehensive set of offences for infringements of the controls; and,
- proportionate, graduated and dissuasive penalties for breaches.

Introduction

On 4 August 2020, the Cabinet approved the General Scheme of a Bill to update the Control of Exports Act 2008.¹ Pre-legislative scrutiny of the Bill was concluded by the Joint Committee on Enterprise, Trade and Employment on 29 September 2021. No report was produced with questions and clarifications addressed satisfactorily at the single session.²

On 4 May 2023, the Minister for Enterprise, Trade and Employment, Simon Coveney, announced the publication of the Control of Exports Bill 2023 and detailed the aim of the Bill:

"The Bill will repeal and replace the Control of Exports Act 2008 and will also ensure that Ireland continues to operate a robust framework for regulating the export of controlled goods.

Export controls seek to balance the pursuit of free trade and the functioning of open markets with maintaining international stability and security.

An effective system of export controls on dual-use and military items is necessary to ensure that Ireland meets EU and International obligations and responsibilities in this space. This Bill will modernise the current framework to bring it up to date with the ever-changing geopolitical landscape." ³

The Bill will be initiated in the Dáil by Minister of State Darragh Calleary, and Second Stage has been scheduled for 11 May 2023.

This Bill Digest focuses on the purpose of the Bill. It explains Ireland's European Union (EU) obligations arising from the EU Dual-Use Regulation and the Council Common Position on activities involving military items in the EU. It contains the following sections:

- Key Messages and Introduction.
- Background Policy and Legislative Context overviews Ireland's primary export control laws and key EU instruments.
- Regulatory Impact Analysis (RIA) summarises the Department's RIA and its underlying rationale for choosing this option.
- Principal Provisions sets out the most significant provisions of the Bill.

¹ DEPT [Report under the Control of Exports Act 2008 1 Jan 2021-31 Dec 2021](#)

² Joint Committee on Enterprise, Trade and Employment debate, [Control of Exports Bill 2021: Department of Enterprise, Trade and Employment](#), Wednesday, 29 Sep 2021.

³ [Press Release](#) from the Department of Enterprise, Trade and Employment on LinkedIn.com 4 May 2023.

Glossary and abbreviations

Term	Meaning
Brokering	Negotiating with and arranging transactions between non-EU countries for the purpose of selling or buying dual-use items.
Dual-use items	Items, including software and technology, that can be used for both civil and military purposes.
Exporter	Any natural or legal person, including researchers or partnerships, physically sending, electronically transmitting or personally carrying dual-use items.
Military Item	Items that are listed on the National Military Export Control List.

Policy and legislative context

The primary export control laws in Ireland derive from:

- (i) European Union regulations/directives.
- (ii) Irish primary legislation – the Control of Exports Act 2008 ('Export Act'); and
- (iii) Statutory instruments ('SI's') issued by the applicable Irish Minister pursuant to the terms of the Export Act (or the Minister for Finance in respect of financial sanctions).

The two key EU instruments are:

- EU Regulation 821/2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items
- Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment

Dual-Use Items

Dual-use items are goods and technologies that may be used for civilian and military purposes.⁴ Accordingly, several multilateral export control regimes ([Australia Group](#), Missile Technology

⁴ A “dual-use item” is defined in Article 2.1 of Regulation 821/2021 as including: “software and technology, which can be used for both civil and military purposes, and includes items which can be used for the design, development, production or use of nuclear, chemical or biological weapons or their means of delivery, including all items which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices”..

Control Regime, [Nuclear Suppliers Group](#), [Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies](#)) [Chemical Weapons Convention](#)) seek to contribute to the non-proliferation of weapons of mass destruction, delivery systems, and advanced conventional weapons through national implementation of guidelines and control lists for exports.⁵ The EU established a separate dual-use export control regime to implement these internationally agreed dual-use controls and introduce coherent European trade standards. Rules on the exporting of dual-use items are set at EU level under the Dual-Use Regulation, which provides for common EU control rules, a common EU control list and harmonised policies for implementation. The export of certain goods to non-EU countries is only permitted following the granting of an export license by the competent EU Member State authority.⁶

EU Regulation 2021/821

The regulatory basis for European dual-use export control, (henceforth, Dual-Use Regulation), became effective in September 2021.⁷ The Dual-Use Regulation aims to establish rules throughout the European Union to control exports, brokering, technical assistance, transit and transfer of dual-use items⁸. It defines a comprehensive list of items subject to export authorisation, specifies the licensing criteria for granting such authorisations, and obliges the Member States to inform and consult one another on critical exports.

