This draft Statutory Instrument supersedes the draft of the Trade etc. in Dual-Use Items, Firearms and Torture etc. Goods (Amendment) (EU Exit) Regulations 2019 which was laid before Parliament on 11th February 2019 and published on 8th February 2019 (ISBN 978-0-11-118062-4). It is being issued free of charge to all known recipients of that Statutory Instrument.

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. 0000

EXITING THE EUROPEAN UNION

CUSTOMS

The Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019

Made - - - - *xxxx*

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**), makes the following Regulations.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(**a**) 2018 c. 16.

PART 2

Amendment of primary legislation

Amendment of the Export Control Act 2002

2.—(1) The Export Control Act 2002(**a**) is amended as follows.

(2) In section 1 (export controls), omit subsection (5).

(3) In section 2 (transfer controls), omit subsection (5).

(4) In section 3 (technical assistance controls)—

(a) in subsection (4)(a)—

(i) at the end of sub-paragraph (i), for "; or" substitute "; and";

(ii) omit sub-paragraph (ii), and the "and" at the end of it;

(b) omit subsection (6).

(5) In section 4 (trade controls)—

(a) in subsection (4)(a)—

(i) in sub-paragraph (i), for "; or" substitute "; and";

(ii) omit sub-paragraph (ii), and the "and" at the end of it;

(b) omit subsection (5).

(6) In section 5 (general restriction on control powers)—

(a) in subsection (2), omit "EU provision or other";

(b) omit subsection (3).

(7) In section 7 (control powers: supplementary), in subsection (2)(c), omit "EU provision or".

(8) In section 11 (interpretation), in subsection (1), omit the definition of "EU provision".

(9) In the Schedule (categories of goods, technology and technical assistance), in paragraph 3(2), in entry A of the Table—

(a) omit "any Member state";

(b) omit "other".

PART 3

Amendment of retained EU law

Amendment of Council Regulation (EC) No 428/2009

3.—(1) Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transfer, brokering and transit of dual-use items is amended as follows.

(2) In Article 1 (establishment of dual-use controls regime), for "Community" substitute "United Kingdom".

(3) In Article 2 (definitions)—

(a) for paragraph 2 substitute—

"2. 'export' shall be construed as follows—

(**a**) 2002 c. 28. The Export Control Act was amended by the Treaty of Lisbon (Changes in Terminology or Numbering) Order 2011 (S.I. 2011/1043), article 6(2)(c), and by the Treaty of Lisbon (Changes of Terminology or Numbering) Order 2012 (S.I. 2012/1809), articles 3 and Part 1 of the Schedule.

(1) it only includes removal from the United Kingdom to a destination outside of the United Kingdom and the Isle of Man;

(2) it includes shipment as stores;

(3) in relation to a vessel, vehicle, submersible vehicle or aircraft, it includes taking it out of the United Kingdom, notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power;

(4) it includes transmission of software or technology by electronic media, including by fax, telephone, email or any other electronic means to a destination outside of the United Kingdom; it includes making available in an electronic form such software and technology to legal and natural persons and partnerships outside of the United Kingdom. Export also applies to oral transmission of technology when the technology is described over the telephone.";

(b) in paragraph 3 (definition of 'exporter')—

(i) in the words before point (i), after "partnership" insert "resident or established in the United Kingdom";

(ii) in point (i)—

(aa) for "customs territory of the Community", in the first place it occurs, substitute "United Kingdom to a destination outside of the United Kingdom and the Isle of Man. If no export declaration has been made, the exporter means the person who holds the contract with the consignee in the third country and has power for determining the sending of the item out of the United Kingdom to a destination outside of the United Kingdom and the Isle of Man.";

(bb) for "customs territory of the Community", in the second place it occurs, substitute "United Kingdom to a destination outside of the United Kingdom and the Isle of Man";

(iii) in point (ii), for "the Community" substitute "of the United Kingdom";

(iv) in the unnumbered paragraph following point (ii), for "Community" substitute "United Kingdom";

(c) in paragraph 4 (definition of 'export declaration')—

(i) for "place" substitute "export";

(ii) omit "under an export procedure";

(d) for paragraph 6 (definition of 'broker') substitute—

"6. 'broker' means:

(i) any person resident or established in the United Kingdom who carries out brokering services from the United Kingdom into the territory of a third country; or

(ii) any United Kingdom national who carries out brokering services from the United Kingdom into the territory of a third country;

(iii) any United Kingdom person who carries out brokering services from a country within the European Union into the territory of another third country;

(iv) any person resident or established in the European Union who carries out brokering services from the United Kingdom into the territory of a third country; or

(v) any European Union national who carries out brokering services from the United Kingdom into the territory of a third country;

6A. 'European Union national' means a natural person who is a national of a Member State of the European Union;

6B. ‘third country’ means any country or territory outside of the United Kingdom and the Isle of Man;”;

(e) in paragraph 7 (definition of ‘transit’)—

(i) for “non-Community”, substitute “non-United Kingdom”; and

(ii) for “customs territory of the Community with a destination outside the Community”, substitute “United Kingdom with a destination outside of the United Kingdom and the Isle of Man”;

(f) after paragraph 7 insert—

“7A. ‘United Kingdom national’ means a British Citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, or a person who, under the British Nationality Act 1981(**a**), is a British subject or a British protected person within the meaning of that Act;

7B. ‘United Kingdom person’ means a United Kingdom national or a legal person, entity or body incorporated or constituted under the law of the United Kingdom or any part of the United Kingdom;”;

(g) in paragraph 9, for “union”, substitute “retained”;

(h) omit paragraph 12 (definition of ‘customs territory of the European Union’); and

(i) omit paragraph 13 (definition of ‘non-Community dual-use items’).

