

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT EXPORT CONTROL (AMENDMENT)  
(EU EXIT) REGULATIONS 2022

*Thursday 1 December 2022*

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**The Committee consisted of the following Members:**

*Chair:* CAROLYN HARRIS

Ali, Tahir (*Birmingham, Hall Green*) (Lab)  
Benn, Hilary (*Leeds Central*) (Lab)  
† Cruddas, Jon (*Dagenham and Rainham*) (Lab)  
† Duguid, David (*Banff and Buchan*) (Con)  
† Eastwood, Mark (*Dewsbury*) (Con)  
† Eustice, George (*Camborne and Redruth*) (Con)  
† Fabricant, Michael (*Lichfield*) (Con)  
† Fletcher, Nick (*Don Valley*) (Con)  
† Ford, Vicky (*Chelmsford*) (Con)  
† Greenwood, Margaret (*Wirral West*) (Lab)  
† Griffith, Dame Nia (*Llanelli*) (Lab)

Hollern, Kate (*Blackburn*) (Lab)  
† Huddleston, Nigel (*Parliamentary Under-Secretary  
of State for International Trade*)  
† Mak, Alan (*Havant*) (Con)  
† Stafford, Alexander (*Rother Valley*) (Con)  
† Wakeford, Christian (*Bury South*) (Lab)  
† Wood, Mike (*Dudley South*) (Con)

Yohanna Sallberg, *Committee Clerk*

† **attended the Committee**

# Seventh Delegated Legislation Committee

Thursday 1 December 2022

[CAROLYN HARRIS *in the Chair*]

## Draft Export Control (Amendment) (EU Exit) Regulations 2022

11.30 am

**The Parliamentary Under-Secretary of State for International Trade (Nigel Huddleston):** I beg to move,

That the Committee has considered the draft Export Control (Amendment) (EU Exit) Regulations 2022.

It is a genuine pleasure to serve under your chairmanship, Ms Harris.

The aims of the draft statutory instrument are threefold: first, to make technical amendments to the Export Control Order 2008 to implement the European Union dual-use regulation, which applies in Northern Ireland by virtue of the Northern Ireland protocol; secondly, to correct an error introduced by an earlier instrument; and thirdly, to remove the Russian Federation as a permitted destination from the scope of certain general export authorisations.

Let me step back to provide some context. The draft instrument amends legislation relating to the United Kingdom's export controls. This is a technically complex area of law, so I hope Members will bear with me as I provide some background. The export controls to which this instrument relates specifically are strategic exports, which include goods, software and technology capable of having a military use. In particular, it relates to dual-use exports, which are capable of both civilian and military uses. The restrictions that apply to strategic goods, software and technology are known as controls, and can take different forms. For example, controls may relate to dual-use items or to end uses relating to weapons of mass destruction. Controlled items may be licensed for export, but exporting controlled items without a licence constitutes an offence.

When the United Kingdom was a member of the European Union, it was subject to the EU law on export controls. The EU set out a number of controls relating to strategic exports, as well as extensive lists of goods, software and technology subject to control. As Members are aware, since the UK's withdrawal from the EU, certain EU rules have continued to apply in Northern Ireland, in accordance with the terms of the Northern Ireland protocol. When the United Kingdom left the European Union in 2020, many of the detailed rules describing which strategic goods could be exported without a licence were set out in European law.

I will set out three distinct descriptions of relevant legislation and use them throughout the rest of my speech. First, the old EU dual-use regulation applied to the United Kingdom before our withdrawal from the EU; it continued to apply throughout the EU, and in Northern Ireland in accordance with the Northern Ireland protocol, until 9 September 2021. Secondly, the retained dual-use regulation is the version of the old EU dual-use

regulation that was retained in UK law when we left the European Union; it applies in Great Britain. Thirdly, the new—I use the EU word—recast EU dual-use regulation came into force on 9 September 2021; the recast dual-use regulation replaced the old regulation in the EU and has applied automatically since 9 September 2021 in Northern Ireland, in accordance with the rules of the Northern Ireland protocol.

