

Draft Regulations laid before Parliament under paragraph 8F(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.0000

**EXITING THE EUROPEAN UNION
CUSTOMS
TRADE**

The Export Control (Amendment) (EU Exit) Regulations 2020

Made - - - - *******

Coming into force in accordance with regulation

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1(5), 3(6), 4(5), and 5(1) and (2) of the Export Control Act 2002⁽¹⁾ and sections 8(1) and 8C(1) and (5) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽²⁾. In accordance with paragraph 8F(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Preliminary provisions

Citation

1. These Regulations may be cited as the Export Control (Amendment) (EU Exit) Regulations 2020.

Commencement

2.—(1) This Part and regulations 12 and 13 come into force immediately before the day after the date on which these Regulations are made.

(1) 2002 c. 28; sections 1(5), 3(6), 4(5), and 5(2) were amended by article 6(2)(c) of the Treaty of Lisbon (Changes in Terminology) Order (S.I. 2011/1043).
(2) 2018 c. 16; section 8 was amended by section 27 of, section 8C was inserted by section 21 of, and paragraph 21 of Schedule 7 was amended by paragraph 53(2) of Schedule 5 to, the European Union (Withdrawal Agreement) Act 2020 (c. 1).

- (2) Part 2 comes into force on the day after the date on which these Regulations are made.
- (3) The remainder of these Regulations come into force immediately before IP completion day.

PART 2

Amendment of the Export Control Order 2008

Amendment of the Export Control Order 2008

- 3. The Export Control Order 2008(3) is amended in accordance with this Part.

Amendment of article 9 (provisions supplementing the torture Regulation)

- 4. In article 9(3), for “5”, substitute “11”.

Amendment of article 32 (amendment, suspension, and revocation of licences)

- 5. In article 32(2), for “9(4)”, substitute “21(5)”.

PART 3

Amendment of the Export Control (Amendment) (EU Exit) Regulations 2019

Amendment of the Export Control (Amendment) (EU Exit) Regulations 2019

- 6. The Export Control (Amendment) (EU Exit) Regulations 2019(4) are amended in accordance with this Part.

Amendment of regulation 4 (amendment of the Export Control Order 2008)

- 7.—(1) Regulation 4 is amended in accordance with this regulation.
- (2) In paragraph (2),—
 - (a) in subparagraph (a)(viii), omit “and”; and
 - (b) for subparagraph (b), substitute—
 - “(b) for the definition of “the dual-use Regulation”, substitute—
““the dual-use Regulation”, in relation to—
 - (a) England and Wales and Scotland, means Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items(5);
 - (b) Northern Ireland, means Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items(6) as it has effect

(3) S.I. 2008/3231, amended by S.I. 2009/2151 and S.I. 2019/989; there are other amending instruments, but none is relevant.

(4) S.I. 2019/137.

(5) EUR 2009/428, amended by S.I. 2019/771.

(6) OJ No. L 134, 29.5.2009, p. 1; relevant amending instruments are OJ No. L 326, 8.12.2011, p. 26, OJ No. L 173, 12.6.2014, and OJ No. L 428, 30.12.2019, p. 1.

- by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement(7);”;
- (c) before the definition of “goods subject to trade controls”, insert—
- ““general export authorisation” has the same meaning as in Article 2(9) of the dual-use Regulation;”; and
- (d) for the definition of “the torture Regulation”, substitute—
- ““the torture Regulation”, in relation to—
- (a) England and Wales and Scotland, means [Regulation \(EU\) 2019/125](#) of the European Parliament and of the Council 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(8);
- (b) Northern Ireland, means [Regulation \(EU\) 2019/125](#) of the European Parliament and of the Council 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(9) as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.”.”.
- (3) For paragraph (3), substitute—
- “(3) In article 2A (Crown application), in paragraph (1), for subparagraphs (c) to (e), substitute—
- “(c) article 8 (transit controls supplementing the dual-use Regulation);
- (d) article 42L (export and transfer control in relation to Northern Ireland: dual-use goods, software, and technology); and
- (e) article 42S (export control in relation to Northern Ireland: leg irons, gang chains, and portable electric shock devices).”.”.
- (4) For paragraph (13), substitute—
- “(13) In article 16 (Exception for firearms – firearm or shot gun certificate or permit),—
- (a) for paragraph (2), substitute—
- “(2) Articles 3 (military goods, etc.) and 4 (movement of UK-controlled dual-use goods, etc. to certain destinations) do not apply in relation to a person who exports a firearm to which this article applies if—
- (a) the firearm, and any related ammunition or sight using non-electronic image enhancement, is a part of the personal effects of the person; and
- (b) the person—
- (i) is a part of the armed forces, a police force, or a public authority, of the United Kingdom;
- (ii) is, subject to paragraph (3), not required to have an export authorisation by virtue of Article 4 of the firearms Regulation because the person meets the requirements set out in Article 9(1) (a) of that Regulation (exception for hunters and sport shooters);
- or

(7) A copy of the EU withdrawal agreement may be found online at <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration>.