The Dual-Use Regulation has direct effect across the EU and forms part of the EU's Common Commercial Policy under Article 207 of the Treaty on the Functioning of the European Union (TFEU). Trade in dual-use items is an EU competence, and this regulation has direct legal effect in all member states. However, Member States are obliged to establish via national legislation effective, proportionate and dissuasive penalties applicable in the case of infringements of the provisions of the regulation. The EU regulation also provides Member States with discretion to adopt certain additional measures in their national legislation.

Key Features of the Regulation⁹

The Dual-Use Regulation introduces new controls on cyber-surveillance items; these are “specially designed to enable the covert surveillance of natural persons by monitoring, extracting, collecting or analysing data from information and telecommunication systems”. This includes new mechanisms for coordinating controls between Member States and additional reporting.

⁵ Katharina L. Meissner & Kevin Urbanski (2022) Feeble rules: one dual-use sanctions regime, multiple ways of implementation and application?, *European Security*, 31:2.

⁶ Briefing, EU Legislation in Progress, '[Review of dual-use export controls](#)' European Parliament.

⁷ Regulation (EU) No 2021/821 of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) [2021] OJ L 206/1.

⁹ [EUR-Lex - 4532505 - EN - EUR-Lex \(europa.eu\)](#).

Other new provisions include:

- controls on the provision of technical assistance related to certain dual-use items;
- mechanisms to allow greater cooperation between Member States, including on enforcement matters;
- the ability for Member States to introduce export controls for non-listed items where that State deems those controls necessary in the interest of public security;
- new rules on brokering of dual-use goods;
- the introduction of two new Union General Export Authorisations covering exports of intra-group export of software and technology (GEA EU007) and encryption items (GEA EU008) and the introduction of a 'large project authorisation'.

The Dual Use Regulation introduces an obligation on exporters to implement an Internal Compliance Programme (ICP) in certain circumstances to facilitate compliance in the export of controlled items. Other measures include longer retention of records and revised definitions. The new “large project authorisation” is defined in Article 2.14 of the regulation and the duration of validity of such authorisation is detailed in Article 12.3.

Annex I to the Regulation, based on internationally agreed controls, lists the dual-use items that require export authorisation. It does not include any new categories of products, and most of the key definitions and licensing frameworks from the prior regulation have been carried over with limited changes. The list of dual-use items is amended periodically, and the last amendment was made by Delegated Regulation (EU) [2022/1](#). These include:

- nuclear materials, facilities and equipment;
- special materials and related equipment;
- materials processing;
- electronics;
- computers;
- telecommunications and information security;
- sensors and lasers;
- navigation and avionics;
- marine systems, equipment and materials;
- aerospace and propulsion systems and equipment.

Other dual-use items, including any associated brokering services or technical assistance, need export authorisation if they are intended, entirely or in part, for:

- chemical, biological or nuclear weapons;
- military use in countries subject to an arms embargo;
- components of military items already exported from an EU Member State without the necessary authorisation.

Authorisation is required for:

- the export of cybersurveillance items likely to be used for internal repression or serious violations of human rights and international humanitarian law;

- the transfer of dual-use items listed in Annex IV, such as stealth technology and strategic control, from one Member State to another.

Member States may:

- prohibit the transit on their territory of non-EU dual-use items if their intended use would breach the regulation;
- ban or demand an export authorisation for items not listed in Annex I, for reasons of public security, including terrorism or human rights violations;
- demand export authorisation, in certain circumstances, for the transfer of dual-use items from their territory to another Member State.
- The introduction of an individual or global authorisation applicable to large projects valid for a maximum period of four years, except in duly justified circumstances based on the duration of the project.

The regulation provides for five types of authorisation valid throughout the EU customs area.

- **EU general export authorisations.** These are for certain destinations under certain conditions. They include authorisation for exports to Australia, Canada, Iceland, Japan, Liechtenstein, New Zealand, Norway, Switzerland, the United Kingdom and the United States.
- **National general export authorisations.** These are issued by Member States if they are consistent with existing EU general export authorisations and they do not cover the export of dual-use software and technology to certain countries.
- **Individual and global.** These are issued by national authorities for up to 2 years to one exporter for the export of:
 - one or more dual-use items to one end-user in a non-EU country (individual); or
 - multiple items, countries and end-users (global).
- **Large project authorisations.** Individual export authorisation or a global export authorisation granted to one specific exporter, in respect of a type or category of dual-use items which may be valid for exports to one or more specified end-users in one or more specified non-EU countries for the purpose of a specified large-scale project.