The recast dual-use regulation sets out the laws that govern the export of dual-use goods, software and technology from the EU and Northern Ireland. It includes new controls on cyber-surveillance items and technical assistance, and it provides for additional controls relating to EU member states' national control lists. For regulatory purposes, the recast dual-use regulation is incomplete: it sets out controls on dual-use items but does not provide the necessary legislative detail on how to license exports of such items, the offences applicable for breaching controls, or the applicable customs enforcement powers. Such matters have been left to domestic implementation.

In this case, the regulation that we are seeking to ensure functions properly controls the export of dual-use goods, which are goods that have both military and civilian use. The draft statutory instrument therefore aims to make the necessary changes to the Export Control Order 2008 to ensure that the recast dual-use regulation is properly connected to the existing domestic-law provisions on licensing, offences and customs enforcement. To that extent, it provides for the technical implementation of the United Kingdom's obligations under the Northern Ireland protocol, rather than representing any change in export control policy.

I should clarify that this statutory instrument is subject to the draft affirmative procedure, because it modifies criminal offences to make the new European Union controls on cyber-surveillance items, technical assistance and national control lists all operable in Northern Ireland. Paragraph 8F(1) of schedule 7 to the European Union (Withdrawal) Act 2018 specifies that instruments that make provisions falling within paragraph 8F(2) fall must be made using the draft affirmative procedure.

Let me explain what the regulations do, first with respect to the changes to the Export Control Order 2008 and then with respect to the changes to the retained dual-use regulation. First, on the 2008 order, regulation 3 updates and clarifies definitions relating to the recast dual-use regulation as it applies in Northern Ireland and the retained dual-use regulation as it applies in Great Britain.

Secondly, regulations 4 to 8 and 15 and 16 update various cross-references to refer to the recast dual-use regulation. For instance, references to article 20(1) of the old dual-use regulation have been updated to refer to the equivalent provision in article 27(1) of the recast dual-use regulation.

Thirdly, regulations 9, 13 and 17 modify the offences provisions in the 2008 order to cover the new controls in the recast dual-use regulation. That is, they make it an offence to contravene the prohibitions and restrictions in the recast dual-use regulation and specify applicable penalties. They also more clearly distinguish between the offences applicable in Northern Ireland and those applicable in England, Wales and Scotland. Specifically, regulation 9 limits the application of article 35 of the 2008 order to offences relating to the retained dual-use regulation as it applies in England, Wales and Scotland.

Regulations 13 and 17 create new offences in Northern Ireland in respect of the new controls in the recast dual-use regulation.

Fourthly, regulation 10 both updates certain cross-references to the recast dual-use regulation and extends His Majesty's Revenue and Customs' customs powers in Northern Ireland in respect of the new controls.

Fifthly, regulation 12 updates a cross-reference to a European Council directive from 18 June 1991 on the control of the acquisition and possession of weapons, known as the EU firearms directive. This, too, was replaced by an updated directive on the same subject matter: directive (EU) 2021/555, which came into force on 26 April 2021. The new directive now also applies in Northern Ireland in accordance with the Northern Ireland protocol, and it is appropriate that we update the cross-reference accordingly.

Let me turn to the amendment the instrument makes to the retained dual-use regulation. First, regulation 19 corrects an error in an earlier instrument made during the withdrawal of the United Kingdom from the European Union. It reinstates the Secretary of State's power to reduce, annul, suspend, modify or revoke brokering-services authorisations in the retained dual-use regulation.

Secondly, regulations 20 to 22 amend the retained dual-use regulation to remove the Russian Federation as a permitted destination in certain general export licences that apply to Great Britain.

**Mark Eastwood** (Dewsbury) (Con): The Minister mentioned the Russian Federation. I fully support what we are doing with sanctions and to try to restrict exports into and imports from Russia; however, the Russian Federation seems to be very good at circumventing our rules or finding loopholes that allow imports into or exports out of this country. Will the Minister clarify how his Department will address that?

