

*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 were laid before Parliament on 11th February 2019 and published on 11th February 2019 (ISBN 978-0-11-118062-4). It is being issued free of charge to all known recipients of that draft 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.*

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## DRAFT STATUTORY INSTRUMENTS

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**2019 No. XXXX**

# **EXITING THE EUROPEAN UNION CUSTOMS**

## **The Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2019**

*Made* - - - - *\*\*\**

*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(1), 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.

### **Citation and commencement**

**1.** These Regulations may be cited as the Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2019 and come into force on the later of exit day or the day after the day on which they are made.

### **Amendment of Council Regulation (EU) 2019/125**

**2.—(1)** Council Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment is amended as follows.

**(2)** In Article 1 (subject matter)—

**(a)** omit “Union”;

- (b) for “third”, substitute “other”.
- (3) In Article 2 (definitions)—
- (a) in point (d) (definition of “export”)—
- (i) for “customs territory of the Union,”, substitute “United Kingdom to a destination outside of the territory of the United Kingdom,”;
- (ii) for the words from “of Regulation (EU) No 952/2013” to the end, substitute “given by section 100A(2) of the Customs and Excise Management Act 1979(2),”;
- (b) in point (e) (definition of “import”)—
- (i) for “into the customs territory of the Union,”, substitute “(excluding goods consigned from the Isle of Man) into the United Kingdom,”;
- (ii) omit “within the meaning of Regulation (EU) No 952/2013”;
- (c) for point (h), substitute—
- “(h) “competent authority” means the Secretary of State”;
- (d) in point (i) (definition of “applicant”), in point 2—
- (i) omit “customs”;
- (ii) for “Union”, substitute “United Kingdom”;
- (e) for point (j) (definition of “customs territory of the Union”), substitute—
- “(j) references to the “territory of the United Kingdom” include the Isle of Man,”;
- (f) for point (l), substitute—
- “(l) “broker” means—
- (i) any person resident or established in the United Kingdom who supplies brokering services from the United Kingdom;
- (ii) any United Kingdom national who supplies brokering services from the United Kingdom;
- (iii) any United Kingdom person who supplies brokering services from a country within the European Union;
- (iv) any person resident or established in the European Union who supplies brokering services from the United Kingdom;
- (v) any European Union national who supplies brokering services from the United Kingdom,”;
- (g) for point (m), substitute—
- “(m) “supplier of technical assistance” means—
- (i) any person resident or established in the United Kingdom who supplies technical assistance from the United Kingdom;
- (ii) any United Kingdom national who supplies technical assistance from the United Kingdom;
- (iii) any United Kingdom person who supplies technical assistance from a country within the European Union;
- (iv) any person resident or established in the European Union who supplies technical assistance from the United Kingdom;
- (v) any European Union national who supplies technical assistance from the United Kingdom,”;

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(2) 1979 c. 2. Section 100A was inserted by the Finance Act 1984 (c. 43), section 8, Schedule 4, Part 1.

(h) for point (n), substitute—

“(n) “exporter” means any person, resident or established in the United Kingdom, who makes an export declaration or on whose behalf an export declaration is made, that is to say the person who, at the time the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the territory of the United Kingdom. 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 the power for determining the sending of the item out of the United Kingdom to a destination outside of the territory of the United Kingdom. If no contract has been concluded, or if the holder of the contract does not act on its own behalf, the exporter is the person who has the power for determining the sending of the item out of the United Kingdom to a destination outside of the territory of the United Kingdom;”;

(i) for point (o), substitute—

“(o) “General Export Authorisation” means an authorisation for exports as defined under point (d) to certain countries which is available to all exporters who respect conditions and requirements for its use as listed in Annex 5”;

(j) in point (p) (definition of “individual authorisation”)—

(i) omit “customs”;

(ii) for “Union”, substitute “United Kingdom”;

(k) in point (s) (definition of “transit”)—

(i) for “customs territory of the Union” in each place that it occurs, substitute “territory of the United Kingdom”;

(ii) for “non-Union goods”, substitute “goods not in free circulation”;

(l) after point (s), insert—

“(t) “third country” means any country or territory other than the United Kingdom or the Isle of Man;

(u) “United Kingdom national” means a person who is 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(3), is a British subject or a British protected person within the meaning of that Act;

(v) “United Kingdom person” means a United Kingdom national or a person, entity or body incorporated or constituted under the law of the United Kingdom or of any part of the United Kingdom;

(w) “European Union national” means a natural person who is a national of a member State;

(x) a person is “resident or established” in the country or territory in which, in the case of a natural person, that person has their habitual residence and, in the case of any other person, that person has its registered office, central headquarters or a permanent business establishment;

(y) “permanent business establishment” has the meaning given by Article 5(32) of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.”.