Exporters requesting authorisation must supply authorities with complete information and keep detailed records of their exports for 5 years.

Authorisations to provide brokering services and technical assistance are granted by national authorities and are valid throughout the EU customs area.

Member States, when deciding to grant or refuse an authorisation request, must take into account:

- the EU, national and international obligations and commitments, particularly relevant non-proliferation regimes and export controls;
- any EU, [Organisation for Security and Cooperation in Europe](#) or [United Nations sanctions](#);
- the national foreign and security policy decisions;
- the intended end-use and risk of diversion to another end-user or another end-use.

Member States must inform the [European Commission](#) of:

- the national authorities authorised to grant export authorisations and prohibit transit of non-EU dual-use items,
- the measures they take to enforce the regulation and take every measure, together with the Commission, to establish direct cooperation and information exchange between national authorities to ensure the efficiency, consistency and enforcement of the export controls,
- provide the Commission with the necessary information for its annual report.

Delegated Regulation (EU) [2022/699](#) amends Regulation (EU) 2021/821 by removing Russia as a destination from the scope of EU general export authorisations in light of Russia's illegal attack on Ukraine's territorial integrity, sovereignty, and independence and the respective threats to the EU's essential security interests (see summary from EUR-Lex on EU [restrictive measures against Russia](#)).

Exports from Northern Ireland

Exports of dual-use items from the EU to the UK became subject to control under the Dual Use Regulation with the UK's departure from the Union on 1 January 2021, just like exports to any other third country.¹⁰ Specific arrangements are outlined in the Northern Ireland (NI) Protocol¹¹, which provides that the Regulation applies to, and in the United Kingdom in respect of Northern Ireland¹², with the UK acting as a competent authority under the Regulation for exports from Northern Ireland to third countries outside the EU. In addition, the European Commission developed a dedicated secure electronic tool to support the exchange of information with the UK competent authority in charge of applying the Regulation in and from Northern Ireland. This enables this authority to access information on denials for essentially identical transactions issued by the EU Member State, and have bilateral consultation with issuing Member State, as foreseen by the Regulation.

Council Common Position 944/2008

The second key EU instrument is the [Council Common Position 944/2008](#), defining common rules governing control of exports of military technology and equipment and most recently amended in 2019. The categories of military technology and equipment to which these rules should apply are set out in the common military list of the EU.

The Common Position sets out the eight criteria against which licence applications should be assessed. Control over the export of military equipment is a national competence and the Common

¹⁰ Report From The Commission To The European Parliament And The Council on the implementation of Regulation (EU) 2021/821 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use item, [COM \(2022\) 434 final](#), 1 September 2022.

¹¹ OJ L 29, 31.1.2020, p. 7 ("Withdrawal Agreement").

¹² Article 5(4) of the NI Protocol and section 47 of Annex 2 to that Protocol.

Position does not have direct effect in Member States. Therefore, its provisions must be given effect by national primary legislation. The current national legislation comprises the Control of Exports Act 2008 and a number of statutory instruments.

Ireland's Export System

Exporters seeking to export controlled items must apply to the Department for prior approval in the form of an Export Licence. Five broad categories of items are subject to Export Controls:

- i "Military" equipment, including transfers to other EU Member States;
- ii "Dual-use" items (products and components, including software and technology, that can be used for both civil and military purposes);
- iii Firearms for personal, civilian use (e.g. for hunting or sport);
- iv Goods which may be used for capital punishment, torture, or other cruel, inhuman and degrading treatment or punishment; and
- v Exports to certain states subject to EU Restrictive Measure (sanctions), many of which include restrictions on trade with the targeted state.

Export Controls also apply to:

1. Ancillary items for development, production, testing, deployment of controlled items,
2. Brokering of controlled items,
3. Providing Technical Assistance, including Information relating to controlled items.

Primary Legislation

The legal framework for Export Controls is set out in a combination of national and EU legislation.

The domestic legislation comprises the Control of Exports Act 2008 and numerous Statutory Instruments associated with this Act and the European Communities Act 1972 (as amended).

The EU legislation is set out in several Council Regulations, which have direct effect in all Member States, as well as a Council Common Position and Council Directives which do not have direct effect in Member States, and which must be transposed into national legislation.

The EU Regulations require Member States to adopt appropriate measures to ensure proper enforcement of all the provisions of the Regulations. In particular, Member States are required to lay down effective, proportionate and dissuasive penalties applicable to infringements of the provisions of the Regulations.