**Nigel Huddleston:** My hon. Friend is absolutely right, and I assure him that we are all over this. We have one of the most robust export control licensing regimes in the world, and we are playing very close attention, working with our international partners, to make sure that Russia is not able to exploit loopholes. We have rigorous conversations with our partners to ensure that is not the case. The very point of the amendment regulations before us is, as Members will recognise, to do everything we can and that is necessary to step in in the light of Russia's invasion and annexation of Ukraine's sovereign territory. I understand my hon. Friend's great interest in this matter.

I hope Members will forgive me if I do not go into the detail of the remaining draft regulations, which make minor and technical amendments in consequence of those that I have just set out. I ask Members to support the draft regulations, which I commend to the Committee.

11.40 am

**Dame Nia Griffith** (Llanelli) (Lab): It is a huge honour to serve under you, Ms Harris; it is the first time that I have had the pleasure. On behalf of the official Opposition, I welcome the Minister to his post and thank him for his clear explanation of the legislation. I also thank the team that prepared the explanatory memorandum, which has been very helpful, given the complexities of the technical detail.

In principle, Labour supports the legislation. It is in everybody's interests to have clear regulations that can be implemented effectively. I will not repeat all the technical detail, but broadly the legislation has two main purposes. The first is to make the necessary changes to update legislation in line with existing policy, and we support the measures proposed. The second purpose is to prevent sales to Russia, in particular the sale of dual-use equipment—a purpose that we absolutely support.

The Opposition have long supported the principle of export controls, particularly in respect of arms or equipment that might be used for internal repression or external aggression. Labour stands unshakably with our NATO allies in supporting the provision of military, economic, diplomatic and humanitarian assistance to Ukraine as it defends itself against Putin's illegal invasion. We are keen to see the strongest possible economic and diplomatic sanctions maintained against Putin's Russia and for any loopholes to be closed. To that end, we fully support the measures that strengthen the sanctions and provide for export controls to the Russian Federation.

Clearly, in the current context it is more important than ever to prevent the export of items such as dual-use equipment. We therefore support the measures in the legislation that prevent the sale of dual-use equipment to the Russian Federation and that put right a deficiency that arose following the erroneous removal of a provision that extended the power to refuse, annul, suspend, modify or revoke export authorisations to brokering authorisations. I welcome yesterday's news that the Secretary of State for International Trade signed a digital agreement with Ukraine. On our TV screens, we get a small snapshot of the huge reconstruction task lying ahead in Ukraine that we want to support, and trade is a vital part of economic recovery.

The draft regulations reflect the situation in Northern Ireland—namely, to achieve the same ends, legislation pertaining to Great Britain is introduced through retained legislation, while that pertaining to Northern Ireland is introduced through the equivalent EU legislation. As we have said repeatedly, it is vital for businesses and consumers in Northern Ireland that every effort is made to make Brexit work and to ensure the smoothest possible flow of trade between Great Britain and Northern Ireland. For example, we have called for an effective veterinary agreement, as the Minister will know, to ease the flow of goods from east to west.

It is a matter of deep concern that Northern Ireland remains without an Executive. It is an abject failure that power sharing has not been restored for months and months. The UK Government have achieved little in respect of bringing the communities together and helping to restore an Executive in Northern Ireland. The explanatory memorandum says that it was not deemed necessary to have any consultation. I understand that international trade is reserved to the UK Government, but given the lack of a functioning Executive in Northern Ireland and the sensitivity of anything to do with trade, have there been any discussions between the Department and officials in Northern Ireland or any elected representatives?

The explanatory memorandum tells us that the provision that extended the power to refuse, annul, suspend, modify or revoke export authorisations to brokering authorities was removed "in error". How did that happen? As has been explained, the draft regulations rectify

[*Dame Nia Griffith*]

deficiencies. What analysis have the Government made of anything that has slipped through what we might call the net—the loopholes—and, in particular, of whether there has been any inappropriate supply of dual-control equipment to the Russian Federation or that has been prevented by broader sanction initiatives?

