

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (AMENDMENT) (EU EXIT) REGULATIONS 2019
2019 No. 137

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for Joint Committee on Statutory Instruments.

2. Purpose of the instrument

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

Explanations

What did any relevant EU law do before exit day?

- 2.2 These Regulations amend provisions within the following domestic legislation: the Export of Radioactive Sources (Control) Order 2006 and the Export Control Order 2008, and other domestic subordinate legislation in connection with EU sanctions regimes.
- 2.3 The Export of Radioactive Sources (Control) Order 2006 makes provision for licences with references to persons established within and exporting from the European Union. The Export Control Order 2008 gives effect to EU directives on the movement of military goods and firearms within the EU and creates penalties pursuant to several EU export control regulations.
- 2.4 The Export Control (Somalia) Order 2011, the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011 and the Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014 (“the Sanctions Offences Orders”) make provision for criminal offences in relation to contravention of directly applicable EU sanctions regimes concerning those countries.

Why is it being changed?

- 2.5 The changes are being made because the provisions either relate to reciprocal arrangements or are otherwise redundant upon exit from the EU. The amendments also include amendments to references to EU instruments which are no longer appropriate.

What will it now do?

- 2.6 The Regulations omit provisions which are dependent on the UK’s membership of the EU, and substitute references to the EU with references to the UK as appropriate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was presented for sifting by ESIC and SLSC on 7 January. The sifting process ended on 23 January with agreement from both committees to the use of the negative procedure for this instrument.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Trade Policy George Hollingbery has made the following statement regarding Human Rights:

“In my view the provisions of the Export Control (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These Regulations are made to address inoperabilities and deficiencies of UK law arising from the withdrawal of the United Kingdom from the EU.

7. Policy background

What is being done and why?

- 7.1 This instrument amends five subordinate pieces of legislation to prevent, remedy or mitigate deficiencies arising from withdrawal.
- 7.2 Regulation 3 amends the Export of Radioactive Sources (Control) Order 2006 to remove EU references which are no longer appropriate following withdrawal from the EU.
- 7.2.1 Regulation 4 omits from the Export Control Order 2008 various EU related definitions which have no practical application after withdrawal. Amendments remove other EU references which will no longer be appropriate. Other omissions relate to reciprocal arrangements concerning exceptions for the movement of firearms in the EU. Other amendments ensure that use and disclosure of information provisions will continue to apply to retained EU law so that it continues to operate effectively.
- 7.2.2 Regulation 5 makes provision to amend the Sanctions Offences Orders which make provision for criminal offences in relation to contravention of corresponding EU sanctions regimes. The corresponding EU sanctions regimes will form part of domestic law on or after exit day as modified using European Union (Withdrawal) Act 2018 powers by way of the Sanctions (Amendment) (EU Exit) Regulations 2019.

The amendments are to ensure continuing effective enforcement of the applicable sanctions regimes and to remove inappropriate references to EU instruments. The amendments substitute references to the European Union Common Military List, which in turn reflects the list of controlled military items of an international export regime known as the Wassenaar Arrangement in which the UK participates, for a reference to Schedule 2 (Military goods, software and technology) of the Export Control Order 2008 which contains the Wassenaar controlled military items.

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(1) 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.
- 8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under Export Control Act 2002 powers to ensure that a non-ambulatory reference to an EU instrument is up to date in advance of exit. In relation to the use of Export Control Act 2002 powers and with particular regard to section 8(1) of that Act the Minister has considered the question as to whether the use of Export Control Act 2002 powers makes a control order which has the effect of prohibiting or regulating the following activities: communication in the ordinary course of scientific research; making of information generally available to the public; or the communication of information that is generally available to the public. The Minister is satisfied that no such control order is made, and as such the question as to whether any interference with the freedom to carry on such activity is necessary does not fall to be determined.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 This instrument provides for the technical amendment of deficiencies arising from withdrawal from 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 There is no, or no significant impact on business, charities or voluntary bodies.
- 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 There are statutory review clauses within two of the subordinate instruments that this instrument amends: at regulation 9 of the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011 and at regulation 11 of the Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014.
- 14.3 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 Trade Policy 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.
Appropriateness	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 7	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. Sifting statement

1.1 The Minister for Trade Policy, George Hollingbery, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Export Control (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure). 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 but do not transfer any powers from the EU to UK Ministers or make any other provision of a type identified in paragraph 2 of Schedule 7 to the European Union (Withdrawal) Act 2018 which triggers the affirmative procedure. The amendments to subordinate legislation concerning criminal offences for contravention of sanctions regimes do not create or widen the scope of criminal offences; the amendments replace references to EU instruments.

1.2 “The use of Export Control Act 2002 vires for provision within the Export Control (Amendment) (EU Exit) Regulations 2019 is consistent with the negative procedure as provided for at section 13(5) Export Control Act 2002.”

2. Appropriateness statement

2.1 The Minister for Trade Policy, George Hollingbery, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Export Control (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate.

2.2 “This is the case because these Regulations are made to address inoperabilities and deficiencies of United Kingdom law arising from the withdrawal of the UK from the EU.”

3. Good reasons

3.1 The Minister for Trade Policy, George Hollingbery, 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 United Kingdom law arising from the withdrawal of the UK from the EU.”

4. Equalities

4.1 The Minister for Trade Policy, George Hollingbery, has made the following statement:

“The draft 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.”

- 4.2 The Minister for Trade Policy, George Hollingbery, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In relation to the draft instrument, I, George Hollingbery, 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.”

5. Explanations

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