(4) In Article 3 (scope), in paragraph 2, omit “or Article 8”.

(5) In Article 4 (authorisation requirements for exports)—

(a) in paragraph 1, for “competent authorities of the Member State in which he is established”, substitute “Secretary of State”;

(b) in paragraph 2—

(i) for “by a decision or a common position adopted by the Council or”, substitute “through its listing as an embargoed destination in Part 1 or 2 of Schedule 4 to the Export Control Order 2008, as amended from time to time, or by”;

(ii) for “authorities referred to in paragraph 1”, substitute “Secretary of State”; and

(iii) in point (a), for “the military list of Member States”, substitute “Schedule 2 to the Export Control Order 2008”;

(c) in paragraph 3—

(i) for “authorities referred to in paragraph 1”, substitute “Secretary of State”;

(ii) for “the national military list”, substitute “Schedule 2 to the Export Control Order 2008, as amended from time to time,”; and

(iii) for “from the territory of that Member State without authorisation or in violation of an authorisation prescribed by national legislation of that Member State”, substitute “without authorisation or in violation of an authorisation granted by the Secretary of State”;

(d) in paragraph 4, for “authorities referred to in paragraph 1”, substitute “Secretary of State”;

(e) omit paragraphs 5 to 7; and

(f) in paragraph 8 for “Article 11 of Regulation (EEC) No 2603/69” substitute “Article 10 of Regulation (EU) 2015/479”.

(6) In Article 5 (authorisation requirements for brokering services)—

(a) in paragraph 1—

(**a**) 1981 c. 61.

(i) for "competent authorities of the Member State in which he is resident or established", substitute "Secretary of State"; and

(ii) for "competent authorities which", substitute "Secretary of State, who"; and

(b) omit paragraphs 2, 3 and 4.

(7) Omit Article 6 (transit of non-Community dual-use items).

(8) Omit Article 8 (national controls for public security or human rights considerations).

(9) In Article 9 (export authorisations)—

(a) in paragraph 1—

(i) in the first sub-paragraph, for "Union", substitute "Retained";

(ii) in the second sub-paragraph—

(aa) for "competent authority of the Member States where the exporter is established", substitute "Secretary of State"; and

(bb) for "the export control legislation", insert "United Kingdom export control legislation";

(iii) omit the third sub-paragraph;

(iv) in the fourth sub-paragraph—

(aa) for "Union", in both places it occurs substitute "Retained";

(bb) for "Commission shall be empowered to adopt delegated acts in accordance with Article 23a to", substitute "Secretary of State may by regulations"; and

(v) omit the fifth sub-paragraph;

(b) in paragraph 2—

(i) in the first sub-paragraph, for "competent authorities of the Member State where the exporter is established", substitute "Secretary of State";

(ii) omit the second sub-paragraph;

(iii) in the third sub-paragraph—

(aa) for "competent authorities", in both places it occurs substitute "Secretary of State"; and

(bb) omit "national";

(c) omit paragraph 3;

(d) in paragraph 4—

(i) for "national general export authorisations", substitute "A national general export authorisation";

(ii) in sub-paragraph (a), before "exclude", insert "shall";

(iii) for sub-paragraph (b), substitute—

"(b) may be used by all exporters, established or resident in the United Kingdom, if they meet the requirements set out in this Regulation. It must be issued in accordance with the indications set out in Annex IIIc;";

(iv) for sub-paragraph (c), substitute—

"(c) must not be used if the exporter has been informed by the Secretary of State that the items in question are, or may be intended, in their entirety or in part, for any of the uses referred to in paragraphs 1 and 3 of Article 4 or in paragraph 2 of Article 4 in a country subject to an arms embargo imposed through its listing as an embargoed destination in Part 1 or 2 of Schedule 4 to the Export Control Order 2008, as amended from time to time, or by a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or if the exporter is aware that the items are intended for the abovementioned uses.";

(e) in paragraph 5—

(i) for "Member States", substitute "The Secretary of State"; and

(ii) for "or introduce in their respective" substitute "in"; and

(f) omit paragraph 6.

(10) In Article 10 (brokering authorisations)—

(a) in paragraph 1—

(i) for "competent authorities of the Member State where the broker is resident or established", substitute "Secretary of State"; and

(ii) omit the fourth sentence;

(b) in paragraph 2, for "competent authorities" substitute "Secretary of State";

(c) omit paragraphs 3 and 4.

(11) Omit Article 11 (dual-use items located in other Member States).

