

*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. 0000**

**EXITING THE EUROPEAN UNION  
CUSTOMS**

**The Trade etc. in Dual-Use Items, Firearms and Torture  
etc. Goods (Amendment) (EU Exit) Regulations 2019**

*Made - - - - XXXX*

*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<sup>(1)</sup>, 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.

**PART 1**

Introductory

**Citation and commencement**

**1.** These Regulations may be cited as the Trade etc. in Dual-Use Items, Firearms and Torture etc. Goods (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

## PART 2

### Amendment of primary legislation

#### Amendment of the Export Control Act 2002

- 2.—(1) The Export Control Act 2002(2) is amended as follows.
- (2) In section 1 (export controls), omit subsection (5).
- (3) In section 2 (transfer controls), omit subsection (5).
- (4) In section 3 (technical assistance controls)—
- (a) in subsection (4)(a)—
    - (i) at the end of sub-paragraph (i), for “; or” substitute “; and”;
    - (ii) omit sub-paragraph (ii), and the “and” at the end of it;
  - (b) omit subsection (6).
- (5) In section 4 (trade controls)—
- (a) in subsection (4)(a)—
    - (i) in sub-paragraph (i), for “; or” substitute “; and”;
    - (ii) omit sub-paragraph (ii), and the “and” at the end of it;
  - (b) omit subsection (5).
- (6) In section 5 (general restriction on control powers)—
- (a) in subsection (2), omit “EU provision or other”;
  - (b) omit subsection (3).
- (7) In section 7 (control powers: supplementary), in subsection (2)(c), omit “EU provision or”.
- (8) In section 11 (interpretation), in subsection (1), omit the definition of “EU provision”.
- (9) In the Schedule (categories of goods, technology and technical assistance), in paragraph 3(2), in entry A of the Table—
- (a) omit “any Member state”;
  - (b) omit “other”.

## PART 3

### Amendment of retained EU law

#### Amendment of Council Regulation (EC) No 1236/2005

- 3.—(1) Council Regulation (EC) No 1236/2005 of 27 June 2005 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”.

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(2) 2002 c. 28. The Export Control Act was amended by the Treaty of Lisbon (Changes in Terminology or Numbering) Order 2011 (S.I. 2011/1043), article 6(2)(c), and by the Treaty of Lisbon (Changes of Terminology or Numbering) Order 2012 (S.I. 2012/1809), articles 3 and Part 1 of the Schedule.

- (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 United Kingdom or the Isle of Man,”;
  - (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(3);”;
- (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 paragraph 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” (at points (n), (p) and (s) and Articles 5(1) and 7b(1)), 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;”;

- (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 shall mean 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 IIIb;”;
- (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 and the Isle of Man;
- (u) “United Kingdom national” means 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(4), 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 legal 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 of the European Union;
- (x) a person is “resident or established” in the country or territory in which, in the case of a natural person, that person has his or her 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(5).”.

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(4) 1981 c. 61.

(5) OJ L No 287, 29.10.13, p.1.

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

(5) In Article 4 (import prohibition)—

(a) in paragraph 1—

(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 4b (prohibition of brokering services), for “a third country”, substitute “any country or territory outside of the United Kingdom”.

(7) In Article 4c (prohibition of training), for “a third country” substitute “any country or territory outside of the United Kingdom”.

(8) In Article 4d (trade fairs)—

(a) for “a Member State”, substitute “the United Kingdom”;

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

(9) For Article 4e (advertising), substitute—

“It shall be prohibited for any person resident or established in the United Kingdom who sells or purchases advertising space or advertising time from within the United Kingdom; for any United Kingdom national who sells or purchases advertising space or advertising time from within the United Kingdom; for any United Kingdom person who sells or purchases advertising space or advertising time from a country within the European Union; 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 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 II.”.

(10) Omit Article 4f (national measures).

(11) In Article 5 (export authorisation requirement)—

(a) in paragraph 1—

(i) omit “customs”;

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

(iii) omit “external”;

(iv) omit “under Article 226 of Regulation (EU) No. 952/2013”;

(v) omit “non-Union”;

(vi) for point (c), substitute—

“(c) goods listed in Schedule 2 to the Export Control Order 2008(6);”;

(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”.

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