

2018 No. 0000

EXITING THE EUROPEAN UNION

CUSTOMS

The Export Control (Amendment) (EU Exit) Regulations 2019

Sift requirements satisfied *****
Made - - - - *****
Laid before Parliament *****
Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 1(5) and 2(5) of the Export Control Act 2002(a) and section 8(1) of the European Union (Withdrawal) Act 2018(b).

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Export Control (Amendment) (EU Exit) Regulations 2019 and save for regulation 5(31) come into force on exit day.
2. Regulation 5(31) comes into force on [1st March 2019].

PART 2

Amendment of subordinate legislation

Amendment of the Export of Radioactive Sources (Control) Order 2006

- 3.—(1) The Export of Radioactive Sources (Control) Order 2006(c) is amended as follows.
(2) In article 5 (Licences), in paragraph (3)–

(a) 2002 c. 28.
(b) 2018 c. 16.
(c) S.I. 2006/1846, amended by S.I. 2011/1043; there is another amending instrument, but it is not relevant.

- (a) in the words before sub-paragraph (a), omit “to any destination outside the European Union”;
 - (b) in sub-paragraph (b) for “established within the European Union” in each place these words occur, substitute “established in the United Kingdom”;
 - (c) in sub-sub-paragraph (bb) omit “from the European Union”.
- (3) In article 13 (Use and disclosure of information), in paragraph (2)(b), omit “European Union or other”.

Amendment of the Export Control Order 2008

- 4.**—(1) The Export Control Order 2008(a) is amended as follows.
- (2) In article 2(1) (Interpretation)—
- (a) omit the definitions of:
 - (i) “certificate”;
 - (ii) “competent authority”;
 - (iii) “the customs territory”;
 - (iv) “the defence-related products Directive”;
 - (v) “European military items”;
 - (vi) “the firearms Directive”;
 - (vii) “non-community goods”;
 - (viii) “the Union General Export Authorisation”; and
 - (b) before the definition of “scheduled journey” insert ““retained general export authorisation” has the same meaning as in Article 2(9) of the dual-use Regulation;”
- (3) In article 2A (Crown application) omit paragraphs 1(c) and 1(e).
- (4) In article 6 (WMD purposes end-use control supplementing the dual-use Regulation), for “customs territory” substitute “United Kingdom”.
- (5) Omit article 7 (Control on transfers within the customs territory supplementing the dual-use Regulation).
- (6) In article 8 (Transit controls supplementing the dual-use Regulation)—
- (a) for paragraph (1) substitute—

“(1) Subject to articles 17 and 26, no person shall export goods listed in Annex I to the dual-use Regulation where the goods in question are entering and passing through the United Kingdom with a final destination outside the United Kingdom and the Isle of Man.”;
 - (b) in paragraph (2) subsection (a), for “a competent authority”, substitute “the Secretary of State”;
 - (c) in paragraph (2), after the semi-colon at the end of subsection (b), substitute—

“(2) and the dual-use goods in question are goods which are not listed in Annex I to the dual-use Regulation and which are entering and passing through the United Kingdom with a final destination outside the United Kingdom and the Isle of Man.”.
- (7) Omit article 9.
- (8) In article 10 (Transfers within the United Kingdom for WMD purposes) substitute references to “customs territory” with “United Kingdom”.
- (9) In the heading to article 11 for “customs territory” substitute “United Kingdom”.
- (10) In article 11 (Transfers from outside the customs territory for WMD purposes)—

(a) S.I. 2008/3231 as amended.

- (a) in paragraph (1) sub-paragraph (a), for “a competent authority”, substitute “the Secretary of State”;
 - (b) in paragraph (2) substitute references to “customs territory” with “United Kingdom”.
- (11) In article 12 (Transfers by non-electronic means from the United Kingdom for WMD purposes, substitute paragraph (2) with “Subject to articles 18 and 26, the transferor shall not transfer the software or technology in question by non-electronic means to a destination outside the United Kingdom.”
- (12) Omit article 15 (Exception for firearms – European firearms pass).
- (13) Omit article 16 (Exception for firearms – firearm or shot gun certificate or permit).
- (14) In article 17 (Transit or transshipment exception)—
- (a) in paragraph (1)—
 - (i) omit “, 7”;
 - (ii) for “conditions in paragraph (4) are met” substitute “condition in paragraph (4) is met”;
 - (b) in paragraph (3)(a), for “a competent authority”, substitute “the Secretary of State”;
 - (c) for paragraph (4), substitute—

