



Office of the Clerk of Tynwald

Document Withdrawn

The following document was laid before
Tynwald on

21st May 2019

Motion for approval was not made

Statutory Document No. 2019/0159



Customs and Excise Act 1993

EXPORT CONTROL (AMENDMENT) (EU EXIT) REGULATIONS 2019 (APPLICATION) ORDER 2019

Approved by Tynwald:

Coming into Operation: in accordance with article 2

The Treasury makes the following Order under sections 1 and 3 of the Customs and Excise Act 1993.

1 Title

This Order is the Export Control (Amendment) (EU Exit) Regulations 2019 (Application) Order 2019.

2 Commencement

- (1) This Order comes into operation on the day it is approved by Tynwald¹.
- (2) However, when it is approved it shall be deemed to have come into operation on exit day².

3 Interpretation

In this Order, “**exit day**” has the same meaning as in the European Union and Trade Act 2019.

4 Application of the Export Control (Amendment) (EU Exit) Regulations 2019 to the Island

- (1) The Export Control (Amendment) (EU Exit) Regulations 2019³ apply to the Island, as part of the law of the Island, subject to the following exceptions, modifications and adaptations.

¹ Tynwald procedure – affirmative under section 3(1) of the Customs and Excise Act 1993.

² Under section 3(2) of the Customs and Excise Act 1993 an under section 1 of that Act may be made retrospective and be deemed to have come into operation from such day or days as may be specified in the order, not being earlier than the date on which the corresponding provision had effect in the United Kingdom.

³ SI 2019/137.

- (2) In regulation 1 (citation and commencement) —
 - (a) omit the words from “and save for” to the end; and
 - (b) omit (in consequence of sub-paragraph (a)) “and commencement” in the heading to that regulation.
- (3) Omit regulations 2 (commencement) and 3 (amendment of the Export of Radioactive Sources (Control) Order 2006).
- (4) In regulation 4 (amendment of the Export Control Order 2008) —
 - (a) in paragraph (4), for “United Kingdom”, substitute **Island and the United Kingdom**;
 - (b) in paragraph (6) —
 - (i) in sub-paragraph (a) —
 - (aa) for “United Kingdom”, wherever occurring, substitute **Island**; and
 - (bb) for “Isle of Man”, substitute **United Kingdom**;
 - (ii) in sub-paragraph (b), for “Secretary of State”, substitute **Treasury**; and
 - (iii) in sub-paragraph (c), in the substitute words —
 - (aa) omit “(2)”; and
 - (bb) for “United Kingdom”, substitute **Island**; and
 - (cc) for “Isle of Man”, substitute **United Kingdom**;
 - (c) in paragraphs (8) and (9), for “United Kingdom”, substitute **Island and the United Kingdom**;
 - (d) in paragraph (10) —
 - (i) in sub-paragraph (a), for “Secretary of State”, substitute **Treasury**; and
 - (ii) in sub-paragraph (b), for “United Kingdom”, substitute **Island and the United Kingdom**;
 - (e) in paragraph (11) —
 - (i) for “from the United Kingdom for WMD purposes,” substitute **from the United Kingdom and the Island for WMD purposes)**; and
 - (ii) for “outside the United Kingdom”, substitute **outside the Island and the United Kingdom**;
 - (f) in paragraph (14) —
 - (i) in sub-paragraph (b), for “Secretary of State”, substitute **Treasury**; and
 - (ii) in sub-paragraph (c), for “United Kingdom”, substitute **Island**;

- (g) in paragraph (15), for “United Kingdom”, substitute **“Island and the United Kingdom”**;
 - (h) in paragraph (18) —
 - (i) for “UK licence”, substitute **“UK or Isle of Man licence”**; and
 - (ii) in sub-paragraph (a), for “United Kingdom”, substitute **“Island and the United Kingdom”**;
 - (i) in paragraph (19), for “Secretary of State”, substitute **“Treasury”**;
 - (j) in paragraph (21)(a)(i)(bb), for “Kingdom”, substitute **“Island”**;
 - (k) in paragraph (24)(b), for “Secretary of State”, substitute **“Treasury”**;
 - (l) in paragraph (28) —
 - (i) in sub-paragraph (a) —
 - (aa) in head (i), for “Secretary of State”, substitute **“Treasury”**; and
 - (bb) in head (ii), for “Secretary of State’s” substitute **“Treasury’s”**; and
 - (ii) in sub-paragraph (b)(i), for “United Kingdom”, substitute **“Island and the United Kingdom”**; and
 - (m) for paragraph (29)(c), substitute —
 - (c)** after paragraph 6, insert —
 - “(7) In this article “retained EU law” has the meaning given in Schedule 1 to the European Union and Trade Act 2019.”.
- (5) In regulation 5 (amendments to Offences Orders) —
- (a) after “Export Control Order 2008”, wherever occurring, insert **“**, as it has effect in the Island **”**; and
 - (b) in paragraph (3)(b), omit “of the European Union”.
- (6) The text of the Export Control (Amendment) (EU Exit) Regulations 2019 as applied to the Island by this Order is annexed to this Order.

