

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT TRADE ETC. IN DUAL-USE ITEMS AND
FIREARMS ETC. (AMENDMENT) (EU EXIT)
REGULATIONS 2019

Monday 25 March 2019

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Friday 29 March 2019

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The Committee consisted of the following Members:

Chair: SIR ROGER GALE

Ali, Rushanara (*Bethnal Green and Bow*) (Lab)
 † Bardell, Hannah (*Livingston*) (SNP)
 † Churchill, Jo (*Bury St Edmunds*) (Con)
 † Cummins, Judith (*Bradford South*) (Lab)
 † Davies, Chris (*Brecon and Radnorshire*) (Con)
 † Eagle, Ms Angela (*Wallasey*) (Lab)
 Efford, Clive (*Eltham*) (Lab)
 † Green, Chris (*Bolton West*) (Con)
 Hendrick, Sir Mark (*Preston*) (Lab/Co-op)
 † Johnson, Dr Caroline (*Sleaford and North
 Hykeham*) (Con)

† Prisk, Mr Mark (*Hertford and Stortford*) (Con)
 † Pursglove, Tom (*Corby*) (Con)
 † Smith, Owen (*Pontypridd*) (Lab)
 † Stuart, Graham (*Parliamentary Under-Secretary of
 State for International Trade*)
 † Tami, Mark (*Alyn and Deeside*) (Lab)
 † Watling, Giles (*Clacton*) (Con)
 † Whately, Helen (*Faversham and Mid Kent*) (Con)

Hannah Bryce, *Committee Clerk*

† **attended the Committee**

Second Delegated Legislation Committee

Monday 25 March 2019

[SIR ROGER GALE *in the Chair*]

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

4.30 pm

The Parliamentary Under-Secretary of State for International Trade (Graham Stuart): I beg to move,

That the Committee has considered the draft Trade etc. in Dual-Use Items and Firearms etc. (Amendment) (EU Exit) Regulations 2019.

I am pleased to open this debate on the draft regulations; they may not have a very catchy title, but I assure the Committee that they do a very serious job. Without these amending regulations, existing European Union law would not be effective in UK domestic law on the day we exit the European Union. Addressing that issue has been a vital part of our long-term planning since the European Union (Withdrawal) Act 2018 received Royal Assent.

The draft regulations include amendments that will allow the UK to maintain the EU laws that control exports of dual-use items—items that have both civil and military uses. They will also control the export of civilian firearms of the type used by hunters and sports shooters. If we do not retain and amend the relevant legislation, we will no longer control the export of such potentially dangerous items. That would put the United Kingdom in breach of international agreements that require us to impose such controls, which prevent military equipment from falling into the hands of those who intend this country harm.

Exit-related legislation provides the necessary legislative building blocks to ensure our readiness as a nation on exit day. The 2018 Act provides the Government with the tools to deal with deficiencies in domestic law that would arise as a result of our exit from the European Union, so it is right and proper that we use it for matters such as export controls. By making the draft regulations and the associated Export Control (Amendment) (EU Exit) Regulations 2019, my Department will have completed much of the legislative part of controlling the export of strategic goods in preparation for a no-deal scenario. If the draft regulations are no longer required on exit day, we expect to revoke or amend them; alternatively, commencement could be deferred to the end of an implementation period.

Broadly, all the provisions that today apply to exports from the EU customs territory will instead apply to exports from the UK. However, our leaving the European Union will mean that the rules will have to change, and we cannot guarantee that all the export licensing requirements with which UK exporters are familiar will remain the same. The Government have therefore made every effort to provide certainty for businesses and the public, wherever possible. We have published a new general export licence that provides for the export of dual-use items to all

European Union member states and the Channel Islands. In August, we published a technical notice on export controls, which explained our plans for post-EU exit export control licensing. We have also included EU exit advice in the export control training programme and at the annual export control symposium, as well as giving extensive advice to key sector trade associations.

Hon. Members should be aware that the Joint Committee on Statutory Instruments has reported the draft regulations “on the grounds that they require elucidation in one respect and are defectively drafted in three respects.”