(4) In Article 3 (export prohibition), in paragraph 1, in the third paragraph, for “a third country”, substitute “any country or territory outside of the United Kingdom”.

- (5) In Article 4 (import prohibition)—
- (a) in paragraph 1, in the second sub-paragraph—
    - (i) for “Union” substitute “United Kingdom”;
    - (ii) for “a third country”, substitute “any country or territory outside of the United Kingdom”;
  - (b) in paragraph 2, omit “in the Member State of destination,”.
- (6) In Article 6 (prohibition of brokering services), for “a third country”, substitute “any country or territory outside of the United Kingdom”.
- (7) In Article 7 (prohibition of training), for “a third country” substitute “any country or territory outside of the United Kingdom”.
- (8) In Article 8 (trade fairs)—
- (a) for “a Member State”, substitute “the United Kingdom”;
  - (b) for “Union”, substitute “United Kingdom”.
- (9) For Article 9 (advertising), substitute—
- “It shall be prohibited—
- (a) for any person resident or established in the United Kingdom who sells or purchases advertising space or advertising time from within the United Kingdom;
  - (b) for any United Kingdom national who sells or purchases advertising space or advertising time from within the United Kingdom;
  - (c) for any United Kingdom person who sells or purchases advertising space or advertising time from a country within the European Union;
  - (d) for any person resident or established in the European Union who sells or purchases advertising space or advertising time from within the United Kingdom; and
  - (e) for any European Union national who sells or purchases advertising space or advertising time from within the United Kingdom,
- to sell to or to purchase from any person in any country or territory outside of the United Kingdom advertising space in print media or on the internet or advertising time on television or radio in relation to goods listed in Annex 2.”.
- (10) Omit Article 10 (national measures).
- (11) In Article 11 (export authorisation requirement)—
- (a) in paragraph 1, in the first sub-paragraph—
    - (i) omit “customs”;
    - (ii) for “Union”, substitute “United Kingdom”;
    - (iii) omit “external”;
    - (iv) for “under Article 226 of Regulation (EU) No 952/2013” substitute “within the meaning given by paragraph 5 of Schedule 2 to the Taxation (Cross-border Trade) Act 2018(4)”;
    - (v) omit “non-Union”;
    - (vi) for point (c), substitute—
      - “(c) goods listed in Schedule 2 to the Export Control Order 2008(5).”;

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(4) 2018 c. 22.

(5) S.I. 2008/3231. Schedule 2 was substituted by S.I. 2017/697 and 2018/165 and 939.

- (b) omit paragraph 2;
- (c) in paragraph 3—
  - (i) for “a Member State”, substitute “the United Kingdom”;
  - (ii) for “an EU or”, substitute “a”;
  - (iii) for “between Member States” substitute “between the United Kingdom”.
- (12) In Article 12 (criteria for granting export authorisations)—
  - (a) in paragraph 1—
    - (i) for “authorities” substitute “authority”;
    - (ii) omit the words from “in particular” to “the preceding three years and”;
  - (b) in paragraph 2, in the second sub-paragraph, in point (a), for “judgement” substitute “judgment”;
  - (c) in paragraph 2, in the second sub-paragraph, in point (b), for “the UN, the Council of Europe and the EU,”, substitute “the UN and the Council of Europe”.
- (13) In Article 13 (prohibition of transit), for “a Member State”, substitute “the United Kingdom”.
- (14) Omit Article 14 (national measures).
- (15) In Article 15 (authorisation requirement for certain services)—
  - (a) in paragraph 1, for “a third country”, substitute “any country or territory outside of the United Kingdom”;
  - (b) in paragraph 3—
    - (i) for point (a), substitute—
      - “(a) the technical assistance is supplied to military or civil personnel of the United Kingdom in the circumstances described in the first sentence of Article 11(3);”;
    - (ii) in point (c), for “a competent”, substitute “the competent”;
  - (c) omit paragraph 4.
- (16) In Article 16 (export authorisation requirement)—
  - (a) in paragraph 1, in the first sub-paragraph—
    - (i) omit “customs” in the first place that it occurs;
    - (ii) for “Union”, substitute “United Kingdom”;
    - (iii) omit “external”;
    - (iv) for “under Article 226 of Regulation (EU) No 952/2013”, substitute “within the meaning given by paragraph 5 of Schedule 2 to the Taxation (Cross-border Trade) Act 2018”;
    - (v) omit “non-Union”;
  - (b) in paragraph 1, in the second sub-paragraph, for point (c), substitute—
    - “(c) goods listed in Schedule 2 to the Export Control Order 2008.”;
  - (c) in paragraph 2—
    - (i) for “Member States” substitute “the competent authority”;
    - (ii) for “on them” substitute “on it”.
- (17) In Article 17 (criteria for granting export authorisations)—
  - (a) in paragraph 1—