(8) [EUR 2019/125](#), amended by S.I. 2020/***.

(9) OJ No. L 30, 31.1.2019, p .1, amended by OJ No. L 144, 7.5.2020, p. 1.

- (iii) holds in relation to the firearm a certificate of the type specified in paragraph (1)(d) (Manx firearm certificate).”;
- (b) for paragraph (3), substitute—
- “(3) Paragraph (2)(b)(ii) applies only if the export of the firearm is to a country or territory that is neither an embargoed destination nor a country or territory listed in Part 3 of Schedule 4 (countries and territories subject to transit control for military goods).
- (4) In this article, “firearms Regulation”, in relation to—
- (a) England and Wales and Scotland, means [Regulation \(EU\) No 258/2012](#) of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition⁽¹⁰⁾;
- (b) Northern Ireland, means [Regulation \(EU\) No 258/2012](#) of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition⁽¹¹⁾ as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.”.”.
- (5) Before paragraph (16), insert—
- “(15A) In article 21 (Category A goods), in paragraph (2), omit “24.”.
- (15B) In article 23 (Category C goods), in paragraph (1), omit “24.”.”.
- (6) In paragraph (19), for “retained general export authorisation”, substitute “general export authorisation”.
- (7) In paragraph (21), in subparagraph (a)(i)(aa), for “retained general export authorisation”, substitute “general export authorisation”.
- (8) In paragraph (27), for “retained general export authorisation”, substitute “general export authorisation”.
- (9) Before paragraph (29), insert—
- “(28A) In Article 41 (Application of CEMA in respect of offences),—
- (a) in paragraph (1)(a)(i), omit “7,” and “9.”; and
- (b) in paragraph (2)(a), omit “7,” and “9.”.
- (28B) Before Part 7 (General), insert—

(10) [EUR 2012/258](#), amended by [S.I. 2019/771](#).

(11) OJ No. L 94, 30.3.2012, p. 1.

“PART 6A

Provisions relating to the Protocol on Ireland/ Northern Ireland in the EU withdrawal agreement

Interpretation

42A. In this Part,—

“certificate” means a certificate granted by the Secretary of State in accordance with article 42D;

“the EU customs Regulation” means [Regulation \(EU\) No 952/2013](#) of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code(**12**) as it has effect in EU law;

“the EU customs territory” means the customs territory described in Article 4 of the EU customs Regulation;

“the EU defence-related products Directive” means [Directive 2009/43/EC](#) of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community(**13**) as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;

“the EU dual-use Regulation” means Council Regulation ([EC](#)) [No 428/2009](#) of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items(**14**) as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;

“EU-listed military item” means an item listed in the Annex to the EU defence-related products Directive;

“the EU torture Regulation” means [Regulation \(EU\) 2019/125](#) of the European Parliament and of the Council 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(**15**) as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;

“Northern Ireland recipient” means a person in Northern Ireland who is responsible for the receipt of an EU-listed military item.

Provisions relating to the EU defence-related products Directive

Record-keeping requirement: EU-listed military item supplier

42B.—(1) Article 29 (requirement to keep detailed registers or records) applies in relation to a person who acts under the authority of an individual licence to export or transfer from Northern Ireland to the EU customs territory an EU-listed military item as it applies in relation to a person who acts under the authority of a general licence granted by the Secretary of State but as if,—

(12) OJ No. L 269, 10.10.2013, p. 1, amended by OJ No. L 83, 25.3.2019, p. 38; there are other amending instruments, but none is relevant.

(13) OJ No. L 146, 10.6.2009, p. 1; relevant amending instruments are OJ No. L 89, 29.3.2019, p. 1 and OJ No. L 198, 25.7.2019, p. 241.

(14) OJ No. L 134, 29.5.2009, p. 1; relevant amending instruments are OJ No. L.326, 8.12.2011, p. 26, OJ No. L 173, 12.6.2014, and OJ No. L 428, 30.12.2019, p. 1.

(15) OJ No. L 30, 31.1.2019, p. 1, amended by OJ No. L 144, 7.5.2020, p. 1.