(12) In Article 12 (decisions on granting authorisations)—

(a) in paragraph 1—

(i) for "Member States", substitute "Secretary of State";

(ii) in sub-paragraph (a), for "they have each accepted as members" substitute "the United Kingdom has accepted as a member";

(iii) in sub-paragraph (b)—

(aa) for "their", substitute "the"; and

(bb) omit "a decision or a common position adopted by the Council or by";

(iv) in sub-paragraph (c), for the words from "covered" to the end substitute "contained within guidance made under section 9 of the Export Control Act 2002"; and

(b) in paragraph 2, for "Member States", substitute "the Secretary of State".

(13) For Article 13 (refusal etc. of authorisations), substitute—

"13. The Secretary of State, acting in accordance with this Regulation, may refuse to grant an export authorisation, and may annul, suspend, modify or revoke an export authorisation which the Secretary of State has already granted.".

(14) In Article 14 (issuance of authorisations), omit paragraph 2.

(15) For Article 15 (updating of list of dual-use items), substitute—

"1. The Secretary of State may by regulations update the list of dual-use items set out in Annex I in conformity with the relevant obligations and commitments, and any modification thereof, that the United Kingdom has accepted as a member of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.

2. Where the updating of Annex I under paragraph 1 concerns dual-use items which are also listed in Annexes IIa to IIg, regulations under paragraph 1 may also make provision for updating Annexes IIa to IIg.".

(16) In Article 16 (customs procedures), omit paragraphs 2, 3 and 4.

(17) Omit Articles 17 (customs formalities), 18 (provisions of Community Customs Code) and 19 (administrative cooperation).

(18) In Article 20 (control measures)—

(a) in paragraph 1, omit ", in accordance with the national law or practice in force in the respective Member States";

(b) in paragraph 2, omit "In accordance with the national law or practice in force in the respective Member States,"; and

(c) in paragraph 3, for "the competent authorities of the Member State in which the exporter is established or the broker is established or resident", substitute "a person authorised by the Secretary of State or the Commissioners for Her Majesty's Revenue and Customs".

(19) Omit Articles 21 (control measures), 22 (intra-Community transfers) and 23 (Dual-Use Coordination Group).

(20) For Article 23a (Commission power to adopt delegated acts), substitute—

"1. Regulations under Article 9(1) or Article 15(1) are to be made by statutory instrument.

2. Such regulations may:

(a) make different provision with respect to different cases or different descriptions of case;

(b) include—

(i) incidental, supplementary or consequential provision;

(ii) transitional, transitory or saving provision.

3. A statutory instrument containing regulations under Article 9(1) or Article 15(1) is subject to annulment in pursuance of a resolution in either House of Parliament.".

(21) Omit Articles 23b (delegated acts), 24 (enforcement), 25 (role of Commission), 25a (negotiation of third country agreements), 26 (relationship to other treaty provisions) and 28 (entry into force).

(22) In Annex I (list of dual-use items)—

(a) in the section headed "general notes to Annex I", in paragraph 1, the for "maintained by individual Member States", substitute "in Schedule 2 to the Export Control Order 2008";

(b) in the section headed "EDITORIAL PRACTICES IN THE OFFICIAL JOURNAL OF THE EUROPEAN UNION"—

(i) in the heading, for "THE OFFICIAL JOURNAL OF THE EUROPEAN UNION" substitute "THIS REGULATION";

(ii) omit the words before the first indent;

(c) in the section headed "definitions of terms used in this Annex", in the definition of "civil aircraft" omit "one or more EU Member States or";

(d) in the section headed "Category 0 – nuclear materials, facilities, and equipment", in paragraph 0C004, in Note 1, for "competent authorities of the Member State in which the exporter is established" substitute "Secretary of State";

(e) in the section headed "Category 4 – technology", in paragraph 4E001, in Note 2, for "competent authority of the Member State in which the exporter is established" substitute "Secretary of State";

(f) in the section headed "Category 5 – telecommunications and "information security"", in Part 2 (information security), in Note 3 (cryptography note), for "competent authorities of the Member State in which the exporter is established", in both places it occurs, "competent authority" and "competent authorities" substitute "Secretary of State";

(g) in the section headed "Category 7 – navigation and avionics", in paragraph 7A003, in Note 2 omit "*EU Member States or*";

(h) in the section headed "Category 9 – Aerospace and propulsion"—

(i) in paragraph 9A001.a—

(aa) in Note 1, in both places it occurs, omit "EU Member States or";

(bb) in Note 2, omit "a EU Member states or";

(ii) in paragraph 9A003.b, omit "either *non- EU Member States or*";

(iii) in paragraph 9E003.h, in the Note, omit "*one or more EU Member States or*".

(23) In Annex IIa (Union general export authorisation No EU001)—

(a) in the heading to the Annex—

(i) for "Union" substitute "Retained";

(ii) for "EU001" substitute "001";

(b) in the words before Part 1, for "European Commission" substitute "the Secretary of State";

(c) in Part 2, in the words before the section headed "Conditions and requirements for use of this authorisation", omit "throughout the Union";

(d) in Part 2, in the section headed "Conditions and requirements for use of this authorisation"—

(i) in paragraph 1—

(aa) for "competent authorities of the Member State in which he is established" substitute "Secretary of State";

(bb) for "EU001" substitute "001";

(ii) in paragraph 2—

(aa) in the first indent, for "competent authorities of the Member State where they are established" substitute "Secretary of State";

(bb) in the second indent, "competent authorities of the Member State where they are established" substitute "Secretary of State" and for "a decision or a common position adopted by the Council" substitute "the United Kingdom";

(iii) in paragraph 3—

(aa) for "Member State from which the export is made" substitute "Secretary of State";

(bb) for "Member States", in the first place it occurs, substitute "the Secretary of State";

(cc) for "A Member State" substitute "The Secretary of State";

(dd) for "the exporters" substitute "exporters";

(ee) for "that Member State" substitute "the United Kingdom";

(ff) for "competent authorities" substitute "Secretary of State";

(gg) for "Member States", in the second place it occurs, substitute "Secretary of State".

