EXPLANATORY MEMORANDUM TO

THE TRADE ETC. IN DUAL-USE ITEMS, FIREARMS AND TORTURE ETC GOODS (AMENDMENT) (EU EXIT) REGULATION 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 These Regulations are made to address inoperabilities and deficiencies of retained EU law arising from the withdrawal of the United Kingdom from the EU and to ensure EU-derived domestic export control legislation operates effectively post-exit.

2.2 Explanations

What did any relevant EU law do before exit day?

The Regulations amend provisions in the following domestic legislation:

The Export Control Act 2002 is primary legislation central to promoting global security through strategic export controls and facilitating responsible exporting. It provides the Secretary of State with powers to impose: export controls on goods, transfer controls in relation to technology, controls on technical assistance and trade controls on goods of any description.

The Regulations amend provisions in the following retained EU legislation:

Council Regulation (EC) No 1236/2005 of 27 June 2005, (the Torture Goods Regulation) concerns trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. This includes a ban on the export and import of equipment that could only be used for torture or capital punishment and a ban on related technical assistance. There are also provisions to make licensable the export of equipment which could be used for torture, but which also has legitimate applications.

Council Regulation (EC) No 428/2009 of 5 May 2009, (the Dual-Use Regulation) set up a Community regime for the control of exports, transfer, brokering and transfer, brokering and transit of dual-use items. Dual-use items are goods, software, technology, documents and diagrams which can be used for both civil and military applications. They can range from raw materials to components and complete systems, such as aluminium alloys, bearings, or lasers. They could also be items used in the production or development of military goods, such as machine tools, chemical manufacturing equipment and computers. The regulation requires export authorisations to export a dual-use item from the EU to a non-EU country.

Regulation (EU) No 258/2012 of the European Parliament and of the Council (the Firearms Regulation) lays down rules on exporting, importing and transporting firearms, their parts and components, and ammunition and therefore implements Article 10 of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The Regulation

sets out a list of firearms, their parts and components, and the ammunition that require export authorisation. When exporting firearms, their parts and ammunition outside the EU, an exporter must provide the relevant authority in its own EU country with authorisation from the non-EU country receiving the shipment, and from any non-EU countries through which the shipment will pass.

Why is it being changed?

EU law retained on exit day will contain deficiencies arising out of the UK's exit from the EU which need to be corrected for the law to continue to function effectively. The changes are being made because the provisions either relate to reciprocal arrangements or are otherwise redundant upon exit from the EU. There are also amendments to references to EU instruments which are no longer appropriate.

What will it now do?

After EU exit the legislation will enable the Secretary of State to control the export from the UK of strategic items, control the brokering of strategic items, and to control the provision of technical assistance related to the goods and technology.

As far as possible the legislation will operate as it does now, but controls on the following items will apply when they are exported from the UK, rather than from the EU:

- goods which could be used for capital punishment or torture:
- goods, software, technology, documents and diagrams which can be used for both civil and military applications: and
- firearms, their parts and components, and ammunition.

The correct operation of the amendments made by this instrument is dependent on the making of the Customs Tariff (Establishment) (EU Exit) Regulations 2019.

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 and Northern Ireland.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Investment, Graham Stuart has made the following statement regarding Human Rights:

"In my view the provisions of the Trade etc in Dual-Use Items, Firearms and Torture etc Goods (Amendment) (EU Exit) Regulation 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 These regulations are made to address inoperabilities and deficiencies of retained EU and domestic law arising from the withdrawal on the United Kingdom from the EU.

6.2 The export control regime is made up of six pieces of legislation. Three are domestic (the Export Control Act 2002, the Export Control Order 2008 and Radioactive Sources (Control) Order 2006). Three are EU Regulations (the Torture Regulation, the Dual-Use Regulation and the Firearms Regulation). All require amendment if they are to function after EU exit.

6.3 The Export Control Act 2002 and the three EU regulations are amended by this affirmative procedure instrument. The Export Control Order 2008 and the Radioactive Sources (Control) Order 2006 are amended by the Export Control (Amendment) (EU Exit) Regulations 2019, which is a negative procedure instrument.