(a) in paragraph (2),—

- (i) in the words before subparagraph (a), the reference to each act carried out under the authority referred to in paragraph (1) were a reference to the export or transfer carried out under the authority of the individual licence;
- (ii) in subparagraphs (a) to (d) and (f) to (h), the reference to the act were a reference to the export or transfer;
- (iii) in subparagraphs (e), (g), and (h), the reference to the person referred to in paragraph (1) were a reference to the person who acts under the authority of the individual licence; and
- (iv) in subparagraph (i), the reference to the licence or authorisation referred to in paragraph (1) were a reference to the individual licence; and

(b) in paragraph (3), the reference to the licence or authorisation referred to in paragraph (1) were a reference to the individual licence.

(2) Article 31 (inspection of records) applies in relation to a person who is required by virtue of paragraph (1) to keep registers or records as it applies in relation to a person who is required under article 29 to keep registers or records.

Offence to contravene article 42B

42C.—(1) Article 38 (failure to comply with licence conditions) applies in relation to a person who, having acted under the authority of an individual licence, fails to comply with any obligation by virtue of article 42B as it applies to a person who, having acted under the authority of a licence or the general export authorisation, fails to comply with any obligation under article 29.

(2) Article 41 (application of CEMA in respect of offences) applies in relation to paragraph (1) as it applies in relation to article 38.

Secretary of State may certify Northern Ireland recipient undertaking

42D. The Secretary of State may certify an undertaking of a Northern Ireland recipient for the purposes of Article 9(1) of the EU defence-related products Directive by granting a certificate in relation to the recipient.

Applying for certificate

42E.—(1) A person may apply to the Secretary of State for a certificate⁽¹⁶⁾.

(2) The applicant must provide the Secretary of State with the information necessary for the Secretary of State to assess the criteria set out in article 42G.

Secretary of State may grant certificate

42F.—(1) The Secretary of State may grant a certificate only if the Secretary of State, in accordance with article 42G, establishes the reliability of the Northern Ireland recipient undertaking.

(2) A certificate must contain the following—

⁽¹⁶⁾ A person may apply for a certificate by application to the Export Control Joint Unit (a part of the Department for International Trade). Further information may be found online at <https://www.gov.uk/government/organisations/export-control-organisation>.

- (a) the name of the Secretary of State;
 - (b) the name and address of the recipient;
 - (c) a statement that the recipient conforms with the criteria set out in article 42G; and
 - (d) the date of issue and the period of validity of the certificate.
- (3) The period of validity of a certificate must not exceed five years.
- (4) A certificate may be subject to conditions relating to—
- (a) the provision of information necessary to verify compliance by the recipient with the criteria set out in article 42G;
 - (b) the suspension or revocation of the certificate.
- (5) If the Secretary of State decides not to grant a certificate, the Secretary of State must provide the applicant with written notification setting out the reason for the decision.

Establishing reliability of Northern Ireland recipient undertaking

42G.—(1) The Secretary of State, to establish the reliability of a Northern Ireland recipient undertaking, must assess the following criteria in relation to the recipient—

- (a) its capacity to observe limitations on the export of an EU-listed military item received under authorisation granted by a competent authority;
- (b) its proven experience in defence activities, in particular,—
 - (i) the record of compliance by the undertaking with export restrictions, including any relevant court decisions;
 - (ii) any authorisation held by the undertaking to produce or market an EU-listed military item;
 - (iii) the employment of experienced management staff by the recipient;
- (c) its relevant industrial activity in Northern Ireland or the EU customs territory relating to an EU-listed military item, with, in particular, capacity for system or sub-system integration;
- (d) the appointment of a senior executive as the dedicated officer personally responsible for exports and transfers;
- (e) the provision of a written commitment, signed by the senior executive referred to in subparagraph (d), that—
 - (i) the undertaking will take all necessary steps to observe and enforce any specific condition of an authorisation granted by a competent authority relating to end-use and re-export of any specific component or product received;
 - (ii) the undertaking will provide to the Secretary of State, on request, detailed information concerning the end-user or end-use of the EU-listed military item exported, transferred, or received under an authorisation granted by a competent authority; and
- (f) the provision of a written description, signed by the senior executive referred to in subparagraph (d), of the internal compliance programme or export and transfer management system of the undertaking, including details of—

- (i) the organisational, human, and technical resources allocated to the management of exports and transfers;
- (ii) the chain of responsibility within the undertaking;
- (iii) internal audit procedures;
- (iv) awareness-raising
- (v) staff-training;
- (vi) physical and technical security arrangements;
- (vii) record-keeping; and
- (viii) traceability of exports and transfers.

(2) In this article, “competent authority” means an authority in a member State responsible for carrying out the obligations of that member State under the EU defence-related products Directive.