“(4) The condition is that the goods in question remain on board a vessel, aircraft or vehicle for the entire period that they remain in the United Kingdom or are goods on a through bill of lading, through the air waybill or single transport contract and in any event are exported before the end of the period of 30 days beginning with the date of their importation.”.
- (15) In article 19 (End-use control on technical assistance), for each reference to “customs territory”, substitute “United Kingdom”.
- (16) Omit article 24 (Exception for movement of goods within the customs territory).
- (17) In article 26 (Licences) omit paragraph (5).
- (18) In article 27(1) (Person authorised by UK licence to export goods)—
- (a) substitute references to “customs territory” with “United Kingdom”; and
 - (b) in sub-paragraph (a) after “on whose behalf the export declaration is made” insert “, where an export declaration is required,”.
- (19) In article 28(1)(b) (Registration with the Secretary of State), substitute “Union General Export Authorisation” with “retained general export authorisation”.
- (20) Omit article 28A (Certificates (European military items))(a).
- (21) In article 29 (Record keeping – general)—
- (a) in paragraph 1—
 - (i) in sub-paragraph (b)—
 - (aa) substitute “Union General Export Authorisation” with “retained general export authorisation”;
 - (bb) after “Kingdom” insert “.”;
 - (cc) omit “; and”;
 - (ii) omit sub-paragraph (c);
 - (b) omit paragraph 4.
- (22) In article 31 (Inspection of records)—

(a) Article 28A was added by S.I. 2012/1910 which also inserted definitions of “defence-related products Directive” and “European military items” in connection with the implementation of Directive 2009/43/EC to the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community.

- (a) in paragraph (1) omit “or 22(8) (records of exportation and transfer of listed items within the customs territory)”;
 - (b) in paragraph (2) sub-paragraph (b) omit “or 22(8)”.
- (23) Omit article 33A (Certificates: refusals, etc. and appeals).
- (24) In article 35 (Offences relating to prohibitions and restrictions in the dual-use Regulation)—
- (a) in paragraph (1), omit “or 22(1) (exportation or transfer of sensitive items within the customs territory)”;
 - (b) in paragraph 2, for “competent authority” substitute “the Secretary of State”;
 - (c) in paragraph (4), omit “or 22(1)”;
 - (d) in paragraph (7), after “Article 20 (record-keeping)” omit “, 22(8) (records of exportation and transfer of listed items within the customs territory) or 22(10) (requirement in relation to commercial documents for exportation and transfer of listed items within the customs territory)”.
- (25) Omit “or certificates” from the heading to Article 37 (Misleading applications for licences or certificates).
- (26) In article 37, omit both occurrences of “or certificate”.
- (27) In article 38(1) (Failure to comply with licence conditions) for each reference to “Union General Export Authorisation” substitute “retained general export authorisation”.
- (28) In article 40 (Customs powers relating to dual-use goods)—
- (a) in paragraph 1—
 - (i) for “a competent authority” substitute “the Secretary of State”;
 - (ii) for “its” substitute “the Secretary of State’s”; and
 - (b) in paragraph 2—
 - (i) for “customs territory” substitute “United Kingdom”;
 - (ii) at the end of sub-paragraph (b) omit from “,” to “licence”.
- (29) In article 43 (Use and disclosure of information)—
- (a) for paragraph 1(b), substitute—

“(b) so far as not contained within this Order, any provision of retained EU law on the export of goods, the transfer of software or technology, participation in the provision of technical assistance, or activities which facilitate, or are otherwise connected with, the acquisition, disposal or movement of goods.”;
 - (b) in paragraph 2(b) omit “EU provision or other”;
 - (c) after paragraph 6, insert—
 - (d) “(7) In this article “retained EU law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018.”.
- (30) Omit article 46.
- (31) In Schedule 2 (Military goods, software and technology) omit the definition of “Deactivation Regulation” and substitute with “‘Deactivation Regulation’ means Commission Implementing Regulation (EU) 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable;”(a).
- (32) In Schedule 3 (UK controlled dual-use goods, software and technology), in entry PL8001 for “the customs territory” substitute “the customs territory of the European Union”.

