EXPLANATORY MEMORANDUM TO

THE LAW ENFORCEMENT AND SECURITY (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1371

1. Introduction

1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument will ensure that Northern Ireland will continue to implement EU law required by the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement ("the Protocol") relating to explosives precursors and firearms.

Explanations

What did any relevant EU law do before exit day?

2.2 The UK currently participates in certain security related EU Regulatory systems, including Regulation EU No 98/2013 on the marketing and use of explosives precursors (the "Precursors Regulation") and Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons ("the Firearms Directive").

Why is it being changed?

2.3 The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (the "LENS Regulations") made amendments in order to address deficiencies resulting from EU Exit. This instrument addresses the amendments made by the LENS Regulations to ensure that the Protocol is properly implemented and that the domestic statute book is consistent.

What will it now do?

2.4 In relation to explosives precursors, the LENS Regulations made amendments to ensure that the existing regulatory regime continues to operate in substantially the same manner as before exit day, while adjusting terminology which assumes that the UK is an EU Member State. This instrument maintains that position but makes amendments reflecting that the Precursors Regulation will apply in relation to Northern Ireland.

2.5 In relation to firearms, this instrument revokes (before they come into force) amendments made to the Firearms (Northern Ireland) Order 2004 ("the 2004 Order") in the LENS Regulations, to ensure that Northern Ireland can continue to implement the Firearms Directive. This instrument also makes amendments to the 2004 Order and to Commission Implementing Regulation (EU) No 2015/2403 in consequence of the continued application of the Firearms Directive in Northern Ireland.

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 Northern Ireland.

3.3 The instrument makes amendments to the Control of Explosives Precursors etc. Regulations (Northern Ireland) 2014 (the 2014 Regulations) and the 2004 Order, both of which apply to Northern Ireland. The instrument also omits amendments to retained law which were intended to apply to Northern Ireland. However, the retained EU law is incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 save insofar as it applies to Northern Ireland for the purpose of the Protocol. Accordingly, the provisions of this instrument which omit provisions of the LENS Regulations will be of no practical application in 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 set out in Section 3 under "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)".

4.3 The instrument makes amendments to the Regulations and the 2004 Order, both of which extend to Northern Ireland. The instrument also omits from the LENS Regulations amendments made to retained EU law which have UK-wide extent.

5. European Convention on Human Rights

5.1 The Secretary of State for Northern Ireland has made the following statement regarding Human Rights:

"In my view the provisions of the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The European Union (Withdrawal Act) 2018 ("EUWA") ensures that the UK has a functioning statute book on exit day. The Act ends the supremacy of EU law in UK law, retains EU law (as it stands at exit) into domestic law, and preserves laws made in the UK to implement EU obligations.

6.2 The Act created temporary powers to make secondary legislation, including the power in section 8, which enables corrections to be made to legislation that would otherwise fail to operate effectively or other legislative deficiencies arising from the withdrawal of the UK from the EU. Using the power in section 8, the LENS Regulations addressed deficiencies relating to certain security-related EU regulatory systems.

6.3 Section 7A of EUWA implements the Withdrawal Agreement, including the Protocol. Section 7A provides that rights, powers, obligations, remedies etc as they arise or are created from time to time in the Withdrawal Agreement are given legal effect in the UK legal system.

6.4 Paragraph 4 of Article 5 to the Protocol provides that the provisions of EU law listed in Annex 2 to the Protocol shall also apply to and in the UK in respect of Northern Ireland. Accordingly, certain EU law, (including the Precursors Regulation) will apply directly.

6.5 The LENS Regulations made amendments to retained EU law (i.e. to the snapshot of EU law brought into domestic law by section 3 of EUWA) including to the Precursors Regulation. However, to the extent that legislation listed in Annex 2 to the Protocol has effect by virtue of section 7A of EUWA, it is not retained EU law. Accordingly, the amendments made to the Precursors Regulation in relation to Northern Ireland do not have any effect.

6.6 The LENS Regulations also made a number of amendments to firearms legislation which extends to Northern Ireland, in order to prepare for the UK's withdrawal from the EU. Paragraph 4 of Article 5 to the Protocol provides that the provisions of EU law listed in Annex 2 to the Protocol, including the Firearms Directive, apply to and in the UK in respect of Northern Ireland.

6.7 The Firearms Directive sets out certain minimum conditions for the circulation of civil firearms and makes provision for the issue of a European Firearms Pass (EFP). The 2004 Order transposed the Firearms Directive into domestic law in Northern Ireland.

6.8 This instrument is being introduced pursuant to powers contained in the Withdrawal Act to ensure that the 2004 Order will continue to function appropriately in respect of Northern Ireland following the transition period.

7. Policy background

What is being done and why?

7.1 The Firearms Directive and the Precursors Regulation are listed in Annex 2 to the Protocol and will continue to apply in Northern Ireland. The purpose of this instrument is to assist in ensuring that the UK meets its international obligations under the Protocol by continuing to comply with this EU law in and in relation to Northern Ireland.

7.2 The Precursors Regulation provides that Member States may maintain a licensing regime allowing for explosives precursors to be acquired, imported, possessed or used by the public (paragraph 2 of Article 4) and that authorities may recognise licenses issued in another Member State (paragraph 6 of Article 7). Under the Northern Ireland regime, provided for in the 2014 Regulations, for that regime to fully reflect the Precursors Regulation, it will not be possible for licenses to be issued under Great Britain legislation to be recognised. That is because they will not, following EU Exit, be licenses issued in an EU Member State.

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

8.1 This instrument is made using powers under section 8C of the European Union (Withdrawal) Act 2018

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A public consultation was not carried out for this instrument. The Government did not carry out a public consultation as the provisions of the instrument are limited to making the changes necessary to ensure the implementation of the Protocol.

10.2 Firearms is a devolved matter in Northern Ireland, responsibility for which lies with the Northern Ireland Justice Minister. The Northern Ireland Justice Minister has provided consent for the UK Government to introduce this instrument in order to ensure implementation of the Protocol.

11. Guidance

11.1 Guidance on both the Protocol and the Great Britain explosives precursors regimes are available on the GOV.UK website.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is likely to be small. As a result of this instrument, individuals in Great Britain holding a licence for acquiring, importing, possessing or using certain explosives precursors will no longer be able to rely on that licence in Northern Ireland. They will have to obtain a separate Northern Ireland licence from the Northern Ireland Office.

12.3 An Impact Assessment has not been prepared for this instrument because it is required to implement existing policy (the Protocol).

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it is to be monitored in the course of normal departmental business.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Joanne Doherty at the Northern Ireland Office Telephone: 07870363426 or email: joanne.doherty@nio.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rebecca Nugent, Deputy Director for Protocol and Free Trade Agreement Group, at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Northern Ireland can confirm that this Explanatory Memorandum meets the required standard.