

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND THE WINDSOR FRAMEWORK

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Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/43/EC and 2009/81/EC, as regards the simplification of intra EU transfers of defence-related products and the simplification of security and defence procurement.

Submitted by Department for Business and Trade, 15 January 2026.

SUBJECT MATTER

1. This Explanatory Memorandum concerns the legislative proposal from the European Commission published on 17 June 2025 to amend, among others, Directive 2009/43/EC, commonly referred to as the Intra-Community Transfers Directive (the “ICT Directive”). This proposal aims to further simplify and harmonise the rules governing the transfer of defence-related products between European Union (EU) Member States. This Explanatory Memorandum is not concerned with the proposal so far as it relates to Directive 2009/81/EC, as this does not apply under Annex 2 of the Windsor Framework.
2. The ICT Directive was introduced to streamline rules and procedures for intra-Community transfers of defence-related products, enabling free movement within the EU while maintaining robust national security controls. It was implemented through the national export licensing regimes of individual Member States, including the UK.
3. In the UK, the export of defence-related products remains a national competence and is delivered through export control legislation which applies across the whole of the UK. Under the Windsor Framework, the ICT Directive continues to apply directly in Northern Ireland.

SCRUTINY HISTORY

4. The proposal sets out measures which were identified by the European Commission following its review of existing legislation and implementation experience.
5. Previous UK scrutiny of EU legislation focused on implications for UK export controls and the impact on Northern Ireland under the Windsor Framework. When first introduced in 2009, the UK implemented the ICT Directive through

amendments to the domestic export control legislation, alignment of UK licensing with EU requirements, and introducing simplified licensing procedures through Open General Export Licences, including one specifically for exports to Companies Certified under Article 9 of the ICT Directive. The use of this licence was maintained under the ICT Directive for Northern Ireland exporters when we left the EU, and its original broad scope has meant it is already aligned with the Commission's proposal.

6. The Commission's proposal largely reflects measures already implemented in the UK. As an EU Member State, the UK applied the ICT Directive broadly compared to some other Member States. For example, UK Open General Export Licences and Open Individual Export Licences cover non-EU destinations, whereas some Member States restricted these to intra-EU transfers. The proposal now requires all EU Member States to adopt similar wider application to that already implemented by the UK, meaning no new measures need to be introduced in Northern Ireland. The UK continues to maintain simplified processes and licences for exports from Northern Ireland to EU Member States and, where applicable, third countries.
7. The ICT Directive does not affect the discretion of Member States with respect to their policy on defence-related products, and the UK's legislation and policy requires such exports to have an export licence. Where appropriate the UK publishes Open General Export Licences to facilitate such defence related exports, and these will be available for all exporters across the UK to use.

MINISTERIAL RESPONSIBILITY

8. The Secretary of State for Business and Trade (Rt Hon Peter Kyle MP) has primary responsibility for strategic export controls. The Foreign Secretary and Home Secretary also have an interest. The Chancellor of the Exchequer has an interest as His Majesty's Revenue and Customs (HMRC) is responsible for enforcing import and export controls.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

9. Strategic export controls are reserved under the UK's devolution settlements, and there is no formal requirement to consult devolved governments. Northern Ireland Executive has an interest as the ICT Directive applies in Northern Ireland under the Windsor Framework.

LEGAL AND PROCEDURAL ISSUES

10. **Application under the Windsor Framework:** The ICT Directive applies in Northern Ireland under Article 5(4) of, and Annex 2 to, the Windsor Framework. The legislative proposal to amend the ICT Directive would apply in Northern

Ireland under Article 13(3) of the Windsor Framework. The Northern Ireland Assembly conducts democratic scrutiny of relevant regulations under Schedule 6B of the Northern Ireland Act 1998.

11. **EU Legal Base:** The legislative proposal so far as it relates to the ICT Directive is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU).
12. **Voting Procedure:** Ordinary legislative procedure.
13. **Timetable for Adoption and Implementation:** The legislation is at proposal stage and requires approval from the European Parliament and Council under the ordinary legislative procedure. The exact length of time for this process to conclude is uncertain. Timelines are dependent on internal EU processes and vary depending on priority.
14. Following the ordinary legislative procedure, the proposed legislation will enter into force a number of days after its publication in the Official Journal of the European Union; the precise number of days is unspecified in the proposal.
15. EU Member States are then required to adopt and publish the necessary legislation to comply with the proposed legislation. The time period for application is unspecified in the proposal.

POLICY AND LEGAL IMPLICATIONS

16. When first introduced in 2009, the ICT Directive had minimal practical impact on UK businesses because the Commission's ICT model was largely inspired by the UK system, allowing the UK to maintain licensing arrangements very similar to those already in place. The only significant change required was the introduction of an additional Open General Licence for exports to 'Certified Companies' under Article 9 of the ICT Directive. The UK has maintained this licence for exports from Northern Ireland to the EU and other countries.
17. The Commission's current proposal largely mirrors measures already implemented in the UK. As an EU Member State, the UK applied the ICT Directive broadly, including non-EU destinations, whereas some Member States restricted licences to intra-EU transfers. The proposal now requires all EU Member States to adopt this wider application but given our original broad implementation no new measures are required in Northern Ireland to align with the proposal.
18. Examples of measures the UK already has in place in relation to the relevant articles of the ICT Directive, as amended by the Commission's proposals, are outlined below:

- i. Article 4: The UK legislation generally does not provide for exemptions from the requirement to obtain an export licence. Therefore, extending this to cover additional scenarios, as proposed by the Commission, will have no impact.
 - ii. The UK issues General Licences where appropriate, and all licence types are already available for defence-related exports across the UK.
 - iii. Article 5: The UK maintains a General Transfer Licence, as required by Article 9, which is available to all Northern Ireland exporters and already permits use by certified entities.
 - iv. Numerous General Licences are already available for use by exporters throughout the UK.
 - v. Article 5a: The UK can introduce General Licences for projects funded under a Union Defence Industrial Programme, should Northern Ireland exporters participate in such projects. However, given the small number of Northern Ireland exporters, such engagement would likely be with the UK as a third party, and any General Licence would apply across the whole of the UK.
19. As a result, this legislation does not materially affect trade of goods moving from Great Britain to Northern Ireland, or in Northern Ireland itself.

CONSULTATION

20. No UK consultations have been undertaken on this measure; businesses were able to comment on the EU consultation.

FINANCIAL IMPLICATIONS

21. The proposal introduces limited, targeted changes to the ICT Directive. These changes do not significantly alter policy but aim to ensure more efficient implementation. As the measures largely reflect existing UK practice, an impact assessment is not required.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in black ink, appearing to read 'Chris Bryant', with a large, stylized initial 'C'.

Sir Chris Bryant MP
Minister of State
Department for Business and Trade