(24) In Annex IIb (Union general export authorisation No EU002)—

(a) in the heading to the Annex—

(i) for "Union" substitute "Retained";

(ii) for "EU002" substitute "002";

(b) in the words before Part 1, for "European Union" substitute "the Secretary of State";

(c) in Part 2, omit "throughout the Union";

(d) in Part 3—

(i) in paragraph 1(1), in the words before point (a), for the words from "competent authorities" to "Regulation" substitute "Secretary of State";

(ii) in paragraph 1(1), in point (b), omit "a decision or a common position adopted by the Council or";

(iii) in paragraph 1(1), in point (c), for "Member State concerned" substitute "United Kingdom" and for "national legislation of the Member State" substitute "United Kingdom";

(iv) in paragraph 2—

(aa) omit "EU" and "Union";

(bb) for “EU002” substitute “002”;

(v) in paragraph 3—

(aa) for “competent authorities of the Member State where he is established” substitute “Secretary of State”;

(bb) for “by the competent authority of the Member State where the exporter is established” substitute “of the Secretary of State”;

(cc) omit from “Member States shall” to “European Union”;

(dd) for “Member State from which the export is made” substitute “Secretary of State”;

(ee) for “by Member States” substitute “by the Secretary of State”;

(ff) for “A Member State” substitute “The Secretary of State”;

(gg) for “the exporters established in that Member State” substitute “exporters”;

(hh) for “competent authorities” substitute “Secretary of State”;

(ii) for “those Member States which provide for such authorisations” substitute “the Secretary of State”.

(25) In Annex IIc (Union general export authorisation No EU003)—

(a) in the heading to the Annex—

(i) for “Union” substitute “Retained”;

(ii) for “EU003” substitute “003”;

(b) in the words before Part 1, for “European Union” substitute “the Secretary of State”;

(c) in Part 1, in paragraph 1—

(i) in point (a)—

(aa) for “reimported” substitute “imported”;

(bb) for “European Union” substitute “United Kingdom”;

(cc) omit “or re-exported”;

(ii) in point (b)—

(aa) for “reimported” substitute “imported”;

(bb) for “European Union” substitute “United Kingdom”;

(d) in Part 2, omit “throughout the Union”;

(e) in Part 3—

(i) in paragraph 1—

(aa) omit “Union” in the first place it occurs;

(bb) for “competent authorities of the Member State where the original exporter was established” substitute “Secretary of State”;

(cc) for “reimported” substitute “imported”;

(dd) for “European Union” substitute “United Kingdom”;

(ii) in paragraph 2(1)—

(aa) in the words before point (a), for “competent authorities of the Member State in which he is established” substitute “Secretary of State”;

(bb) in point (b), omit “a decision or a common position adopted by the Council or”;

(cc) in point (c), for “territory of the Member State concerned” substitute “United Kingdom” and for “the national legislation of that Member State” substitute “national legislation”;

(iii) for paragraph 3(1) substitute—

"(1) mention the reference number of the initial export authorisation in the export declaration to customs, the reference number X002 and specify that the items are being exported under General Export Authorisation 003 in box 44 of the Single Administrative Document.";

(iv) in paragraph 3(2), for "Union" in each place it occurs, substitute "United Kingdom";

(v) for paragraph 4 substitute—

"4. Any exporter who uses this authorisation must notify the Secretary of State of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the Secretary of State, prior to the first use of this authorisation.

Reporting requirements attached to the use of this authorisation and additional information that the Secretary of State might require on items exported under this authorisation are defined by the Secretary of State.

The Secretary of State may require the exporter to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the Secretary of State without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third sub-paragraphs shall be based on those defined for the use of national general export authorisations granted by the Secretary of State.".

(26) In Annex IId (Union general export authorisation No EU004)—

(a) in the heading to the Annex—

(i) for "Union" substitute "Retained";

(ii) for "EU004" substitute "004";

(b) in the words before Part 1, for "European Union" substitute "the Secretary of State";

(c) in Part 2, omit "throughout the Union";

(d) in Part 3—

(i) in paragraph 1, for "reimported" substitute "imported" and for "European Union" substitute "United Kingdom";

(ii) in paragraph 2—

(aa) for the words from "competent" to "may" substitute "Secretary of State may";

(bb) for "reimported" substitute "imported";

(iii) in paragraph 3(1)(a), for the words from "competent" to "established" substitute "the Secretary of State";

(iv) in paragraph 3(1)(b), omit "a decision or a common position adopted by the Council or";

(v) in paragraph 3(1)(c)—

(aa) for "territory of the Member State concerned" substitute "United Kingdom";

(bb) for "the national legislation of that Member State" substitute "national legislation";