(a) OJ N L 333, 19.12.2015, p.62.

Amendments to Offences Orders

5.—(1) In the Export Control (Somalia) Order 2011(a) in article 1 (Citation, commencement and interpretation) in paragraph (2) in the definition of “military goods and technology”, for “Common Military List of the European Union” substitute “for the time being specified in Schedule 2 (Military goods, software and technology) to the Export Control Order 2008”(b).

(2) In the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011(c) in regulation 5 (Offences supplementing the Taliban Regulation)(d) in paragraph (1) for “the Common Military List of the European Union” substitute “for the time being specified in Schedule 2 (Military goods, software and technology) to the Export Control Order 2008”.

(3) In the Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014(e) in regulation 6 (Offences supplementing the Central African Republic Regulation)—

(a) in paragraph (a)—

(i) omit “listed in the Common Military List of the European Union” and substitute “for the time being specified in Schedule 2 (Military goods, software and technology) to the Export Control Order 2008”; and

(ii) for “included in that list” substitute “specified”.

(b) in paragraph (b) omit “listed in the Common Military List of the European Union” and substitute “for the time being specified in Schedule 2 (Military goods, software and technology) to the Export Control Order 2008”.

Signed by authority of the Secretary of State for [example].

Date

Name
Title
Department of 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 retained EU law to operate effectively and other deficiencies (in particular under paragraph (a), (c), (d) and (g) of section 8(2) of that Act) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to legislation in the field of customs and in particular in relation to export and other trade controls on military and dual-use goods (goods which have both a civilian and a military use). Part 2 amends subordinate legislation. The provisions include provisions within secondary legislation which relate to reciprocal arrangements between the UK and the EU or a Member State of the EU and contain EU references which are no longer appropriate. Upon the withdrawal of the United Kingdom from the EU, these reciprocal arrangements will no longer exist.

(a) S.I. 2011/146 as amended.

(b) S.I. 2008/3231. Schedule 2 was substituted by S.I. 2017/85 and subsequently amended by S.I. 2017/697 and S.I. 2018/165. There are other instruments which amend other parts of the Order.

(c) S.I. 2011/2649 as amended.

(d) Council Regulation (EU) 753/201, concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan as it forms part of domestic law on or after exit day by virtue of the European Union (Withdrawal) Act 2018 is amended by provision made under the Act.

(e) S.I. 2014/3258 as amended.

Regulation 3 amends provisions of the Export of Radioactive Sources (Control) Order 2006 to remove EU references which are no longer appropriate upon withdrawal of the United Kingdom from the EU.

Regulation 4 amends provisions of the Export Control Order 2008. Regulation 4(2) omits various EU related definitions which will have no practical application once the United Kingdom withdraws from the EU. Amendments are also made to remove other EU references from the Export Control Order 2008 which will no longer be appropriate once the United Kingdom has withdrawn from the EU. Regulations 4(12) and 4(13) omit provisions which relate to reciprocal arrangements concerning exceptions for the movement of firearms within the EU. In order that controls provided for by the retained EU law continue to operate effectively, regulation 4(29) makes amendments to ensure that use and disclosure of information provisions will continue to apply to retained EU law as those provisions applied to directly applicable EU provision prior to withdrawal of the United Kingdom from the EU.

Regulation 4(31) comes into force in advance of exit day to ensure a reference to an EU instrument is up to date upon exit day.

Regulation 5 amends domestic instruments which make provision for penalties and enforcement in respect of certain restrictive measures or sanctions targeted at Somalia, the Taliban, Sudan and Central African Republic laid down in various EU Regulations which will form part of domestic law after exit day as added to or otherwise modified by or under the European Union (Withdrawal) Act 2018. The domestic instruments contained references in connection with arrangements dependent upon the United Kingdom's membership of the EU namely reference to the Common Military List of the EU. These Regulations mitigate the consequent deficiencies by replacing references to the EU Common Military List with references to Schedule 2 (Military Goods, Software and Technology) of the Export Control Order 2008 to ensure operability and enforcement of the applicable sanctions measures continues.

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