Secretary of State may amend, suspend, and revoke certificate

42H.—(1) Article 32 (amendment, suspension, and revocation of licences) applies in relation to a certificate as it applies in relation to a licence.

(2) The notification requirements under article 33(2) to (4) (licence refusals) apply in relation to a decision by the Secretary of State to amend, suspend, or revoke a certificate as they apply in relation to a decision by the Secretary of State to amend, suspend, or revoke a licence.

Appeal of Secretary of State decision

42I. Article 33(5) to (7) (licence appeals) applies in relation to a person who has a right under article 42F(5) or by virtue of article 42H(2) to a written notification in respect of a decision made by the Secretary of State as it applies in relation to a person who has a right under paragraphs (1) to (4) to a written notification in respect of a decision made by the Secretary of State.

Offence relating to misleading application for certificate

42J.—(1) Article 37 (misleading applications for licences) applies in relation to a misleading application for a certificate as it applies in relation to a misleading application for a licence.

(2) Article 41 (application of CEMA in respect of offences) applies in relation to paragraph (1) as it applies in relation to article 37.

Provisions relating to the EU firearms Directive

Exception in relation to Northern Ireland: European firearms pass holders

42K.—(1) Articles 3 (military goods, etc.) and 4 (movement of UK controlled dual-use goods, etc. to certain destinations) do not apply in relation to a person who exports a firearm from Northern Ireland to a member State if—

- (a) the firearm is a part of the personal effects of the person;
- (b) the person is in possession of—

- (i) a European firearms pass issued to the person under section 32A of the Firearms Act 1968⁽¹⁷⁾; or
 - (ii) a document that has been issued to the person under the provisions of the law of a member State corresponding to the provisions of that section; and
- (c) paragraph (2) or (3) applies.
- (2) This paragraph applies if the person, on request, satisfies the appropriate officer of Revenue and Customs at the place of export that—
- (a) the exportation of the firearm is necessary to enable the person to participate in one of the activities specified in Article 12(2) of the EU firearms Directive (hunting, target shooting, and re-enactment activities);
 - (b) the firearm is within the category of firearms appropriate to that activity in accordance with that Article; and
 - (c) the export or passage of the firearm is not to or through a member State that prohibits or requires an authorisation for the acquisition or possession of the firearm.
- (3) This paragraph applies if the document referred to in paragraph (1)(b)(ii) contains authorisation for the possession of the firearm issued by—
- (i) the destination member State; and
 - (ii) any other member State through which the person who possesses the firearm intends to pass through on the way to that destination member State.
- (4) In this article, “the EU firearms Directive” means Council Directive of 18 June 1991 on control of the acquisition and possession of weapons ^(91/477/EEC)⁽¹⁸⁾ as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.

Provisions relating to the EU dual-use Regulation

Export and transfer control in relation to Northern Ireland: dual-use goods, software, and technology

- 42L.**—(1) A person must not, unless the person has a UK licence authorising the act, export or transfer dual-use goods, software, or technology from Northern Ireland to the EU customs territory if the person knows—
- (a) the final destination of the dual-use goods, software, or technology is a country or territory other than the EU customs territory; and
 - (b) no processing or working is to be performed on the dual-use goods, software, or technology in the EU customs territory.
- (2) Article 17 (transit or transshipment exception) applies in relation to paragraph (1) as it applies in relation to article 8(1) (transit control supplementing the dual-use Regulation).
- (3) Subject to paragraph (4), the export or transfer of dual-use goods, software, or technology in contravention of this article is prohibited.

⁽¹⁷⁾ 1968 c. 27; section 32A was inserted by regulation 5(1) of the Firearms Acts (Amendment) Regulations 1992 (S.I. 1992/2823) and amended by paragraph 6 of Schedule 2 to the Firearms (Amendment) Act 1997 (c. 5).

⁽¹⁸⁾ OJ No. L 256, 13.9.1991, p. 51, amended by OJ No. L 179, 8.7.2008, p. 5 and OJ No. L 137, 24.5.2017, p. 22.

(4) This article does not prohibit the transfer of software or technology by non-electronic means⁽¹⁹⁾.

(5) In this article, “dual-use goods, software, or technology” means goods, software, or technology—

- (a) not specified in Annex IV to the EU dual-use Regulation; and
- (b) that, if the export or transfer were from Northern Ireland to a country or territory other than the EU customs territory, would require an authorisation granted by the Secretary of State under—
 - (i) Article 3 of the EU dual-use Regulation (export control on specified dual-use items); or
 - (ii) Article 4 of the EU dual-use Regulation (export control on unspecified dual-use items).