Controls on the export of "Military" equipment are a national competence and therefore must be anchored by national, primary legislation.¹³

Control of Exports Act 2008

This is the current primary Irish legislation that deals with export controls in Ireland. The Export Act includes controls on certain brokering activities, the provision of technical assistance and the export of "intangibles", i.e. exports including the transfer by electronic means of software and technology and the exportation of goods brought into Ireland for re-export. It also provides penalties for breach of the Export Act and includes additional enforcement rights for the Irish Customs and Excise service and the Minister for Jobs, Enterprise and Innovation to ensure compliance with the Export Act.

In the 2020 Regulatory Impact Analysis of the Bill, the Department of Business, Enterprise and Innovation identified where the 2008 Act could be improved.

In the area of enforcement, it was determined that the Act does not provide the Minister with adequate powers of enforcement in relation to EU Export Controls or sanctions. In addition, it judged that the Act establishes a very limited set of offences for infringements of the controls and lacks a comprehensive set of proportionate and graduated penalties.

In addition, it was noted that the national legislative framework must be updated to reflect the recent changes to EU legislation including:

- [Council Decision \(CFSP\) 2019/1560](#) amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment
- [European dual-use export control, Regulation 2021/821](#)

Regulatory Impact Analysis (RIA)

While the RIA was not published, the Department kindly provided a copy to the Library & Research Service, for the purposes of briefing Members ahead of the Second Stage debate of the Bill. A copy of the RIA is appended to this Digest but is only for internal briefing purposes and should not be circulated beyond this scope. The RIA notes that the policy objective of the Bill is to ensure that Ireland has comprehensive and robust export controls in line with European and international best practice.

The RIA considers two policy options:

Option A: No policy change i.e. continue to rely on the current controls as provided for by the Control of Exports Act, 2008.

¹³ DBEI Control of Exports Bill 2022 RIA

Option B: Introduce new primary legislation to replace the Control of Export Act 2008 and provide for the modernisation of export controls and to ensure that the Minister has an effective enforcement capability.

In considering Option A, it was concluded that maintaining the status quo would expose Ireland to the risk of significant reputational damage that would occur if Ireland's enforcement of export controls was found to be ineffective. Therefore, this would not be a tenable approach.

After considering Option B, it was determined that new primary legislation would address the issues of concern identified by the Department regarding the export of controlled items that could be used to cause injury in regional conflicts or to violate human rights in third countries. This new legislation would also address gaps in the current legislation while providing the Minister with stronger powers of enforcement and compliance incentives for exporters. The proposed legislation would allow for the clarification of definitions and the modernisation of control administration to reflect advances in technology and changes in business models. Additionally, the legislation would not result in any additional costs for the Department, nor would it increase compliance costs or regulatory burdens for businesses. Therefore, Option B, which involves new legislation replacing the Control of Export Act 2008, is the preferred option.

Impact Analysis of the Bill

Section 4 of the RIA examines the expected impact of the proposed legislation. The Department acknowledges that small and medium enterprises (SMEs) may be disproportionately affected by regulations due to their limited resources. To minimise the cost of compliance, SME stakeholders were consulted, and the proposed legislation was assessed using the European Commission's SME Test. The Department has taken several steps to assist SMEs, including the publication of a plain English booklet and an introductory video on export controls. The proposed legislation focuses on enhancing enforcement and will not impose new compliance requirements on exporters. It will have minimal impact on compliant exporters, including SMEs. The Bill will introduce electronic licensing, which will reduce the administrative burden on SMEs.

Controlled exports from Ireland are significant, and the proposed legislation will underpin the continued viability of this valuable export trade. The new provisions of the Bill will strengthen the Minister's powers of enforcement, clarify the offenses under the Act, update the powers of Authorized Officers, expand the range of penalties for breaches, and introduce administrative sanctions.

The Bill will not involve a significant policy change in an economic market, impact the rights of citizens, or create compliance burdens. It will not affect national competitiveness, socially excluded or vulnerable groups, the environment, or North-South and East-West relations.

Public Consultation

The Department initiated a public consultation process on the proposed legislation on 31 May 2019, inviting stakeholders to contribute to the review of the Control of Exports Act 2008 by making submissions regarding the offences specified in the Act, the penalties set out in the Act, the role and powers of Authorised Officers, and areas where greater legal clarity is required in the Act. The Department also sought views on any developments since 2008 that should be considered, such as new business practices or models, changes in global trade patterns, new and emerging products and technologies, geopolitical developments, and any other pertinent issues.