MADE 28/03/2019

A L CANNAN
Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies in Island law the Export Control (Amendment) (EU Exit) Regulations 2019⁴ (“the applied Regulations”). It is deemed to have come into operation on exit day.

Under the terms of the Customs and Excise Agreement between the United Kingdom and the Isle of Man Governments, the Island is obliged to keep its export control law correspondent with that of the United Kingdom.

Regulation 4 of the applied Regulations amends the Export Control Order 2008, as it has effect in the Island⁵, to address deficiencies in Island law arising from the withdrawal of the United Kingdom from the European Union.

Regulation 5 of the applied Regulations amends 3 United Kingdom statutory instruments, which have previously been applied in the Island, relating to export controls, to correct deficiencies arising from the withdrawal of the United Kingdom from the European Union. These applied Regulations, concerning Somalia, Eritrea, the Taliban, Sudan and Central African Republic make provision for penalties and enforcement in respect of certain restrictive measures or sanctions.

⁴ SI 2019/137.

⁵ The Export Control Order 2008, was originally applied in the Island by means of the Export Control Order 2008 (Application) Order 2009 [SD 104/09], and subsequently amended on a number of occasions, most recently by SD 2018/0238.

Annex

STATUTORY INSTRUMENTS

2019 No. 137

EXITING THE EUROPEAN UNION

CUSTOMS

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

Sift requirements satisfied	23 rd January 2019
Made - - - -	28 th January 2019
Laid before Parliament	31 st January 2019
Coming into force in accordance with regulation 1	

The Secretary of State makes these Regulations in exercise of the powers conferred by section 1(5) and 2(5) of the Export Control Act 2002⁶ and section 8(1) of the European Union (Withdrawal) Act 2018⁷.

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

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Export Control (Amendment) (EU Exit) Regulations 2019 and save for regulation 4(31) come into force on exit day.
2. ~~Regulation 4(31) comes into force on 1st March 2019.~~

PART 2

Amendment of subordinate legislation

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

3. ~~(1) The Export of Radioactive Sources (Control) Order 2006(c) is amended as follows:~~

⁶ 2002 c.28.

⁷ 2018 c.16.

- ~~(2) In article 5 (Licences), in paragraph (3)—~~
- ~~(a) in the words before sub-paragraph (a), omit “to any destination outside the European Union”;~~
 - ~~(b) in sub-paragraph (b) for “established within the European Union” in each place these words occur, substitute “established in the United Kingdom”;~~
 - ~~(c) in sub-sub-paragraph (bb) omit “from the European Union”.~~

~~(3) In article 13 (Use and disclosure of information), in paragraph (2)(b), omit “European Union or other”.~~

Amendment of the Export Control Order 2008

4. (1) The Export Control Order 2008⁸ is amended as follows.
- (2) In article 2(1) (Interpretation)—
- (a) omit the definitions of:
 - (i) “certificate”;
 - (ii) “competent authority”;
 - (iii) “the customs territory”;
 - (iv) “the defence-related products Directive”;
 - (v) “European military items”;
 - (vi) “the firearms Directive”;
 - (vii) “non-community goods”;
 - (viii) “the Union General Export Authorisation”; and
 - (b) before the definition of “scheduled journey” insert ““retained general export authorisation” has the same meaning as in Article 2(9) of the dual-use Regulation;”
- (3) In article 2A (Crown application) omit paragraphs 1(c) and 1(e).
- (4) In article 6 (WMD purposes end-use control supplementing the dual-use Regulation), for “customs territory” substitute ~~“United Kingdom”~~ **“Island and the United Kingdom”**.
- (5) Omit article 7 (Control on transfers within the customs territory supplementing the dual-use Regulation).

⁸ S.I. 2008/3231 as amended.