Offence to contravene article 42L

42M.—(1) Article 34 (offences relating to prohibition in Parts 2, 3, and 4) applies in relation to—

- (a) a person who contravenes the prohibition in article 42L as it applies in relation to a person who contravenes a prohibition in Part 2 (export and transfer controls);
- (b) a person knowingly concerned in activity prohibited by article 42L as it applies in relation to a person knowingly concerned in activity prohibited by Part 2.

(2) Article 41 (application of CEMA in respect of offences) applies in relation to article 42L as it applies in relation to article 8;

(3) Article 42 (increase of maximum penalty for prohibited exportation provided for in CEMA) applies in the case of an offence committed in connection with a prohibition or restriction on exportation in article 42L as it applies in the case of an offence committed in connection with a prohibition or restriction on exportation in Part 2.

Exceptions in relation to Northern Ireland: dual-use goods, software, and technology

42N.—(1) Article 6 (WMD purposes end-use control supplementing the dual-use Regulation) does not apply in relation to the export or transfer from Northern Ireland to the EU customs territory of dual-use goods, software, or technology not specified in Annex I to the EU dual-use Regulation.

(2) Article 12 (transfer by non-electronic means for WMD purposes) does not apply in relation to a person who transfers from Northern Ireland to the EU customs territory by non-electronic means⁽²⁰⁾ any software or technology to which that article applies if the person knows—

- (a) the final destination of the software or technology is the EU customs territory; and

⁽¹⁹⁾ Controls on the transfer from Northern Ireland of dual-use software or technology by non-electronic means are prohibited or regulated by articles 12 and 42N(2).

⁽²⁰⁾ Controls on the transfer from Northern Ireland of dual-use software or technology by electronic means are prohibited or regulated by article 42L and Articles 3 and 4 of the EU dual-use Regulation.

(b) processing or working is to be performed on the software or technology in the EU customs territory.

(3) Article 19(1) (end-use control on providing technical assistance from the United Kingdom) does not apply in relation to a person in Northern Ireland who directly or indirectly provides to a person or place in the EU customs territory any technical assistance to which that article applies.

Exception in relation to Northern Ireland: EU goods in transit

42O.—(1) Article 8 (transit controls supplementing the dual-use Regulation) does not apply in relation to EU goods that are entering Northern Ireland from the EU customs territory and passing through Northern Ireland to a country or territory other than the United Kingdom.

(2) In this article, “EU goods” has the same meaning as “Union goods” in Article 5(23) of the EU customs Regulation.

Authorisation requirement: Article 22(1) of the EU dual-use Regulation

42P.—(1) The authorisation required by Article 22(1) of the EU dual-use Regulation(21) is a licence granted by the Secretary of State.

(2) A person may apply to the Secretary of State for a licence(22).

(3) Article 26(6) (conditions of licence) applies in relation to a licence granted in accordance with paragraph (1).

Record-keeping requirement: Article 22(8) of the EU dual-use Regulation

42Q.—(1) The documents and records to be kept in accordance with Article 22(8) of the EU dual-use Regulation(23) are the registers or records referred to in article 29(2)(a) to (i).

(2) Article 31 (inspection of records) applies in relation to a person who is required under Article 22(8) of the EU dual-use Regulation to keep documents and records as it applies in relation to a person who is required under Article 20 of the dual-use Regulation to keep registers or records.

Offences in relation to Article 22 of the EU dual-use Regulation

42R. Article 35 (offences relating to prohibitions and restrictions in the dual-use Regulation) applies in relation to—

(a) a person who contravenes a prohibition or restriction in Article 22(1) of the EU dual-use Regulation (control on export or transfer of certain dual-use items from Northern Ireland to the EU customs territory) as it applies in relation to a person who contravenes a prohibition or restriction in Article 3(1) of the dual-use Regulation (export control on specified dual-use items);

(21) Article 22(1) of the EU dual-use Regulation, as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, requires a person to have an authorisation to export or transfer from Northern Ireland to the EU customs territory a dual-use item listed in Annex IV to that Regulation.

(22) A person may apply for a licence by application to the Export Control Joint Unit (a part of the Department for International Trade). Further information may be found online at <https://www.gov.uk/government/organisations/export-control-organisation>.

(23) Article 22(8) of the EU dual-use Regulation, as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, requires a person to keep documents or records of an export or transfer from Northern Ireland to the EU customs territory of a dual-use item listed in Annex I to that Regulation.