The Department received three responses [from the Department of Foreign Affairs and Trade](#), the [American Chamber of Commerce Ireland](#), and [Avaya](#), which are summarised below. The Department of Foreign Affairs and Trade expressed strong support for updating the Control of Exports Act to address advances in technology, the international sanctions environment, and the opportunities and benefits derived from international engagement. The American Chamber noted that the Control of Exports Act has been useful in providing a legal basis in Irish law for a number of EU definitions and stated that the existing legislation works well, suggesting that there is “no pressing need for reform” of the Act.

Avaya provided a comprehensive response that specifically addressed the points raised in the consultation document. They proposed that the existing penalty of “imprisonment” for a term not exceeding 6 months be replaced with a revocation of export privileges for up to a 6-month period as a violation warrants severe financial, personal, and corporate responsibility. Avaya also recommended further clarification regarding whether the Authorised Officers are limited to 'domestic' jurisdiction or whether they will be permitted to conduct onsite inspections or visits outside of Ireland and/or EU member states. They also suggested including access to information related to the transaction in a 'cloud' environment and/or 'crypto currency' service provider to allow Authorised Officers to gather all required information into the future.

Principal provisions of the Bill

The Bill is structured in eight parts with 74 sections:

Part 1 Preliminary and General

Part 2 Control of Dual-Use Items

Part 3 Control of Military Items

Part 4 Authorisation

Part 5 Internal Reviews and Appeals

Part 6 Enforcement

Part 7 Offences and Penalties

Part 8 Miscellaneous and Transitional Provisions

The Bill is principally providing for an authorisation system for the export of dual-use and military items from Ireland to third countries and fulfil Ireland's EU obligations to have common licensing requirements and procedures for the export of dual-use items together with giving legal effect in Irish law to the Council Common Position on activities involving military items.

The EU dual-use Regulation has direct effect across the EU. However, Member States are obliged to establish via national legislation effective, proportionate and dissuasive penalties applicable in the case of infringements of the provisions of the regulation. The EU regulation also provides member states with discretion to adopt certain additional measures in their national legislation.

In the upcoming section, text boxes will be used to present Articles of the Dual Use Regulation that allow member states to choose to implement certain extra measures in their national laws.

In the Bill, a reference to a numbered Article is a reference to the Article of the Dual-use Regulation, and a reference to a numbered Annex is a reference to the Annex of the Dual-use Regulation.

The Bill is arranged to detail controls for dual-use and military items in Parts 2 and 3.

Offences for breaches of controls are threaded throughout the Bill and summarised with penalties in Part 7.

Part 1 Preliminary and General

Section 1: Short title and commencement contains the short title and commencement provisions.

Section 2: Interpretation defines the key terms used in the Act, including definitions of "export", "exporter", "broker", "provider of technical assistance", "relevant activity", "dual-use item", "cyber-surveillance item", "technical assistance", "military end-use", and "military item".

Section 3: Competent authority provides that the Minister for Enterprise, Trade and Employment is the competent authority for the purposes of the Dual-use Regulation.

Section 4: Reporting on operation of Act states that a report on the operation of this Act will be laid before each House of the Oireachtas every 12 months.

Subsection (2) provides details on the type of information to be included in the report, and subsection (3) outlines provisions to address the sensitivity of commercial material and personal data.

Section 5: Regulations states that the Minister may prescribe regulations in relation to the functioning of any part of the Bill.

Subsection (3) confirms that such regulations would be laid before each House of the Oireachtas within 21 days.

Section 6: Expenses confirms that expenses incurred in the administration of this Act shall be paid out of monies provided by the Oireachtas.

Section 7: Service of notices or documents sets out the conditions which must be adhered to when documents pertaining to the screening process are being served to individuals.

Section 8: Repeals and revocations provides that the Control of Exports Act 2008, the Control of Exports (Brokering Activities, Items and Technology) Regulations 2021 (SI No. 207 of 2021), the Control of Exports (Appeals) Regulations 2018 (SI No. 457 of 2018) and the Control of Export (Dual Use Items) Order 2009 (SI No. 443 of 2009) are repealed on commencement of this Act.

Part 2 Control of Dual-use items and the obligations of exporters and brokers under Article 3, 4, 5, and 6 of the 2021 Regulations.