7. Policy background

What is being done and why?

7.1 It is necessary to amend domestic and directly applicable EU legislation for it to continue to function after EU exit. This instrument amends primary domestic legislation and three retained EU Regulations to prevent, remedy or mitigate deficiencies arising from withdrawal.

7.2 Regulation 2 omits provisions of the Export Control Act 2002 which will have no practical application once the United Kingdom has withdrawn from the EU.

7.3 Regulation 3 makes amendments to the retained EU Regulation governing trade with countries in goods that could be used for capital punishment or torture etc. by amending Council Regulation (EC) No 1236/2005 of 27 June 2005.

7.4 Regulation 4 makes amendments to the retained EU Regulation governing exports, transfer, brokering and transit of "dual-use" items. Dual-use items can be used for both civil and military purposes.

7.5 Regulation 5 makes amendments to the retained EU regulation governing the export, import and transport of firearms, their parts and components, and ammunition.

7.6 The changes are made to ensure that these rules operate as UK rules after withdrawal, e.g. references to the supply of such goods and associated services to non-EU countries become references to the supply of such goods and associated services to all other countries; types of EU proforma licences are adjusted to become types of UK licence; powers on the part of the European Commission, to make EU legislation to amend relevant annexes to bring goods within scope of the Regulation, become powers for the Secretary of State to amend these annexes by domestic secondary legislation; and Member State notification requirements are omitted.

7.7 Regulations 6, 7 and 8 make transitional provision in relation to Council Regulation (EC) No 1236/2005 of 27 June 2005, Council Regulation (EC) No 428/2009 of 5 May 2009 and Regulation (EU) No 258/2012. These provisions ensure that export authorisation granted by the Secretary of State before exit day and which are in effect immediately before exit day continue to have effect after exit day. The transitional provisions also ensure that undetermined applications for export authorisations are treated as applications for the equivalent post-exit export authorisations and that an

export authorisation in relation to which an appeal made before exit day is successful after exit day has effect as if it is the equivalent post-exit authorisation.

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

8.1 This instrument is being made using the power in section 8 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 European Union. 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 There are currently no plans to consolidate the legislation being amended by this statutory instrument.

10. Consultation outcome

10.1 This instrument provides for the technical amendment of deficiencies arising from withdrawal from the EU and the continued operation of the legislation being amended after the UK exits the EU. No consultation was necessary.

11. Guidance

11.1 The Government has published a technical notice to inform stakeholders how export controls would be affected if the UK leaves the EU with no deal. Further guidance will be published ahead of this legislation coming into force if the UK leaves the EU with no deal.

12. Impact

12.1 The impact on business, charities or voluntary bodies is a new requirement for dual-use export licences to the EU which will be mitigated for many exporters by an easily obtainable open general export licence, available for immediate use following registration.

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 it has no significant impact on the private or voluntary sector.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is only to make changes required to prevent, remedy or mitigate deficiencies arising from the withdrawal of the United Kingdom from the EU.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to closely monitor any representations that are received. Any issues that are raised will be fully investigated with a view to finding an acceptable solution.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required in relation to the provisions made under the EU (Withdrawal) Act 2018.

15. Contact

15.1 Peter Monday at the Department for International Trade (Telephone: 0207 215 8810 or email: peter.monday@trade.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Edward Bell at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Investment 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 clauses 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/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 clauses 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 clauses 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 77	Ministers of the Crown exercising clauses 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 clauses 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 clauses 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, Sch 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 European Union (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 European Union (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 The Minister for Investment, Graham Stuart has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Trade etc in Dual-Use Items, Firearms and Torture etc. Goods (Amendment) (EU Exit) Regulations 2019 does 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."

2. Good reasons

2.1 The Minister for Investment, Graham Stuart 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. 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 The Minister for Investment, Graham Stuart has made the following statement:

"The 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."

3.2 The Minister for Investment, Graham Stuart has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.3 "In relation to the draft instrument, I, Graham Stuart have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.