- (b) a person knowingly concerned in an activity prohibited or restricted by Article 22(1) of the EU dual-use Regulation as it applies in relation to a person knowingly concerned in an activity prohibited or restricted by Article 3(1) of the dual-use Regulation;
- (c) a person who fails to comply with Article 22(8) or (10) of the EU dual-use Regulation (specific record-keeping requirements) as it applies in relation to a person who fails to comply with Article 20 of the dual-use Regulation (general record-keeping requirement).

Provisions relating to the EU torture Regulation

Export control in relation to Northern Ireland: leg irons, gang chains, and portable electric shock devices

42S.—(1) A person must not, unless the person has a UK licence authorising the act, export from Northern Ireland to the EU customs territory any goods described in—

- (a) item 2.1 in Annex II to the EU torture Regulation (electric shock devices worn on the body);
- (b) item 2.3 in Annex II to the EU torture Regulation (bar fetters, weighted leg restraints, and gang chains);
- (c) item 2.1 in Annex III to the EU torture Regulation (portable electric discharge weapons).

(2) The export of leg irons, gang chains, or portable electric shock devices in contravention of this article is prohibited.

Offence to contravene article 42S

42T.—(1) Article 34 (offences relating to prohibition in Parts 2, 3, and 4) applies in relation to—

- (a) a person who contravenes a prohibition in article 42S as it applies in relation to a person who contravenes a prohibition in Part 2;
- (b) a person knowingly concerned in activity prohibited by article 42S as it applies in relation to a person knowingly concerned in activity prohibited by Part 2.

(2) Article 41 (application of CEMA in respect of offences) applies in relation to article 42S as it applies in relation to article 8.

(3) Article 42 (increase of maximum penalty for prohibited exportation provided for in CEMA) applies in the case of an offence committed in connection with a prohibition or restriction on exportation in article 42S as it applies in the case of an offence committed in connection with a prohibition or restriction on exportation in Part 2.

Exception in relation to Northern Ireland: category A and C goods

42U. Articles 21 (supplying or delivering category A goods) and 23 (supplying or delivering category C goods) do not apply in relation to a person in Northern Ireland carrying out activities prohibited or restricted by those articles if the goods to which those activities relate are—

- (a) Category A goods specified in Annex II to the EU torture Regulation; or
 - (b) Category C goods specified in Annex III to the EU torture Regulation.”.”.
- (10) For paragraph (29), substitute—
- “(29) In article 43 (Use and disclosure of information), in paragraph (1)(b), after “any”, insert “retained EU law or”.”.
- (11) For paragraph (32), substitute—
- “(32) In Schedule 3 (UK-controlled dual-use goods, software, and technology),—
- (a) for the definition of “Firearm Regulation”, substitute—
““Firearm Regulation”, in relation to—
 - (a) England and Wales and Scotland, means [Regulation \(EU\) No 258/2012](#) of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition(24);
 - (b) Northern Ireland, means [Regulation \(EU\) No 258/2012](#) of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition(25) as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;”;
- (b) in the table, in the second row, in the second column, for ““the customs territory””, substitute “European Union”.”.

PART 4

Amendment of the Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019

Amendment of the Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019

8. The Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019(26) are amended in accordance with this Part.

Amendment of regulation 2 (amendment of the Export Control Act 2002)

9. In regulation 2,—

(24) [EUR 2012/258](#), amended by [S.I. 2019/771](#).

(25) OJ No. L 94, 30.3.2012, p. 1.

(26) [S.I. 2019/771](#).

- (a) for paragraph (2), substitute—
 - “(2) In section 5 (general restriction on control powers), omit subsection (3).”;
- (b) for paragraph (3), substitute—
 - “(3) In section 11 (interpretation), for the definition of “EU provision”, substitute—
 - ““EU provision” means a provision of an EU instrument as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;”.”; and
- (c) omit paragraphs (4) to (8).

Amendment of regulation 5 (transitional provision relating to the dual-use Regulation)

10. In regulation 5,—

- (a) in each instance, for “exit day”, substitute “IP completion day”; and
- (b) in paragraph (8),—
 - (i) omit the definition of “retained Dual-Use Regulation”;
 - (ii) before the definition of “retained general export authorisation”, insert—
 - ““replacement dual-use Regulation”, in relation to—
 - (a) England and Wales and Scotland, means Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items⁽²⁷⁾;
 - (b) Northern Ireland, means Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items⁽²⁸⁾ as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;
 - “retained authorisation for brokering services” means an authorisation granted by the Secretary of State on or after IP completion day under Article 10 of the replacement dual-use Regulation;”;
 - (iii) in each instance, for “retained Dual-Use Regulation”, substitute “replacement dual-use Regulation”.