Regulation Article 4(1) requires **authorisation** for the export of dual-use items **not listed** in Annex I if the exporter has been informed by the competent authority that the items may be intended:

- 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:

- for a military end-use if the purchasing country or country of destination is subject to an arms embargo;

- incorporation into military items listed in the military list of Member States and other military uses.

Article 4(3) allows Member States to impose authorisation requirement on the export of dual-use items not listed in annex I. A Member State may in the application of Article 4(3), extend the application of Article 4(1) to non-listed dual-use items, if the exporter has grounds for suspecting that those items may be intended for any of the uses referred to in Article 4(1).

Article 4(4) of the Regulation requires Member States which impose an authorisation requirement, in application of Article 4(3), on the export of dual-use items not listed in Annex I, to inform, where appropriate, the other Member States and the Commission

Article 5(3) of the Regulation allows a Member State to adopt national legislation imposing an authorisation requirement on the export of cyber-surveillance items not listed in Annex I if the exporter has grounds for suspecting that those items may be intended for any of the uses referred to in paragraph 1 of Article 5.

Article 6(4) of the Regulation allows a Member State to adopt or maintain national legislation imposing an authorisation requirement on the provision of brokering services of dual-use items if

Section 9: The definitions of terms used are contained here.

Art 3 (1) An authorisation shall be required for the export of dual-use items listed in Annex I.

Art 5 (1) An authorisation shall be required for the export of cyber-surveillance items not listed in Annex I if the exporter has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for use in connection with internal repression and/or the commission of serious violations of human rights and international humanitarian law.

Art 5 (2) An authorisation shall be required for the export of cyber-surveillance items not listed in Annex I if the exporter has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for use in connection with internal repression and/or the commission of serious violations of human rights and international humanitarian law.

Section 10: outlines the obligations of exporters who contravene the rules set forth in Articles 3, 4, 5, and 6, including giving notice to the competent authority before exporting a dual-use item or cyber-surveillance item and carrying out due diligence before exporting.

Section 11: details the procedures the competent authority should follow upon receiving a notice from an exporter, including issuing a decision on whether or not to authorise the export.

Section 12: grants the Minister the power to issue orders prohibiting the export of certain dual-use items not specified in Annex 1.

Section 13 allows the competent authority to direct an exporter to apply for an authorisation to export a dual-use item not specified in Annex I.

Art 6 (1) An authorisation shall be required for the provision of brokering services of dual-use items listed in Annex I if the broker has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1).

Section 14 outlines the obligations of brokers who contravene the rules set forth in Article 6.

Subsection (1) sets out that it is an offence to contravene Article 6.1 of the Dual-Use Regulation.

Section 15: Provision supplemental to section 14 provides that the Minister, pursuant to a notice received under subsections (2) or (4) of Section 14, shall notify the broker of the decision that either an authorisation is not required, or directing the broker to apply for an authorisation to provide brokering services relating to a dual-use item.

Article 5 (4) of the Regulation allows a Member State may adopt or maintain national legislation imposing an authorisation requirement on the provision of technical assistance where a provider of technical assistance who proposes to provide technical assistance for dual-use items has grounds for suspecting that those items are or may be intended for any of the uses referred to in Article 4(1).

Section 16: Outlines the obligations of providers of technical assistance under Article 8.

Art 8 (1) An authorisation shall be required for the provision of technical assistance related to dual-use items listed in Annex I if the provider of technical assistance has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1).

Providers who break Article 8.1 commit an offense. Providers must notify the competent authority if they know that a dual-use item is intended for use in a way specified in paragraph (a), (b), or (c) of Article 4.1, and must not provide technical assistance if informed by the competent authority. If a provider suspects that a dual-use item may be intended for such use, they must notify the competent authority. Failing to comply with these obligations is an offense.

Section 17: Provides further provisions for Section 16. The competent authority must notify the provider of technical assistance of their decision after receiving a notice from them. If an

authorisation is required, the competent authority will direct the provider to apply for one. Failing to comply with this direction is an offense.

Section 18: Allows the Minister to issue an order prohibiting the transit of certain dual-use items through or from the State if they believe it is necessary because the item will or may be used in a way specified in paragraph (a), (b), or (c) of Article 4.1. Anyone who violates this order is committing an offense.

Section 19: Allows the competent authority to direct a person to apply for an authorisation to transit a dual-use item specified in Annex I if they believe the item will or may be used in a way specified in paragraph (a), (b), or (c) of Article 4.1. Anyone who violates this direction is committing an offense.