Does the Minister anticipate any difficulties in the implementation of the legislation? The explanatory notes say that there has been no impact assessment because of the low level of impact on any business. Nevertheless, have any efforts been made to identify any businesses that will be affected by the legislation? If so, has there been any correspondence or discussion with them? Those are the questions that I would like the Minister to answer, but I reiterate that we are, in principle, supportive of the legislation. We understand the reasons why it is necessary and would like to see it implemented effectively as soon as possible.

11.45 am

**Nigel Huddleston:** I thank the hon. Lady for her comments and her welcome. I very much look forward to working constructively with her and the Opposition team on many matters, the vast majority of which relating to the Department for International Trade and the whole remit are not party political. We share the same goals in terms of promoting trade and, as the hon. Lady mentioned, ensuring that where trade happens on sensitive items it happens appropriately. She will be aware of the measures that we have in place. We can be proud to have developed, under multiple Governments, one of the most robust control systems in the world.

Let me respond briefly to the items the hon. Lady raised. Let us be clear and honest about the error that was made: it was a simple error—in government we make human errors every now and again. It was identified by officials and this is the process for correcting it. There have been no consequences to that error since it occurred, so there has been no material impact. We are correcting it at the earliest opportunity.

On the scale of the items covered, according to our licensing data 11 Northern Ireland exporters were granted standard individual export licences for dual use in 2021. They were issued with 315 licences to export dual-use items from Northern Ireland, valued at £13 million. We hold licensing data on open licences, but that data does not include information about end users.

The hon. Lady asked about the impact assessment. The draft instrument implements existing policy; it has no impact on businesses, charities or voluntary bodies and there is no significant change. The EU regulation that it implements was the subject of an EU Commission impact assessment, which is available online. I assure the hon. Lady that we do not believe the differences

between the old and the recast regulation will have a significant impact. I mentioned an error; I am afraid they happen every now and again, but I hope that she will accept the apology and the quick turnaround.

My hon. Friend the Member for Dewsbury raised a broader point about sanctions. I reassure him that our sanctions are there to fulfil a whole range of purposes. In the UK, those purposes include complying with UN and other international obligations, supporting foreign policy and national security objectives, and maintaining international peace and security. The UK implements a wide range of sanctions regimes through regulations made under the Sanctions and Anti-Money Laundering Act 2018, which provides the main legal basis for the UK to impose, update and lift sanctions. UK sanctions regulations made under that Act apply in the whole of the UK, including Northern Ireland.

**Mark Eastwood:** I thank the Minister for that answer. I have picked up on the disparity between sanctions and controls and restrictions in respect of Russia and Belarus. Will the Minister provide reassurance that they are consistent, and that the sanctions and any restrictions and export controls are applied equally in respect of the Russian Federation and Belarus?

**Nigel Huddleston:** I reassure my hon. Friend that we have extremely rigorous export controls. He raises issues and points that go beyond the remit of the regulations, but I am happy to follow up and have a conversation with him to discuss those matters. I am aware that he is extremely concerned about such issues, as indeed we all are, and I thank him for raising them, but the Chair will forgive me for taking that conversation offline.

**Dame Nia Griffith:** Will the Minister respond to my question about whether any discussions about this legislation were held with Northern Ireland officials or Northern Ireland representatives? I fully understand why there did not have to be such discussions, but we understand the sensitivity of the situation.

**Nigel Huddleston:** I assure the hon. Lady that we have regular discussions. The Under-Secretary of State for International Trade, my hon. Friend the Member for West Aberdeenshire and Kincardine (Andrew Bowie), who is responsible for export policy, has regular conversations with the devolved Administrations and we follow through with them on an ongoing basis, so discussions happen very frequently indeed. I am happy to write to the hon. Lady about that. I ask the Committee to support the regulations.

*Question put and agreed to.*

11.51 am

*Committee rose.*