Amendment of regulation 6 (transitional provision relating to the firearms Regulation)

11. In regulation 6,—

- (a) in each instance, for “exit day”, substitute “IP completion day”; and
- (b) in paragraph (3),—
 - (i) before the definition of “retained firearms export authorisation”, insert—
 - ““replacement firearms Regulation”, in relation to—
 - (a) England and Wales and Scotland, means Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms

⁽²⁷⁾ EUR 2009/428, amended by S.I. 2019/771.

⁽²⁸⁾ OJ No. L 134, 29.5.2009, p. 1; relevant amending instruments are OJ No. L.326, 8.12.2011, p. 26, OJ No, L 173, 12.6.2014, and OJ No. L 428, 30.12.2019, p. 1.

- Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition⁽²⁹⁾;
- (b) Northern Ireland, means Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition⁽³⁰⁾ as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;”;
- (ii) for the definition of “retained firearms export authorisation”, substitute—
- ““retained firearms export authorisation” means an export authorisation within the meaning given by Article 2(14) of the replacement firearms Regulation granted by the Secretary of State on or after IP completion day under Article 4 of the replacement firearms Regulation;”;
- (iii) omit the definition of “retained Firearms Regulation”.

PART 5

Amendment of the Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2020

Amendment of the Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2020

12. The Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2020⁽³¹⁾ are amended in accordance with this Part.

Amendment of regulation 1 (citation and commencement)

13. In regulation 1, for “the later of exit day or the day after the day on which they are made” substitute “IP completion day”.

Amendment of regulation 2 (amendment of the torture Regulation)

14. In regulation 2,—

(a) for paragraph (38)(a), substitute—

“(a) for the Introductory Note, in each Annex, substitute—

“The commodity codes in this Annex refer to the codes specified in the Tariff of the United Kingdom⁽³²⁾, which is the document containing the legal classification and import rate for products being imported into the United Kingdom and entitled “The Tariff of the United Kingdom”, as revised or reissued from time to time including by any document published under regulations made

(29) EUR 2012/258, amended by S.I. 2019/771.

(30) OJ No. L 94, 30.3.2012, p. 1.

(31) S.I. 2020/***

(32) A copy of the UK Global Tariff along with a tool to check the commodity code applying to particular goods may be found online at <https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021>.

A copy of the UK Global Tariff along with a tool to check the commodity code applying to particular goods may be found online at <https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021>.

under section 8(1) of the Taxation (Cross-border Trade) Act 2018⁽³³⁾ replacing the same in whole or in part.

If “ex” precedes the code, the goods specified in this Annex 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 in the Tariff of the United Kingdom.”;”;

- (b) in paragraph (42), for subparagraph (f), substitute—
 - “(f) in box 15 of the form,—
 - (i) for “Article 9(1)”, substitute “Article 21(1)”; and
 - (ii) for “setout”, substitute “set out”;”;
- (c) in paragraph (43),—
 - (i) before subparagraph (c), insert—
 - “(ba) in box 5 of the form, for “Consignee” substitute “Consignee”;”;
 - (ii) in subparagraph (e)(i), for “Article 22(1)” substitute “Article 21(1)”; and
 - (iii) in subparagraph (f)(vii)(aa), for “the Customs Tariff (Establishment) (EU Exit) Regulations 2019”, substitute “the Tariff of the United Kingdom”.

Amendment of regulation 3 (transitional provision relating to the torture Regulation)

15.—(1) In the heading to regulation 3, for “(EC) No”, substitute “(EU)”.

(2) In regulation 3,—

- (a) in paragraph (1), for “these Regulations came into force”, substitute “IP completion day”; and
- (b) in paragraph (2),—
 - (i) for the definition of “existing authorisation” substitute—
 - ““existing authorisation” means an authorisation granted by the Secretary of State under Article 3, 11, 15, 16, or 19 of the EU Torture Regulation;”;
 - (ii) in the definition of “EU Torture Regulation”, for “exit day”, substitute “IP completion day”;
 - (iii) in the definition of “new authorisation”, for the words “retained Torture Regulation, as amended by these Regulations”, substitute “replacement torture Regulation”; and
 - (iv) for the definition of “retained Torture Regulation”, substitute—
 - ““replacement torture Regulation”, in relation to—
 - (a) England and Wales and Scotland, means [Regulation \(EU\) 2019/125](#) of the European Parliament and of the Council 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⁽³⁴⁾;
 - (b) Northern Ireland, means [Regulation \(EU\) 2019/125](#) of the European Parliament and of the Council 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⁽³⁵⁾ as it has

⁽³³⁾ 2018 c. 22.

⁽³⁴⁾ [EUR 2019/125](#), as amended by S.I. 2020/***.