Section 20: Obligations under Article 11

Art. 11 (1) An authorisation shall be required for intra-Union transfers of dual-use items listed in Annex IV. Dual-use items listed in Part 2 of Annex IV shall not be covered by a general authorisation.

States that anyone who violates Article 11.1 or transfers a dual-use item without authorisation is committing an offense.

Section 21: Provision relating to decision of competent authority following receipt of relevant notice provides that the Minister shall make a decision regarding a notice received under sections 11, 15 and 16 as soon as may be

PART 3 - Control of Military Items.

Section 22: defines the key terms used in Part 3 of the Act.

Section 23 establishes a national military export control list, which consists of items other than dual-use items that are considered to be military items. The Minister, after consulting with other Ministers, can prescribe such a list. An item can be included on the list if it is on the Common Military List of the European Union, has been designed for military purposes, is necessary for the State's security, and does not adversely affect competition.

Section 24 prohibits an exporter from exporting a military item unless they have been granted authorisation for that export. A contravention of this provision is an offence.

Section 25 prohibits a broker from providing brokering services in respect of a military item being exported from one third country to another, from the State to a third country, or from a Member State other than the State to a third country, unless they have been granted authorisation for the provision of brokering services.

Section 26: sets out that it is an offence to transit a military item through or from the State without an authorisation.

Section 27 provides for an exemption from an offence under section 24 in certain situations for temporary exports by the Defence Forces or the Garda Síochána.

PART 4 - Authorisation

Section 28: Application for authorisation sets out the procedure for applying to the Minister for an authorisation.

Art 15 (1) In deciding whether or not to grant an authorisation or to prohibit a transit under this Regulation, the Member States shall take into account all relevant considerations, including:

- (a) Union and Member States' international obligations and commitments, in particular the obligations and commitments they have each accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties;
- (b) their obligations under sanctions imposed by a decision or a common position adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations;
- (c) considerations of national foreign and security policy, including those covered by Common Position 2008/944/CFSP;
- (d) considerations about intended end-use and the risk of diversion.

2. In addition to the criteria set out in paragraph 1, when assessing an application for a global export authorisation, Member States shall take into consideration the implementation of an ICP by the exporter.

Section 29: Decision of Minister on application for authorisation In considering an application for an authorisation the Minister shall take into account Article 15 for a dual-use item matters and Article 2 of Council Common Position 2008/944/CFSP for a military item.

Section 30: Prohibition on transfer of authorisation provides that an authorisation is non-transferrable.

Section 31: Requirement to keep records sets out the conditions and the requirement that an authorisation holder must keep records.

Section 32: Reporting provides that the Minister may request a report on the records held by the holder of an authorisation.

Section 33: Requirement to comply with authorisation provides that non-compliance with the conditions of an authorisation is an offence.

Section 34: Revocation modification or suspension of authorisation provides that the Minister may revoke, suspend or modify an authorisation.

Section 35: Termination of suspension sets out the process for terminating the suspension of an authorisation under Section 34.

Section 36: Regulations relating to authorisations provides that the Minister may prescribe certain matters relating to an authorisation, including the application procedure and any fees to be paid.

PART 5 Internal review and appeals

Chapter 1

Internal review

Section 37: Appointment of decision makers or reviewers provides that the Minister may appoint his or her officers to make or review relevant decisions.

Section 38: Internal review sets out a process of internal review which a person in receipt of a relevant decision may request.

Chapter 2 Adjudicators

Section 39: Appointment of adjudicators provides that the Minister may appoint persons as adjudicators under this Act and sets out the conditions of that appointment.

Section 40: Revocation of appointment as adjudicator provides that the Government may revoke an appointment under Section 39 under certain grounds and sets out the process for this.

Section 41: Liability of adjudicators provides that an adjudicator operating under this Act shall not be liable in damages.

Section 42: Rules concerning conduct of appeals before adjudicator provides that the Minister may prescribe the rules in relation to appeals to be determined by an adjudicator.

Chapter 3 Review of relevant decisions

Section 43: Procedure for appeal of decision under section 38 provides that a decision under section 38(5) may be appealed under this Section.

Section 44: Oral hearing provides that an adjudicator may determine an appeal without an oral hearing and sets out a procedure where the adjudicator considers it necessary for an oral hearing.

Section 45: Decision of adjudicator provides that the adjudicator shall decide to allow the appeal and to remit the matter to the Minister or affirm the relevant decision of the Minister.