On the first point, we have provided the Joint Committee with an explanation of why the transfer of technology by electronic means to the Isle of Man is considered to be an export, whereas the physical movement of goods is not: it is a consequence of our customs arrangements with the Isle of Man and is consistent with our controls on military goods and technology. The other three points we acknowledge as drafting errors, which we will correct in the near future, but none of which will affect the proper functioning of the regulations.

I hope that the House will work in the interests of our nation to ensure the passage of this legislation, which is essential to ensuring that we are prepared for EU exit. I commend the draft regulations to the Committee.

4.34 pm

Judith Cummins (Bradford South) (Lab): It is a pleasure to serve under your chairmanship, Sir Roger. The sifting Committee has drawn the draft regulations to the special attention of both Houses on the basis that their drafting is defective and that particular points require further elucidation. The Department has acknowledged the legislation’s flaws, but we are still considering the defective draft, as the Government have not withdrawn it or laid before the House a draft with the defective wording amended, so the wording of the draft before the Committee may not be the wording of the final statutory instrument. Can the Minister confirm whether the Government intend to amend the regulations in the light of the sifting Committee’s comments?

That Committee referred specifically to regulation 3(5)(f), which amends the final paragraph of article 4 of the dual-use regulation so that it reads: “This Regulation is without prejudice to the right of Member States to take national measures under Article 10 of Regulation (EU) 2015/479”. In its minutes, the sifting Committee noted that it was

“puzzled as to how domestic UK legislation could, after exit day, prejudice the right of member States to take national measures under EU law”,

and that

“the Department acknowledges that this is an error and undertakes to correct it.”

Regulation 3(22) amends annex I of the dual-use regulation, which lists dual-use items for which export authorisation is required. Category 9 lists items related to aerospace and propulsion, including assemblies and components that incorporate technologies for turbine engines

“whose design or production origins are either non-EU Member States or Wassenaar Arrangement Participating States; or unknown to the manufacturer.”

Regulation 3(22)(h)(ii) amends that provision by removing “either non-EU Member states or”.

The sifting Committee noted that that amendment would require authorisation only when the design or publication of those items originated from such places as Norway, Canada, Japan, Australia or EU member states, or when their origin was unknown. The Department acknowledged that that was an error, and gave the Committee assurances that it would seek to amend the drafting.

The sifting Committee also asked the Department to explain why the words

“This Regulation shall be binding in its entirety and directly applicable in all Member States”

had not been omitted by regulations 3 or 4. Can the Minister clarify what steps have been taken to amend the defective drafting of this legislation to correct those errors?

The regulations are intended to ensure that the existing approach to export controls applied to dual-use items and firearms is continued once we have withdrawn from the European Union. For the most part, the draft regulations proposed by the Government seek to ensure that references to “the European Union” or “the Community” are replaced, where appropriate, by references to the United Kingdom, our customs territory or the Secretary of State. To that end, we recognise that the United Kingdom must seek to ensure that we maintain an export control regime that is effective immediately after we leave the EU. That must happen with minimal disruption to ensure that the regime is operable and that controlled goods are not inadvertently exported inappropriately.

We recognise the considerable contribution that a responsible, world-leading defence and security industry makes to the UK economy. We believe that strong export controls have a vital role to play in sustaining a legitimate trade in arms while protecting UK jobs and research and development. We want to ensure that a robust and rigorous control system is in place for dual-use items, firearms and other sensitive material. We have called for a tighter approach to our export controls regime and for the cessation of exports to countries where there is a concern that they will be used to violate international humanitarian law. Will the Minister set out how the Government intend to ensure that export restrictions can be imposed when the ultimate user may be applying that item to or in a jurisdiction where there are concerns about public security or human rights?

Regulation 3(8) provides for the deletion of article 8 of Council regulation (EC) No. 428/2009. That article covers member states of the European Union where they impose restrictions on exports not otherwise included on the EU’s military list. Although it may be necessary to omit that article given that we will no longer be members of the EU, we would welcome clarity on whether the Government believe that such measures are covered in the revised regulations.

The Minister will perhaps also clarify what the basis will be for determining what constitutes a human rights violation for these purposes, given that regulation 3(27)(d)(iv) amends Annex IIe of the European regulation to omit the reference to the charter of fundamental rights of the European Union. How, then, do the Government intend to define such a violation?