- (6) In article 8 (Transit controls supplementing the dual-use Regulation)—
(a) for paragraph (1) substitute—

“(1) Subject to articles 17 and 26, no person shall export goods listed in Annex I to the dual-use Regulation where the goods in question are entering and passing through the ~~United Kingdom~~ **Island** with a final destination outside the ~~United Kingdom~~ **Island** and the ~~Isle of Man~~ **United Kingdom**.”;

- (b) in paragraph (2) subsection (a), for “a competent authority”, substitute “the ~~Secretary of State~~ **Treasury**”;

- (c) in paragraph (2), after the semi-colon at the end of subsection (b), substitute—

“ ~~(2)~~ and the dual-use goods in question are goods which are not listed in Annex I to the dual-use Regulation and which are entering and passing through the ~~United Kingdom~~ **Island** with a final destination outside the ~~United Kingdom~~ **Island** and the ~~Isle of Man~~ **United Kingdom**.”.

- (7) Omit article 9.

(8) In article 10 (Transfers within the United Kingdom for WMD purposes) substitute references to “customs territory” with “~~United Kingdom~~ **Island and the United Kingdom**”.

(9) In the heading to article 11 for “customs territory” substitute “~~United Kingdom~~ **Island and the United Kingdom**”.

(10) In article 11 (Transfers from outside the customs territory for WMD purposes)—

- (a) in paragraph (1) sub-paragraph (a), for “a competent authority”, substitute “the ~~Secretary of State~~ **Treasury**”;

- (b) in paragraph (2) substitute references to “customs territory” with “~~United Kingdom~~ **Island and the United Kingdom**”.

(11) In article 12 (Transfers by non-electronic means ~~from the United Kingdom for WMD purposes~~, **from the United Kingdom and the Island for WMD purposes**) substitute paragraph (2) with “Subject to articles 18 and 26, the transferor shall not transfer the software or technology in question by non-electronic means to a destination ~~outside the United Kingdom~~ **outside the Island and the United Kingdom**.”

- (12) Omit article 15 (Exception for firearms – European firearms pass).

(13) Omit article 16 (Exception for firearms – firearm or shot gun certificate or permit).

- (14) In article 17 (Transit or transhipment exception)—
- (a) in paragraph (1)—
 - (i) omit “, 7”;
 - (ii) for “conditions in paragraph (4) are met” substitute “condition in paragraph (4) is met”;
 - (b) in paragraph (3)(a), for “a competent authority”, substitute “the ~~Secretary of State~~ **Treasury**”;
 - (c) for paragraph (4), substitute—

“(4) The condition is that the goods in question remain on board a vessel, aircraft or vehicle for the entire period that they remain in the ~~United Kingdom~~ **Island** or are goods on a through bill of lading, through the air waybill or single transport contract and in any event are exported before the end of the period of 30 days beginning with the date of their importation.”.

(15) In article 19 (End-use control on technical assistance), for each reference to “customs territory”, substitute “~~United Kingdom~~ **Island and the United Kingdom**”.

(16) Omit article 24 (Exception for movement of goods within the customs territory).

(17) In article 26 (Licences) omit paragraph (5).

(18) In article 27(1) (Person authorised by ~~UK licence~~ **UK or Isle of Man licence** to export goods)—

- (a) substitute references to “customs territory” with “~~United Kingdom~~ **Island and the United Kingdom**”; and
- (b) in sub-paragraph (a) after “on whose behalf the export declaration is made” insert “, where an export declaration is required,”.

(19) In article 28(1)(b) (Registration with the ~~Secretary of State~~ **Treasury**), substitute “Union General Export Authorisation” with “retained general export authorisation”.

(20) Omit article 28A (Certificates (European military items))⁹.

⁹ Article 28A was added by S.I. 2012/1910 which also inserted definitions of “defence-related products Directive” and “European military items” in connection with the implementation of Directive 2009/43/EC 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.

- (21) In article 29 (Record keeping – general)—
- (a) in paragraph 1—
 - (i) in sub-paragraph (b)—
 - (aa) substitute “Union General Export Authorisation” with “retained general export authorisation”;
 - (bb) after “~~Kingdom~~ **Island**” insert “.”;
 - (cc) omit “; and”;
 - (ii) omit sub-paragraph (c);
 - (b) omit paragraph 4.
- (22) In article 31 (Inspection of records)—
- (a) in paragraph (1) omit “or 22(8) (records of exportation and transfer of listed items within the customs territory)”;
 - (b) in paragraph (2) sub-paragraph (b) omit “or 22(8)”.
- (23) Omit article 33A (Certificates: refusals, etc. and appeals).
- (24) In article 35 (Offences relating to prohibitions and restrictions in the dual-use Regulation)—
- (a) in paragraph (1), omit “or 22(1) (exportation or transfer of sensitive items within the customs territory)”;
 - (b) in paragraph 2, for “competent authority” substitute “the ~~Secretary of State~~ **Treasury**”;
 - (c) in paragraph (4), omit “or 22(1)”;
 - (d) in paragraph (7), after “Article 20 (record-keeping)” omit “, 22(8) (records of exportation and transfer of listed items within the customs territory) or 22(10) (requirement in relation to commercial documents for exportation and transfer of listed items within the customs territory)”.
- (25) Omit “or certificates” from the heading to Article 37 (Misleading applications for licences or certificates).
- (26) In article 37, omit both occurrences of “or certificate”.
- (27) In article 38(1) (Failure to comply with licence conditions) for each reference to “Union General Export Authorisation” substitute “retained general export authorisation”.