Chapter 4 Exceptional provisions regarding sensitive material and evidence

Section 46: Treatment of certain material of relevance to security or public order of State in appeal against decision under section 43 provides that the adjudicator may determine whether disclosure of information to an appellant would create a risk to the security or public order of the State and make certain directions regarding the disclosure of such relevant information.

Section 47: Appeals to be held otherwise than in public provides that an appeal under Section 43 shall be conducted otherwise than in public.

Section 48: Confidentiality of proceedings provides for the non-disclosure of any information obtained by a party to an appeal or as a result of an appeal and sets out that contravention of this is an offence.

Section 49: Designation of legal representatives in respect of certain matters provides that the Minister may designate a legal representative to represent a party to an appeal.

Chapter 5 Appeal against decision of adjudicator

Section 50: Appeal against decision of adjudicator provides that a decision of an adjudicator under Section 45 may be appealed to the High Court on a point of law.

Section 51: Application to suspend effect of relevant decision provides that bringing an appeal to the High Court under Section 50 does not suspend the effect of the relevant decision and provides that the appellant may additionally apply to the High Court to have the effect of that relevant decision suspended.

Section 52: Treatment of evidence in relation to appeals against decision of adjudicator

provides that the High Court may determine whether the disclosure of information to an appellant would create a risk to the security or public order of the State, and make certain directions regarding the disclosure of such relevant information.

Section 53: Hearing of matters otherwise than in public provides that the High Court may hear the whole or part of any proceedings under this Part otherwise than in public.

Section 54: Proceedings before court other than High Court provides that a reference to the High Court under Sections 51, 52 and 53 is a reference to the court before which the appeal is heard, where leave is granted to hear proceedings before a court other than the High Court.

PART 6 Enforcement

Section 55: Interpretation for Part 6 defines the key terms used in Part 6 of the Act.

Section 56: Authorised Officers provides that the Minister may appoint an authorised officer under this Act.

Section 57: Powers of authorised officer to request information and enter premises provides that an authorised officer may request relevant information or records and enter any premises that has been or is being used in connection with a relevant activity.

Section 58: Powers of authorised officer on entry sets out the powers of an authorised officer upon entry to a premises, and the conditions on the use of those powers.

Section 59: Warrant required to enter dwelling provides that a judge of the District Court may issue a warrant authorising an authorised officer to enter and inspect a dwelling.

Section 60: Report of authorised officer provides that an authorised officer shall prepare and provide a report to the Minister in relation to functions performed under Sections 57 or 58.

Section 61: Compliance Notice provides that an authorised officer may give a notice to a person suspected of contravening a provision of this Act and sets out the rules of such notice.

Section 62: Appeal against or application to suspend compliance notice provides that a compliance notice may be appealed to the District Court.

Section 63: Application to Circuit Court provides that an authorised officer may apply to the Circuit Court for an order requiring the recipient of a compliance notice to comply with the notice.

Section 64: Forfeiture provides that any relevant item in respect of which an offence has been committed under this Act may be liable to forfeiture and sets out the rules of such forfeiture.

Section 65: Proceedings for condemnation by court provides that condemnation proceedings are civil proceedings and shall be commenced in the name of the Minister.

Section 66: Power to deal with seizures, before and after condemnation provides that the Minister may, by his or her discretion, restore, sell or destroy anything seized as liable to forfeiture under this Act.

Section 67: Legal privilege provides that nothing in this Act shall compel the disclosure of, or authorise the taking of, any privileged legal material, other than by means whereby the confidentiality of the information can be maintained.

Section 68: Application of provisions relating to security and hearings otherwise than in public provides that the provisions in Sections 52 and 53 shall apply, with certain modifications, to Sections 62, 63 and 65.

PART 7 - Offences and penalties

Section 69: Obstruction provides that it is an offence to obstruct or interfere with an authorised officer, or a member of the Garda Síochána in exercising a power under this Act.

Section 70: False or misleading information provides that it is an offence to knowingly provide false or misleading to the Minister in purported compliance with this Act.

Section 71: Penalties for offences sets out the penalties for contravention of provisions under this Act.

Section 72: Offence by body corporate provides that an offence committed by a body corporate under this Act may also be proceeded against a director, manager, secretary, or other office of the body corporate.

PART 8 - Miscellaneous and Transitional Provisions

Section 73: Information sharing provides that the Minister may share information with, and may enter into a data sharing arrangement with, a relevant body where necessary for the function of the Minister under Parts 4, 5 or 6.

Section 74: Transitional provisions sets out the transitional arrangements for the operation of the Act in the period immediately before commencement.

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