EXPLANATORY MEMORANDUM TO

THE COMMON RULES FOR EXPORTS (EU EXIT) REGULATIONS 2020

2020 No. 1405

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 makes technical amendments to the retained domestic version of EU Regulation No 2015/479 of the European Parliament and of the Council dated 11th March 2015 on common rules for exports (Regulation (EU) 2015/479) to ensure that the Regulation, as it applies in Great Britain at the end of the implementation period, can continue to operate effectively in domestic law following the United Kingdom's exit from the European Union (EU). Regulation (EU) 2015/479 itself will continue to be directly applicable in Northern Ireland at the end of the implementation period as a result of the operation of section 7A of the European Union (Withdrawal) Act 2018 and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement.

Explanations

What did any relevant EU law do before exit day?

2.2 Regulation (EU) 2015/479 sets out procedures and measures to be adopted by the European Commission and EU member states where unusual developments on the market require temporary quantitative restrictions to be applied in respect of certain exports. The procedures include a notification and consultation procedure, and rules concerning the implementation of quantitative restrictions.

Why is it being changed?

2.3 At the end of the implementation period, section 3 of the European Union (Withdrawal) Act 2018 will take effect to incorporate any direct EU legislation into domestic law. Regulation (EU) 2015/479 is direct EU legislation for the purposes of section 3 of the European Union (Withdrawal) Act 2018. It will therefore be incorporated into the retained domestic EU law of the United Kingdom at the end of the implementation period but it will only apply, as amended by these Regulations, in relation to Great Britain. However, the retained domestic version of Regulation (EU) 2015/479, as it will apply in Great Britain at the end of the implementation period, contains references to certain bodies (e.g. "the Commission") and other terminology (e.g. "Member States") that will cease to have relevance and/or legal effect in Great Britain at the end of the implementation period. Therefore, to ensure that the measures set out in the retained domestic version of the Regulation (EU) 2015/479 can continue to operate effectively in Great Britain at the end of the implementation period, technical amendments are required to the text.

What will it now do?

2.4 These Regulations amend the retained domestic version of Regulation (EU) 2015/479 as it applies in Great Britain at the end of the implementation period to remove the notification and consultation procedures set out in Chapter II. These procedures require an EU member state to notify the European Commission of the need for protective measures on exports in response to unusual developments on the market. The European Commission in turn notifies the other member states, and requests statistical data on exports from them where necessary. These processes are no longer considered necessary given that the jurisdiction of the European Commission on matters related to export controls will cease in Great Britain after the end of the implementation period and the United Kingdom will take control of its own exports. This is except in relation to exports from Northern Ireland where Regulation (EU) 2015/479 itself will remain directly applicable by virtue of section 7A of the European Union (Withdrawal) Act 2018 and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement.

2.5 These Regulations preserve the ability for the United Kingdom, in relation to exports from Great Britain, to take the protective measures set out in Chapter III of Regulation (EU) 2015/479, including imposing the requirement to make the export of a product subject to the production of an export authorisation, and/or the placing of quantitative restrictions on exports.

2.6 These Regulations amend Chapter IV of the retained domestic version of Regulation (EU) 2015/479 to remove the information sharing and reporting requirements between the European Commission and EU Member States. This is necessary as control over export controls for products exported from Great Britain will revert to the Her Majesty's Government in the United Kingdom, at the end of the implementation period and these reporting requirements will no longer be necessary.

2.7 Offences for the contravention or circumvention of restrictions or prohibitions on the exportation of goods are found in the Customs and Excise Management Act 1979 ("the 1979 Act") which has United Kingdom wide effect. A person is guilty of an offence under the 1979 Act in connection with the exportation of goods that is prohibited or restricted by regulations made, in relation to Northern Ireland, under the directly applicable Regulation (EU) 2015/479 or, in relation to Great Britain, under the retained domestic version of Regulation (EU) 2015/479 and similar penalties apply under the 1979 Act in relation to the commission of such offences.

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 The territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of the amendments made by this instrument is England, Wales and Scotland (Great Britain).

4.3 The retained EU law, which has United Kingdom wide effect, is incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018. However, the amendments made to the retained EU law only apply in relation to Great Britain. This is because of the effect of section 7A of the European Union (Withdrawal) Act 2018 and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement by virtue of which Regulation (EU) 2015/479 will remain directly applicable to and in the United Kingdom in respect of Northern Ireland. Accordingly, this instrument will be of no practical application in Northern Ireland at the end of the implementation period.