Will existing licences that have been granted under the current EU regime continue to apply once the UK has left the EU, or will exporters be required to seek new licences under the UK’s stand-alone regime?

The draft regulations will impose obligations on British exporters to obtain licences and demonstrate import permission in respect of goods or services to be exported to the EU27 once we leave the EU. Can the Minister tell us whether the Government have conducted any analysis of the impact on British businesses? It is quite possible that there will be a substantial increase in the administrative burden on the British companies that service customers in those markets and the European suppliers that feed into the supply chain of those businesses—let alone the re-papering exercise that may be required for compliance with the UK’s regime.

I would also be grateful if the Minister clarified the intent of regulation 3(3)(d), which will amend the definition of “broker” to include

“any United Kingdom person who carries out brokering services from a country within the European Union into the territory of another third country”,

and will place an obligation on

“any European Union national who carries out brokering services from the United Kingdom”.

How will that provision interact with obligations that might be imposed on those people by the EU? How do the Government intend to work with European counterparts in administering such licences?

Regulation 3(7) will omit the article of the European regulation that relates to the transit through the EU customs territory of a non-Community good that would otherwise constitute a controlled good. Omitting that article leaves a question about the UK’s handling of controlled goods that are transported through the UK and intended for a destination outside the UK. I would be grateful if the Minister confirmed how the draft regulations will capture such goods.

Finally, the underlying EU regulation makes numerous provisions for procedural harmonisation, dialogue and co-operation between EU member states, including a dual-use co-ordination group chaired by a representative of the European Commission. The draft regulations would omit those obligations, which are set out under articles 11, 14, 16, 19, 22 and 23, among others. I would be grateful if the Minister advised us whether the Government intend to continue a formal dialogue with our European counterparts to ensure a common approach to restricted exports.

4.42 pm

Ms Angela Eagle (Wallasey) (Lab): It is a pleasure to serve under your chairmanship, Mr Gale. The Minister’s answers to the admirably and forensically prepared questions of my hon. Friend the Member for Bradford South will clearly be important, but I want to ask something slightly more overarching.

The draft regulations relate to complex but important EU regulations on export controls for all kinds of goods, including firearms and technology, that we would not want in the hands of non-democratic state actors. They will disentangle us from an EU regime of long standing. My hon. Friend asked important questions about how we intend to continue working with our EU partners, despite being disentangled, to ensure that we do not become a conduit for dubious activities as a result of loopholes in our systems.

With reference to the regulation that addresses the UN protocol on ammunition, I assume that the Minister can tell us a little about how his Department deals with

[Ms Angela Eagle]

the issues in non-EU contexts. I hope he will reassure us that if we are disentangled from the EU's structures, his Department will have enough people and resources in place to ensure, first, that we have a regime robust enough to guarantee that we do not create loopholes that might attract prospective smugglers, and secondly that the Department can deal with what will undoubtedly be an increased workload in an appropriate way that does not put us at risk.

4.44 pm

Graham Stuart: I thank Opposition Members for their contributions. We have discussed the importance of maintaining robust strategic export controls, and a number of questions have come up. I thank the hon. Member for Bradford South for her forensic questioning, as the hon. Member for Wallasey rightly described it, on the important issue of maintaining effective controls after we have left the European Union, and will pick up on a few of the points that she raised.

Existing licences will still be valid; however, exporters from the UK who have a licence from the EU will need to seek new licences from the EU. The hon. Member for

Bradford South rightly raised the impact on business. The export control joint unit has minimised additional administrative burdens for business by making available an open general export licence—OGEL—for exports to the EU. Exporters can register for one easily through our SPIRE online platform. Our assessment is that that will not have a significant impact on exporters.

Both hon. Members who spoke raised the question of future co-operation with the EU. The form of dialogue with the EU will be a matter for negotiations on our future economic partnership with the EU. We will continue to maintain robust controls on brokering. Transit is controlled under the Export Control (Amendment) Order 2018.

I have been clear that the Government remain committed to using the draft regulations to maintain the high-quality controls that we have discussed. We have a responsibility to ensure the safety and security of our people, and the legislation supports that objective. On that basis, I call on my fellow hon. Members to support the motion.

Question put and agreed to.

4.48 pm

Committee rose.