- (i) for “competent authorities” substitute “competent authority”;
- (ii) omit the words from “in particular” to “the preceding three years and”;
- (b) in paragraph 3, omit the final un-numbered sub-paragraph.
- (18) In Article 18 (prohibition of transit), for “a Member State”, substitute “the United Kingdom”.
- (19) In Article 19 (authorisation requirement for certain services), in paragraph (1), for “a third country”, substitute “any country or territory outside of the United Kingdom”.
- (20) In Article 20 (types of authorisations and issuing authorities)—
  - (a) in paragraph 1—
    - (i) in the first sub-paragraph, omit “Union”;
    - (ii) in the second sub-paragraph, omit “of the Member State where the exporter is resident or established”;
    - (iii) omit the final sub-paragraph;
  - (b) in paragraph 2, omit “of the Member State where the exporter is resident or established, as listed in Annex I”;
  - (c) in paragraph 3, omit the words from “of the Member State” where those words first occur, to “takes place”;
  - (d) in paragraph 4, omit the words “of the Member State where the museum is established, as listed in Annex I”;
  - (e) for paragraph 5, substitute—
 

**“5. An authorisation for the supply of technical assistance related to goods listed in Annex 2, 3, or 4 shall be granted by the competent authority.”;**
  - (f) omit paragraph 6;
  - (g) in paragraph 7, omit the words from “of the Member State” to “incorporated or constituted”;
  - (h) in paragraph 8, for “authorities” in each place that it occurs, substitute “authority”;
  - (i) in paragraph 10—
    - (i) for “Upon request of a national preventive mechanism”, substitute “At the request of one or more of the bodies comprising the United Kingdom’s national preventive mechanism”;
    - (ii) for “authorities” in the first and second place that it occurs, substitute “authority”;
    - (iii) for “the requesting national preventive mechanism”, substitute “the relevant body or bodies”;
    - (iv) omit the last sentence;
  - (j) omit paragraph 11.
- (21) In Article 21 (authorisations)—
  - (a) in paragraph 1, omit the fourth sentence;
  - (b) in paragraph 3, omit from “The specific” to the end;
  - (c) in paragraph 5, for “authorities”, substitute “authority”.
- (22) In Article 22 (customs formalities)—
  - (a) in paragraph 1, omit the last sentence;
  - (b) in paragraph 2—

- (i) for “the customs authorities” in both places that it occurs, substitute “Her Majesty’s Revenue and Customs”;
  - (ii) omit “in accordance with applicable national law”.
- (23) Omit Article 23 (notification and consultation requirement).
- (24) For Article 24 (amendment of annexes), substitute—
  - “1. The Secretary of State may by regulations amend the following provisions of this Regulation—
    - (a) Annex 2;
    - (b) Annex 3;
    - (c) Annex 4;
    - (d) Annex 5;
    - (e) Annex 7;
    - (f) Annex 8;
    - (g) Annex 9.
  - 2. Regulations under paragraph 1 are to be made by statutory instrument.
  - 3. Regulations under paragraph 1—
    - (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 paragraph 1 is subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (25) Omit Article 25 (requests for adding goods to one of the lists of goods).
- (26) In Article 26—
  - (a) for the heading, substitute “Annual activity report”;
  - (b) omit paragraphs 1 and 2;
  - (c) in paragraph 3—
    - (i) for the words from “Member States” to “shall make a public,” substitute “The Secretary of State shall prepare and publish an”;
    - (ii) omit “they have”;
    - (iii) for “a Member State”, substitute “the Secretary of State”;
    - (iv) for “its security”, substitute “the United Kingdom’s security”;
  - (d) omit paragraphs 4, 5 and 6.
- (27) Omit Article 27 (processing of personal data).
- (28) In Article 28 (use of information), omit the words from “Regulation (EC) No 1049/2001” to “and national”.
- (29) Omit Article 29 (exercise of the delegation).
- (30) Omit Article 30 (urgency procedure).
- (31) Omit Article 31 (anti-torture coordination group).