(vi) in paragraph 3(4)—

(aa) for the words from "a competent" to "established" substitute "the Secretary of State";

(bb) for "the competent authority" substitute "the Secretary of State";

(cc) omit "equivalent to or above CONFIDENTIEL UE/EU";

(vii) in paragraph 4—

(aa) omit "EU" and "Union";

(bb) for “EU004” substitute “004”;

(viii) in paragraph 5, in the words before the first un-numbered paragraph—

(aa) for “competent authorities of the Member State where he is established” substitute “Secretary of State”;

(bb) for “competent authority of the Member State where the exporter is established” substitute “Secretary of State”;

(cc) omit the words from “Member States shall” to “Union”;

(ix) in paragraph 5, in the first un-numbered paragraph—

(aa) for “Member State from which the export is made” substitute “Secretary of State”;

(bb) for Member States” substitute “the Secretary of State”;

(x) in paragraph 5, in the second un-numbered paragraph—

(aa) for “A Member State” substitute “The Secretary of State”;

(bb) omit “established in that Member State”;

(cc) for “competent authorities” substitute “Secretary of State”;

(xi) in paragraph 5, in the third un-numbered paragraph, for “those Member States” substitute “the Secretary of State”.

(27) In Annex IIe (Union general export authorisation No EU005)—

(a) in the heading to the Annex—

(i) for “Union” substitute “Retained”;

(ii) for “EU005” substitute “005”;

(b) in the words before Part 1, for “European Union” substitute “the Secretary of State”;

(c) in Part 2, omit “throughout the Union”;

(d) in Part 3—

(i) in paragraph 1(1), in the words before point (a), for the words from “competent” to “Regulation” substitute “Secretary of State”;

(ii) in paragraph 1(1), in point (b), omit “a decision or a common position adopted by the Council or”;

(iii) in paragraph 1(1), in point (c)—

(aa) for “territory of the Member State concerned” substitute “United Kingdom”;

(bb) for “the national legislation of that Member State” substitute “national legislation”;

(iv) in paragraph 1(1), in point (d), omit “as defined by the Charter of Fundamental Rights of the European Union”;

(v) in paragraph 1(3) for “re-exported” substitute “exported” and omit “or to Member States”;

(vi) in paragraph 2, omit “EU” and “Union” and for “EU005” substitute “005”;

(vii) in paragraph 3, in the words before the first un-numbered paragraph—

(aa) for “competent authorities of the Member State where he is established” substitute “Secretary of State”;

(bb) for “competent authority of the Member State where the exporter is established” substitute “Secretary of State”;

(cc) omit the words from “Member States shall” to Union”;

(viii) in paragraph 3, in the first un-numbered paragraph—

(aa) for “Member State from which the export is made” substitute “Secretary of State”;

(bb) for “Member States” substitute “the Secretary of State”;

(ix) in paragraph 3, in the second un-numbered paragraph—

(aa) for “A Member State” substitute “The Secretary of State”;

(bb) omit “established in that Member State”;

(cc) for “competent authorities” substitute “Secretary of State”;

(x) in paragraph 3, in the third un-numbered paragraph, for “those Member States” to the end, substitute “the Secretary of State”.

(28) In Annex IIf (Union general export authorisation No EU006)—

(a) in the heading to the Annex—

(i) for “Union” substitute “Retained”;

(ii) for “EU006” substitute “006”;

(b) in Part 2, omit “throughout the Union”;

(c) in Part 3—

(i) in paragraph 1(1), in the words before point (a), for the words from “competent” to “Regulation” substitute “Secretary of State”;

(ii) in paragraph 1(1), in point (b), omit “a decision or a common position adopted by the Council or”;

(iii) in paragraph 1(1), in point (c)—

(aa) for “territory of the Member State concerned” substitute “United Kingdom”;

(bb) for “the national legislation of that Member State” substitute “national legislation”;

(iv) in paragraph 1(3), for “re-exported” substitute “exported” and omit “or to Member States”;

(v) in paragraph 2, omit “EU” and “Union” and for “EU006” substitute “006”;

(vi) in paragraph 3, in the words before the first un-numbered paragraph—

(aa) for “competent authorities of the Member State where he is established” substitute “Secretary of State”;

(bb) for “competent authority of the Member State where the exporter is established” substitute “Secretary of State”;

(cc) omit the words from “Member States shall” to Union”;

(vii) in paragraph 3, in the first un-numbered paragraph—

(aa) for “Member State from which the export is made” substitute “Secretary of State”;

(bb) for “Member States” substitute “the Secretary of State”;

(viii) in paragraph 3, in the second un-numbered paragraph—

(aa) for “A Member State” substitute “The Secretary of State”;

(bb) omit “established in that Member State”;

(cc) for “competent authorities” substitute “Secretary of State”;

(ix) in paragraph 3, in the third un-numbered paragraph, from “those Member States” to the end, substitute “the Secretary of State”.

(29) In Annex IIIa (model export authorisation forms)—

(a) in the first paragraph, for “Member States”, substitute “Secretary of State”;

(b) omit the second paragraph;

(c) in the header to the model form and in the header to attachment to the model form 1bis, in both places it occurs, omit “EUROPEAN COMMUNITY”;

(d) omit entry 11;

(e) omit entry 12;

(f) in the box following entry 22 to the model form, for "At discretion of Member States", substitute "At discretion of the Secretary of State"; and

(g) in entry 27 to the model form, for "Member state, name" substitute "Name".