- (28) In article 40 (Customs powers relating to dual-use goods)—
- (a) in paragraph 1—
 - (i) for “a competent authority” substitute “the ~~Secretary of State~~ **Treasury**”;
 - (ii) for “its” substitute “the ~~Secretary of State’s~~ **Treasury’s**”;
and
 - (b) in paragraph 2—
 - (i) for “customs territory” substitute “~~United Kingdom~~ **Island and the United Kingdom**”;
 - (ii) at the end of sub-paragraph (b) omit from “,” to “licence”.
- (29) In article 43 (Use and disclosure of information)—
- (a) for paragraph 1(b), substitute—
 - “(b) so far as not contained within this Order, any provision of retained EU law on the export of goods, the transfer of software or technology, participation in the provision of technical assistance, or activities which facilitate, or are otherwise connected with, the acquisition, disposal or movement of goods.”;
 - (b) in paragraph 2(b) omit “EU provision or other”;
 - ~~(c) after paragraph 6, insert—~~
 - ~~(d) “(7) In this article “retained EU law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018.”.~~
 - (c) after paragraph 6, insert—**
 - “(7) In this article “retained EU law” has the meaning given in Schedule 1 to the European Union and Trade Act 2019.”.**
- (30) Omit article 46.
- (31) In Schedule 2 (Military goods, software and technology) omit the definition of “Deactivation Regulation” and substitute with “‘Deactivation Regulation’ means Commission Implementing Regulation (EU) 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable;”¹⁰.

¹⁰ OJ N L333, 19.12.2015, p.62.

(32) In Schedule 3 (UK controlled dual-use goods, software and technology), in entry PL8001 for “the customs territory” substitute “the customs territory of the European Union”.

Amendments to Offences Orders

5. (1) In the Export Control (Somalia) Order 2011¹¹ in article 1 (Citation, commencement and interpretation) in paragraph (2) in the definition of “military goods and technology”, for “Common Military List of the European Union” substitute “for the time being specified in Schedule 2 (Military goods, software and technology) to the Export Control Order 2008, **as it has effect in the Island**”¹².

(2) In the Export Control (Al-Qaida and Taliban Sanctions) Regulations 2011¹³ in regulation 5 (Offences supplementing the Taliban Regulation)¹⁴ in paragraph (1) for “the Common Military List of the European Union” substitute “for the time being specified in Schedule 2 (Military goods, software and technology) to the Export Control Order 2008, **as it has effect in the Island**”.

(3) In the Export Control (Sudan, South Sudan and Central African Republic Sanctions) Regulations 2014¹⁵ in regulation 6 (Offences supplementing the Central African Republic Regulation)—

(a) in paragraph (a)—

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

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

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

Signed by authority of the Secretary of State for International Trade.

George Hollingbery
Minister of State for Trade Policy
Department for International Trade

28 January 2019

¹¹ SI 2011/146 as amended.

¹² SI 2008/3231. Schedule 2 was substituted by SI 2017/85 and subsequently amended by SI 2017/697 and SI 2018/165. There are other instruments which amend other parts of the Order.

¹³ SI 2011/2649 as amended.

¹⁴ Council Regulation (EU) 753/2011, concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan as it forms part of domestic law on or after exit day by virtue of the European Union (Withdrawal) Act 2018 is amended by provision made under the Act.

¹⁵ SI 2014/3258 as amended.

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) and section 1(5) and 2(5) of the Export Control Act 2002 (c.28). The powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 are exercised in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraph (a), (c), (d) and (g) of section 8(2) of that Act) arising from the withdrawal of the UK from the European Union.

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

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

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

Regulation 4(31) comes into force in advance of exit day to ensure a reference to an EU instrument is up to date upon exit day. Regulation 4(31) is made in exercise of the powers conferred by section 1(5) and 2(5) of the Export Control Act 2002.

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

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