- (32) Omit Article 32 (review).
- (33) Omit Article 33 (penalties).
- (34) Omit Article 34 (territorial scope).
- (35) Omit Article 36 (entry into force).
- (36) After Article 36, omit the words from “This Regulation shall be binding” to the signatures.
- (37) Omit Annex 1 (list of authorities).
- (38) In Annexes 2 and 3 (list of goods with no use other than for the purposes of torture etc. and list of goods that could be used for torture etc)—
- (a) for the Introductory Note, in each Annex, substitute—
- “The commodity codes in this Annex refer to the codes specified in the Customs Tariff (Establishment) (EU Exit) Regulations 2019.
- Where “ex” precedes the code, the goods covered constitute only a part of the scope of the commodity code and are determined by both the description given in this Annex and the scope of the code.”.
- (b) for “CN code” in the table in each Annex, substitute “Commodity code”.
- (39) In Annex 4 (list of goods that could be used for the purpose of capital punishment), for “CN code”, substitute “Commodity code”.
- (40) In Annex 5—
- (a) for the title, substitute, “GENERAL EXPORT AUTHORISATION”;
- (b) in Part 2—
- (i) omit the first sentence;
- (ii) in the second sentence, omit “throughout the Union”;
- (iii) omit the text beginning with “Danish territories” and ending with “Sint Maarten”;
- (iv) for “Relevant British Territories not included in the customs territory” substitute “Relevant British Territories”.
- (c) in Part 3—
- (i) in paragraph (1)(b), for “authorities of the Member State in which the exporter is resident or established have”, substitute “authority has”;
- (ii) in paragraph (1)(b) and (c), for “a third” in each place that it occurs, substitute “another”;
- (iii) in paragraph (2)—
- (aa) omit “EU GEA 2019/125” in the first place it occurs;
- (bb) for “authorities of the Member State where they are resident or established”, substitute “authority”;
- (cc) omit “EU GEA 2019/125 by indicating in box 44 the relevant code found in the TARIC database”;
- (iv) omit paragraph (3).
- (41) Omit Annex 6 (list of certain Member States’ territories).
- (42) In Annex 7 (export or import authorisation form)—
- (a) omit “EUROPEAN UNION” at the beginning of the authorisation form;
- (b) in box 6 of the form omit “Code”;
- (c) in box 7 of the form, omit “Code”;



- (d) omit box 8 of the form;
  - (e) for “CN code” in each place in the form in which it occurs, substitute “Commodity code”;
  - (f) in box 15 of the form, for “Article 9(1)” substitute “Article 21(1)”;
  - (g) in box 19 of the form, omit “Member State,”;
  - (h) in the explanatory notes to the form—
    - (i) in the un-numbered paragraph beginning “The issuing authority” omit “which is set out in Annex I to that Regulation”;
    - (ii) in the un-numbered paragraph beginning “Where national procedures”—
      - (aa) omit the words “national procedures of the Member States require”;
      - (bb) after “of the form”, insert “are required”;
      - (cc) omit the words “following the national rules applicable”;
    - (iii) in the section of the table concerning box 3 of the form, omit “and Article 34”;
    - (iv) in the section of the table concerning box 5 of the form, omit “See also Article 18 of Regulation (EU) No 952/2013”;
    - (v) in the section of the table concerning box 6 of the form, for words from “both” to the end substitute “the name of the country concerned”;
    - (vi) in the section of the table concerning box 7 of the form, for words from “both” to the end substitute “the name of the country concerned”.
- (43) In Annex 8 (authorisation form for the supply of brokering services)—
- (a) omit “EUROPEAN UNION” in both places it occurs in the authorisation form;
  - (b) omit “third” in each place that it occurs on the authorisation form, except for in box 10;
  - (c) in box 6 and 7 omit the box headed “Country code”;
  - (d) omit box 9 of the form;
  - (e) in box 19 of the form—
    - (i) for “Article 9(1)” substitute “Article 22(1)”;
    - (ii) for “attachements(s)” substitute “attachment(s)”;
  - (f) in the explanatory notes to the form—
    - (i) in the un-numbered paragraph beginning with “The issuing authority” omit “It is an authority that is included in the list of competent authorities in Annex I to that Regulation”;
    - (ii) in the section of the table concerning box 5 of the form, omit “third”;
    - (iii) in the section of the table concerning box 6 of the form—
      - (aa) omit “Third”;
      - (bb) for words from “both” to the end substitute “the name of the country concerned”;
    - (iv) in the section of the table concerning box 7 of the form—
      - (aa) omit “Third”;
      - (bb) for words from “both” to the end substitute “the name of the country concerned”;
    - (v) omit the section of the table concerning box 9 of the form;
    - (vi) in the section of the table concerning box 12 of the form, omit the word “third” in both places that it occurs;