(30) In Annex IIIb (model brokering services authorisation forms)—

(a) in the header to the model form, omit "EUROPEAN COMMUNITY";

(b) omit entry 8;

(c) in the box following entry 19 to the model form, for "At discretion of Member States", substitute "At discretion of the Secretary of State".

(31) In Annex IIIc (common elements of authorisations for publication)—

(a) in the heading—

(i) omit "GENERAL";

(ii) omit "IN NATIONAL OFFICIAL JOURNALS";

(b) omit paragraph 3.

(32) Omit Annex IV (list referred to in Article 22(1) for intra-Community transfers).

Amendment of Regulation (EU) No 258/2012

4.—(1) Regulation (EU) No 258/2012 of 14 March 2012 of the European Parliament and of the Council implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition is amended as follows.

(2) In Article 2 (definitions)—

(a) in point (4) (definition of 'ammunition'), for "relevant Member State" substitute "United Kingdom";

(b) in point (5) (definition of 'deactivated firearms') in the second paragraph, for "Member States" in both places substitute "The Secretary of State" and omit "by a competent authority";

(c) for point (6) substitute—

"(6) "export" means any departure of goods from the United Kingdom, including shipment as stores, to a destination outside of the United Kingdom or the Isle of Man;";

(d) omit point (7) (definition of "person");

(e) in point (8) (definition of "exporter")—

(i) in the first paragraph—

(aa) after "any person," insert "resident or";

(bb) for "Union", in the first place it occurs, substitute "United Kingdom"; and

(cc) for "customs territory of the Union", in the first place it occurs, substitute "United Kingdom to a destination outside of the United Kingdom and the Isle of Man. If no export declaration has been made, the exporter is the person who holds the contract with the consignee in the third country and has power for determining the sending of the item out of the United Kingdom to a destination outside of the United Kingdom and the Isle of Man.";

(dd) for "customs territory of the Union" in the second place it occurs, substitute "United Kingdom to a destination outside of the United Kingdom and the Isle of Man";

(ii) in the second paragraph, for "Union", in both places it occurs, substitute "United Kingdom";

(f) omit point (9) (definition of "customs territory of the Union");

(g) in point (10) (definition of "export declaration"), for "place" substitute "export" and omit "under an export procedure";

(h) in point (11) (definition of "temporary export"), for "customs territory of the Union" substitute "the United Kingdom to a destination outside of the United Kingdom and the Isle of Man";

(i) after point (11) insert—

"(11a) "third country" means any country or territory outside of the United Kingdom and the Isle of Man;";

(j) in point (12) (definition of "transit"), for "customs territory of the Union" substitute "United Kingdom";

(k) in point (13) (definition of "transhipment"), for "re-exportation" substitute "exportation";

(l) in point (15) (definition of "illicit trafficking")—

(i) in the words before point (a), for "one Member State" substitute "the United Kingdom";

(ii) in point (a), for "Member State concerned" substitute "Secretary of State";

(iii) omit point (c);

(m) in point (16) (definition of "tracing"), for "Member States" substitute "United Kingdom".

(3) In Article 3 (exclusions)—

(a) in paragraph 1(c), for "Member States" substitute "United Kingdom";

(b) in paragraph 1(d), for "Member State in whose territory they are established" substitute "Secretary of State".

(4) In Article 4 (export authorisations)—

(a) in paragraph 1 for "competent authorities of the Member State where the exporter is established" substitute "Secretary of State";

(b) in paragraph 2—

(i) for "Common Position 2008/944/CFSP" substitute "the Export Control Order 2008(**a**)";

(ii) for "Member States" substitute "the Secretary of State";

(iii) for "them" substitute "the Secretary of State";

(iv) for "Common Position" substitute "Order";

(c) omit paragraph 3.

(5) For Article 5 (power to amend Annex I) substitute—

"1. The Secretary of State may by regulations amend Annex I.

2. Regulations under this Article are to be made by statutory instrument.

3. Regulations under this Article:

(a) may make different provision with respect to different cases or descriptions of case;

(b) may include—

(i) incidental, supplementary or consequential provision;

(ii) transitional, transitory or saving provision.

4. A statutory instrument containing regulations under this Article is subject to annulment in pursuance of a resolution in either House of Parliament.".

(6) Omit Article 6 (conditions relating to the Commission's power to adopt delegated acts).

(**a**) S.I. 2008/3231.

(7) In Article 7 (requirements prior to issuing export authorisations)—

(a) in paragraph 1, in the words before point (a), for "Member State concerned" substitute "Secretary of State";

(b) in paragraph 2, for "Member States" substitute "The Secretary of State";

(c) in paragraph 3, for "competent authority of the Member State responsible for issuing the export authorisation" substitute "Secretary of State";

(d) in paragraph 4—

(i) for "Member States" substitute "The Secretary of State" and for "competent authorities" substitute "Secretary of State";

(ii) omit "to be determined by national law or practice,";

(e) omit paragraph 6.