5. European Convention on Human Rights

5.1 The Minister for International Trade, Ranil Jayawardena MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Common Rules for Exports (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 At the end of the implementation period, section 3 of the European Union (Withdrawal) Act 2018 will take effect to incorporate any direct EU legislation into domestic law. Regulation (EU) 2015/479 is direct EU legislation for the purposes of this section and will therefore become part of the retained domestic law of the United Kingdom at the end of the implementation period but will only apply as amended in relation to Great Britain by virtue of the effect of section 7A of the European Union (Withdrawal) Act 2018 and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement. However, the retained domestic version of Regulation (EU) 2015/479 contains references to certain bodies (e.g. "the Commission") and other terminology (e.g. "Member States") that will cease to have relevance and/or legal effect in Great Britain now that the United Kingdom is no longer a Member State of the EU. Therefore, to ensure that the measures set out in the retained domestic version of Regulation (EU) 2015/479 can continue to operate effectively in Great Britain at the end of the implementation period, technical amendments are required to the text of that retained EU Regulation.

7. Policy background

What is being done and why?

7.1 These Regulations will provide Her Majesty's Government in the United Kingdom with the power to implement measures to control certain exports from Great Britain in order to prevent a critical situation arising owing to a shortage of essential products in the United Kingdom, or to allow the United Kingdom to fulfil its international obligations, including relating to "primary products" which are defined, for greater clarity, as including unprocessed agricultural products and raw materials. These powers already exist in relation to the United Kingdom through Regulation (EU) 2015/479 but are only exercisable by the European Commission on behalf of the EU. The amendments made by this instrument will ensure these powers are available to

the Secretary of State in relation to exports from Great Britain at the end of the implementation period.

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

8.1 This instrument is being made using the powers in sections 8 and 8C of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the EU; to fully implement the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement; and to clarify the relationship between directly applicable EU law in Northern Ireland and the law of the United Kingdom at the end of the implementation period. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 These Regulations amend the retained domestic version of Regulation (EU) 2015/479 on common rules for exports as it applies in Great Britain. Regulation (EU) 2015/479 itself will continue to be directly applicable to and in the United Kingdom in respect of Northern Ireland at the end of the implementation period by virtue of the application of section 7A of the European Union (Withdrawal) Act 2018 and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement.

10. Consultation outcome

10.1 It was not considered necessary to undertake a consultation in connection with these Regulations.

10.2 These Regulations amend the retained domestic version of Regulation (EU) 2015/479 as necessary to ensure that it operates effectively in Great Britain after the end of the implementation period. They leave the application of the directly applicable Regulation (EU) 2015/479 unchanged in relation to Northern Ireland.

11. Guidance

11.1 It is not considered necessary to issue specific guidance in connection with these Regulations.

11.2 These Regulations amend the retained domestic version of an existing EU Regulation to ensure that it operates effectively in Great Britain at the end of the implementation period. The existing law under Regulation (EU) 2015/479 remains unchanged as it directly applies in relation to Northern Ireland at the end of the implementation period.

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 An Impact Assessment has not been prepared for this instrument because these Regulations relate to the maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. It was not considered necessary to undertake a consultation of small businesses in connection with these Regulations. These Regulations do not represent a change to the law, rather they amend existing law to ensure it continues to operate effectively at the end of the implementation period.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Iain Fifer at the Department for International Trade, telephone: 07500 857673 or email: Iain.Fifer@trade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ayesha Ali and Ada Igboemeka, Deputy Directors for Multilateral Tariff Policy and Operations at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister for International Trade, Ranil Jayawardena MP at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the EU (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the EU (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 Minister for International Trade, Ranil Jayawardena MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Common Rules for Exports (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because these Regulations are made to address inoperabilities and deficiencies of retained EU law arising from the withdrawal of the United Kingdom from the EU, as they apply to Great Britain."

2. Good reasons

2.1 Minister for International Trade, Ranil Jayawardena MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is the case because these Regulations are made to address inoperabilities and deficiencies of retained EU law arising from the withdrawal of the United Kingdom from the EU."

3. Equalities

3.1 Minister for International Trade, Ranil Jayawardena MP has made the following statement:

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.