- (vii) in the section of the table concerning box 15 of the form—
  - (aa) for “the EU Combined Nomenclature”, substitute “the Customs Tariff (Establishment) (EU Exit) Regulations 2019”;
  - (bb) omit the words from “See Commission” to the end.
- (44) In Annex 9 (authorisation form for the supply of technical assistance)—
  - (a) omit “EUROPEAN UNION” at the beginning of the authorisation form;
  - (b) in box 6 of the form—
    - (i) omit “Third”;
    - (ii) omit “or Member State”;
    - (iii) omit “(name and code)”;
  - (c) omit box 8 of the form;
  - (d) in box 9, for “googd” substitute “goods”;
  - (e) in box 11 of the form—
    - (i) for “third”, in each place that it occurs, substitute “foreign”;
    - (ii) for “EU”, substitute “UK”;
  - (f) in box 15, for “Article 9(1)” substitute “Article 21(1)”;
  - (g) in the explanatory notes to the form—
    - (i) in the un-numbered paragraph beginning “This authorisation form”, in the second indent—
      - (aa) omit “Union”;
      - (bb) omit “EU GEA 2019/125”;
    - (ii) in the un-numbered paragraph beginning “The issuing authority”, omit the words from “It is” to the end.
    - (iii) in the section of the table concerning box 6 of the form—
      - (aa) omit “Third”;
      - (bb) omit “or Member State”;
      - (cc) omit “Third”;
      - (dd) for words from “both” to the end substitute “the name of the country concerned”;
    - (iv) omit the section of the table concerning box 8 of the form;
    - (v) in the section of the table concerning box 11 of the form—
      - (aa) omit “third” in both places it occurs;
      - (bb) omit “Third”;
      - (cc) for words from “both” to the end substitute “the name of the country concerned”.

### **Transitional provision relating to Council Regulation (EC) No 2019/125**

**3.—(1)** An existing authorisation which had effect immediately before these Regulations came into force continues to have effect as if it were a new authorisation.

(2) In this regulation—

“existing authorisation” means an authorisation granted by the Secretary of State under—

- (a) Article 3, 11, 15, 16 or 19 of the EU Torture Regulation, or
- (b) Article 3, 11, 15, 16 or 19 of the retained Torture Regulation, as it had effect immediately before these Regulations came into force;

“EU Torture Regulation” means Council Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment as it had effect immediately before exit day;

“new authorisation” means an authorisation granted by the Secretary of State under Article 3, 11, 15, 16 or 19 of the retained Torture Regulation, as amended by these Regulations;

“retained Torture Regulation” means Council Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018.

	<i>Name</i>
	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 makes amendments to the rules governing trade with countries in goods that could be used for the purpose of capital punishment or torture etc. by amending Council Regulation (EU) 2019/125 of 16 January 2019. The changes are made to ensure that these rules operate as UK rules after withdrawal. For instance, 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 authorisations are adjusted to become types of UK authorisations; powers on the part of the European Commission to make EU tertiary legislation to amend relevant annexes to bring goods within scope of the Regulation become powers to amend these annexes by domestic secondary legislation; and inter-member State notification requirements are omitted.

Regulation 3 makes transitional provision in relation to Regulation (EU) 2019/125 of 16 January 2019.

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.