(8) In Article 9 (temporary export)—

(a) in paragraph 1, in the words before point (a), omit "or the re-export";

(b) in paragraph 1(a)(i), for "competent authorities" substitute "Secretary of State";

(c) in paragraph 1(a)(ii)—

(i) for "re-export" substitute "export";

(ii) for "customs territory of the Union" substitute "United Kingdom or the Isle of Man";

(iii) for "re-exported" substitute "exported";

(d) omit paragraph 1(b);

(e) in paragraph 1(c)—

(i) for "competent authorities of a Member State" substitute "Secretary of State";

(ii) for "customs territory of the Union through that Member State" substitute "United Kingdom";

(f) in paragraph 2, in the words before point (a), for "Member States" substitute "The Secretary of State" and omit ", in accordance with national law,";

(g) in paragraph 2(a)—

(i) for "re-export" substitute "export";

(ii) For "re-exported" substitute "exported";

(iii) for "customs territory of the Union" substitute "United Kingdom or the Isle of Man";

(h) in paragraph 2(b)—

(i) for "re-export" substitute "export";

(ii) for "customs territory of the Union" substitute "United Kingdom or the Isle of Man";

(9) In Article 10 (decision as to whether to grant an export authorisation)—

(a) in paragraph 1, in the words before point (a), for "Member States" substitute "the Secretary of State";

(b) in paragraph 1(a), for "their" substitute "the United Kingdom's";

(c) in paragraph 1(b) for the words from "covered" to the end substitute "contained within guidance made under section 9 of the Export Control Act 2002";

(d) in paragraph 2—

(i) in both paragraphs, for "Member States" substitute "the Secretary of State";

(ii) in the second paragraph, omit "decisions adopted by the Council or by".

(10) In Article 11 (refusal, revocation etc. of an export authorisation)—

(a) in paragraph 1, in the words before point (a), for "Member States" substitute "The Secretary of State";

(b) in paragraph 1(a), for the words beginning with "listed in Article 2(2) to the end of the paragraph substitute "punishable by a term of imprisonment of not less than four years";

(c) after paragraph 1(b), omit "This paragraph is without prejudice to stricter rules under national legislation";

(d) omit the remainder of the Article.

(11) In Article 12 (retention of information) for "In accordance with their national law or practice in force, Member States" substitute "The Secretary of State".

(12) In Article 13 (requests from third countries)—

(a) in paragraph 1 for "Member States" substitute "The Secretary of State";

(b) in paragraph 2—

(i) for "Member States" substitute "the Secretary of State";

(ii) for "customs territory of the Union" substitute "United Kingdom";

(c) omit paragraph 3.

(13) In Article 14 (verification of authorisation procedures)—

(a) for "Member States" substitute "The Secretary of State";

(b) for "their" substitute "the United Kingdom's".

(14) In Article 15 (measures to ensure proper application of Regulation)—

(a) for "Member States" substitute "the Secretary of State";

(b) omit "to enable their competent authorities".

(15) Omit Articles 16, 18, 19, 20 and 21.

(16) In Article 17 (customs formalities)—

(a) omit paragraph 2;

(b) in paragraph 3—

(i) for "Regulation (EEC) No 2913/92" substitute "Regulation (EU) No 952/2013";

(ii) for "Member States" substitute "the Secretary of State";

(iii) for "their territory" substitute "the United Kingdom";

(iv) omit the words beginning with "or, if necessary" and ending with "the customs territory of the Union through their territory";

(v) for "they have" substitute "the Secretary of State has";

(c) in paragraph 4, for "Member States" substitute "the Secretary of State".

(17) Omit Article 22 (entering into force of Regulation).

(18) In Annex I, in the table, for "CN CODE" substitute "Commodity Code".

(19) In Annex II—

(a) omit the two un-numbered sentences before the model form;

(b) in the form—

(i) in the header to the model form, omit "European Union";

(ii) omit entry 12;

(iii) in the box following entry 20, for "At discretion of Member States", substitute "At discretion of the Secretary of State".

PART 4

Transitional provisions

Transitional provision relating to Council Regulation (EC) No 428/2009

5.—(1) A pre-exit global export authorisation which had effect immediately before exit day continues to have effect on and after exit day as if it were a retained global export authorisation.

(2) A person registered to use a Union general export authorisation immediately before exit day is to be treated on and after exit day as being registered to use the corresponding retained general export authorisation.

(3) A person registered to use a pre-exit national general export authorisation immediately before exit day is treated on and after exit day as being registered to use a retained national general export authorisation.

(4) A pre-exit authorisation for brokering services which had effect immediately before exit day continues to have effect on and after exit day as if it were a retained authorisation for brokering services.

(5) A pre-exit individual export authorisation which had effect immediately before exit day continues to have effect on and after exit day as if it were a retained individual export authorisation.

(6) An application for an authorisation for a pre-exit individual export authorisation or a pre-exit global export authorisation which is made but not determined or withdrawn before exit day is to be treated on and after exit day as an application for a retained individual export authorisation or, as the case may be, a retained global export authorisation.

(7) Where a person's appeal under article 33(5) of the Export Control Order 2008 against a decision of the Secretary of State to suspend, revoke, amend or not grant a relevant pre-exit export authorisation is decided in favour of the person on or after exit day, the relevant pre-exit export authorisation has effect from the time at which the appeal was decided as if it were the corresponding retained export authorisation.