⁽³⁵⁾ OJ No. L 30, 31.1.2019, p. 1, amended by OJ No. L 144, 7.5.2020, p. 1.

effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.”.

Signed by authority of the Secretary of State

Date

Name
Title
Department for International Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force in accordance with regulation 2, amend legislation implementing the strategic export controls of the United Kingdom.

Part 2 amends the Export Control Order 2008 (S.I. 2008/3231, as amended) to amend two cross-references to Regulation (EU) 2019/125 of the European Parliament and of the Council 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 (OJ No. L 30, 31.1.2019, p .1, as amended; “the torture Regulation”).

Part 3 amends the Export Control (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/137), regulation 4 of which, for the most part, amends the Export Control Order 2008 on IP completion day (31st December 2020 at 11pm), in consequence of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement. In summary, in *regulation 7*, in relation to the Export Control Order 2008,—

- *paragraphs (2) and (11)* provide for certain definitions,—
 - in relation to England and Wales and Scotland, to reference retained EU law;
 - in relation to Northern Ireland, to reference EU law as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;
- *paragraph (4)* provides for an exception to certain export prohibitions to continue in relation to a certified person who is a part of the armed forces, a police force, or a public authority of the United Kingdom, who is a hunter or sport shooter, or who holds a Manx firearms certificate;
- *paragraph (9)* provides for a new Part 6A (provisions relating to the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement), which comprises the regulations—
 - necessary to implement or supplement the provisions in EU instruments relating to strategic export controls, which on and after IP completion day, as in accordance with the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, have effect in the United Kingdom under section 7A of the [European Union \(Withdrawal\) Act 2018 \(c. 16, as amended\)](#); and
 - for which there is no equivalent provision required in relation to retained EU law;
- *paragraph (10)* authorises the use, for prescribed purposes, of information which is otherwise held by the Secretary of State or the Commissioners for Revenue and Customs in connection with the operation of strategic export controls imposed by—
 - retained EU law; or
 - a directly applicable provision of an EU instrument as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.

All other paragraphs in *regulation 7* make minor or technical amendments in consequence of the amendments set out above.

Part 4 amends the Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/771), which amends the Export Control Act 2002 (c. 28) and certain retained EU law relating to strategic export controls, in consequence of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement. In summary,—

- *regulation 9* provides for regulation-making powers in the Export Control Act 2002, which authorise the Secretary of State, by order, to make provision in connection with any controls

imposed by a directly applicable provision of an EU directive or regulation, to continue to be available in connection with any controls imposed by a directly applicable provision of an EU instrument as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;

- *regulation 10* provides for certain authorisations granted by the Secretary of State under Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ No. L 134, 29.5.2009, p. 1, as amended; “the dual-use Regulation”) that have effect immediately before IP completion day to continue to have effect on and after IP completion day as if they were corresponding authorisations granted by the Secretary of State under the dual-use Regulation,—
 - in relation to England and Wales and Scotland, as it forms part of domestic law;
 - in relation to Northern Ireland, as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;
- *regulation 11* provides for a firearms export authorisation granted by the Secretary of State under Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ No. L 94, 30.3.2012, p. 1; “the firearms Regulation”) that has effect immediately before IP completion day to continue to have effect on and after IP completion day as if it were a corresponding authorisation granted by the Secretary of State under the firearms Regulation,—
 - in relation to England and Wales and Scotland, as it forms part of domestic law;
 - in relation to Northern Ireland, as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.

Part 5 amends the Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/***), which amends, and includes transitional provisions in relation to, the torture Regulation. In summary,—

- *regulation 13* aligns the commencement of the principal Regulations with the incorporation into domestic law of the torture Regulation under section 3 of the European Union (Withdrawal) Act 2018;
- *regulation 14* provides for amendment of the torture Regulation to insert references to the tariff of the United Kingdom;
- *regulation 15* amends a heading and provides for certain authorisations granted by the Secretary of State under the torture Regulation that have effect before IP completion day to continue to have effect after IP completion day as if they were corresponding authorisations granted by the Secretary of State under the torture Regulation,—
 - in relation to England and Wales and Scotland, as it forms part of domestic law;
 - in relation to Northern Ireland, as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.

Authorisation, if required under retained EU law or EU law as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement, may be obtained by application to the Export Control Joint Unit (a part of the Department for International Trade) using the SPIRE online licensing system. Further information may be found online at:

- <https://www.gov.uk/government/organisations/export-control-organisation> (the Export Control Joint Unit);
- <https://www.spire.trade.gov.uk/> (the SPIRE online licensing system).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Export Control (Amendment) (EU Exit) Regulations 2020 No. 1502*

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