(8) In this regulation—

"corresponding retained export authorisation" means—

(a) in relation to a pre-exit individual export authorisation, a retained individual export authorisation; and

(b) in relation to a pre-exit global export authorisation, a retained global export authorisation;

"EU Dual-Use Regulation" means Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transfer, brokering and transit of dual-use items as it had effect immediately before exit day;

"pre-exit authorisation for brokering services" means an authorisation granted by the Secretary of State before exit day under Article 10 of the EU Dual-Use Regulation;

"pre-exit global export authorisation" means an export authorisation within the meaning given by Article 2(10) of the EU Dual-Use Regulation granted by the Secretary of State before exit day under article 26(4) of the Export Control Order 2008;

"pre-exit individual export authorisation" means an export authorisation within the meaning given by Article 2(10) of the EU Dual-Use Regulation granted by the Secretary of State before exit day under article 26(4) of the Export Control Order 2008;

"pre-exit national general export authorisation" means an export authorisation within the meaning given by Article 2(11) of the EU Dual-Use Regulation granted by the Secretary of State before exit day under article 26(4) of the Export Control Order 2008;

"relevant pre-exit export authorisation" means a pre-exit individual export authorisation or a pre-exit global export authorisation;

"retained Dual-Use Regulation" means Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transfer,

brokering and transit of dual-use items as forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018;

"retained general export authorisation" means an export authorisation established under Article 9(1) of the retained Dual-Use Regulation;

"retained global export authorisation" means an export authorisation by Article 2(10) of the retained Dual-Use Regulation granted by the Secretary of State on or after exit day under article 26(4) of the Export Control Order 2008;

"retained individual export authorisation" means an export authorisation within the meaning given by Article 2(10) of the retained Dual-Use Regulation granted by the Secretary of State on or after exit day under article 26(4) of the Export Control Order 2008;

"retained national general export authorisation" means an export authorisation within the meaning given by Article 2(11) of the retained Dual-Use Regulation granted by the Secretary of State on or after exit day under article 26(4) of the Export Control Order 2008;

"Union general export authorisation" means an export authorisation established under Article 9(1) of the EU Dual-Use Regulation.

Transitional provision relating to Regulation (EU) No 258/2012

6.—(1) A pre-exit firearms export authorisation which had effect immediately before exit day continues to have effect on and after exit day as if it were a retained firearms export authorisation.

(2) An application for a pre-exit firearms export authorisation which is made but not determined or withdrawn before exit day is to be treated on and after exit day as an application for a retained firearms export authorisation.

(3) In this regulation—

"EU Firearms Regulation" means Regulation (EU) No 258/2012 of 14 March 2012 of the European Parliament and of the Council implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition as it had effect immediately before exit day;

"pre-exit firearms export authorisation" means an export authorisation within the meaning given by Article 2(14) of the EU Firearms Regulation granted by the Secretary of State before exit day under Article 4 of the EU Firearms Regulation;

"retained firearms export authorisation" means an export authorisation within the meaning given by Article 2(14) of the retained Firearms Regulation granted by the Secretary of State on or after exit day under Article 4 of the EU Firearms Regulation;

"retained Firearms Regulation" means Regulation (EU) No 258/2012 of 14 March 2012 of the European Parliament and of the Council implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2008.

Name
Title
Date Department for International Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (b), (c), (d) and (g) of subsection (2)) arising from the withdrawal of the United Kingdom from the European Union.

Regulation 2 amends primary legislation. In particular regulation 2 amends and omits provisions of the Export Control Act 2002 (c.28) which will have no practical application once the United Kingdom has withdrawn from the EU. Regulation 2(2) omits the power to make provision in connection with any controls that may be imposed by a directly applicable EU provision on the exportation of goods. Regulation 2(3) omits the power to make provision in connection with any controls that may be imposed by a directly applicable EU provision on the transfer of technology. Regulation 2(4) omits the power to make provision in connection with technical assistance controls that may be imposed by a directly applicable EU provision. Regulation 2(5) omits the power to make provision in connection with trade controls that may be imposed by a directly applicable EU provision. Section 5 of the Export Control Act 2002 provides that there are no restrictions on the kinds of controls that may be imposed to give effect to international obligations and Regulation 2(6) makes amendments to remove obligations arising from the United Kingdom's membership of the EU from the scope of international obligations in this context.

Part 3 amends retained EU legislation. Regulation 3 makes amendments in relation to the control of exports, transfer, brokering and transit of "dual-use" items. Dual-use items are items which can be used for both civil and military purposes. In particular this regulation amends Council Regulation (EC) No 428/2009 of 5 May 2009, which set up a Community regime for the control of exports, transfer, brokering and transfer, brokering and transit of dual-use items.

Regulation 4 makes amendments in relation to the illicit trafficking of firearms and in particular amends Regulation (EU) No 258/2012 of the European Parliament and of the Council implementing Article 10 of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

Part 4 makes transitional provision. Regulation 5 does so in relation to Council Regulation (EC) No 428/2009 of 5 May 2009 and regulation 6 does so in relation to Regulation (EU) No 258/2012.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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