

REPLACEMENT EXPLANATORY STATEMENT

Export Control Act 1982 *Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021*

Legislative Authority

Section 23A of the *Export Control Act 1982* (the Act) provides the Secretary of the Department of Agriculture, Water and the Environment (the department) with the power to make orders providing for, or in relation to, the establishment and administration of a system or systems of tariff rate quotas for the export of goods.

Subsection 23A(2) of the Act relevantly provides that the orders may make provision for, or in relation to the following:

- Determining the amount of tariff rate quota for the export of goods for a period
- Methods for determining tariff rate quota entitlements for the export of goods
- Establishing and maintaining a register of tariff rate quota entitlements.

The power to make the *Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021* (the Amendment Order) was delegated by the Secretary under section 19 of the Act on 24 September 2020 to the Assistant Secretary responsible for quota administration.

Purpose

The purpose of the Amendment Order is to amend the *Export Control (Tariff Rate Quotas) Order 2019* (the Order) in response to the United Kingdom (UK) leaving the European Union (EU) and the end of the Brexit transition period on 31 December 2020. The Amendment Order adjusts the administration of tariff rate quota (TRQ) by creating separate tariff rate quotas (TRQs) for certain commodities for each of the European Union and the United Kingdom, adjusting exporter's TRQ allocations to reflect the creation of two separate markets, and makes other consequential amendments.

Background

The Australian Government manages the buffalo, beef, and dairy TRQs for exports to the European Union. As part of certain World Trade Organization arrangements, Australia is responsible for managing access to the TRQs, including issuing certification so that Australian exports can enter the European Union under more favourable tariff rates. As a result of the United Kingdom ending its transition for exiting from the European Union with effect from 31 December 2020, Australia's TRQs relating to the European Union have been split between the European Union and the United Kingdom in line with the volumes stipulated by the European Union and the United Kingdom. (For the European Union refer to Commission Implementing Regulation No 2019/216, available for perusal by the public at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0216>. For the United Kingdom refer to https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762822/UKs_Goods_Schedule_at_the_WTO.pdf).

Impact and Effect

The Amendment Order enables the department to administer the split EU and UK TRQs separately, including transitional arrangements to adjust how entitlements are calculated in the 2021 quota year following the split, and allows the department to issue tariff rate quota certificates for the respective TRQs.

Consultation

Before making the instrument, the department consulted with the meat industry representatives through the Quota Consultation Committee of the Australian Meat Industry Council, and with affected exporters not represented by the committee, on the process by which exporters' TRQ entitlements would be calculated in the first quota year of the new EU and UK TRQs. The proposed process was supported overall by the export industry as providing a balanced outcome and minimising negative commercial impacts. The consultation commenced in February 2019 and concluded in June 2020.

There are no changes in relation to all other elements of the TRQ management.

The Office of Best Practice Regulation (OBPR) confirmed that a Regulation Impact Statement is not required (OBPR ID: 43816)

Details of the Amendment Order are set out in Attachment A.

The Amendment Order is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Amendment Order is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021*

Part 1—Preliminary

Section 1 – Name

This section provides that the name of the Amendment Order is the *Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021*.

Section 2 – Commencement

This section provides that the Amendment Order commences on the day after it is registered.

Section 3 – Authority

This section provides that the Order is made under section 23A of the *Export Control Act 1982*.

Section 4 – Schedules

This section provides that each instrument specified in a schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 – Amendments

Export Control (Tariff Rate Quotas) Order 2019

Item 1 – Section 6 (definitions of EU *Beef and Buffalo Regulation*, *EU Dairy Regulation* and *European Union*)

Item 1 repeals the definitions of *EU Beef and Buffalo Regulation*, *EU Dairy Regulation*, and *European Union*. The repeal of the first two definitions removes the reference to regulations which have been repealed by the European Parliament.

The repeal of the definition of *European Union* reflects the fact that the United Kingdom is no longer part of the European Union for tariff rate quota purposes as at the end of the UK withdrawal transition period.

Item 2 – Section 6

Item 2 inserts a new definition, the *EU Tariff Quota Regulation* in section 6 of the 2019 Order. This is defined to mean Commission Implementing Regulation (EU) No 2020/761, as in force from time to time. The incorporation of the regulation from time to time is provided for in paragraph 25(5)(aba) of the Export Control Act 1982. This European Commission

regulation came into force on 17 December 2019 and defines the products eligible for tariff rate quotas on entry into the European Union and the applicable access volumes.

The definition includes a note that the Regulation could in 2021 be viewed on the EUR-Lex website (<https://eur-lex.europa.eu>).

Item 3 – Section 6

Item 3 inserts definitions for *UK buffalo meat* and *UK high quality beef* to have the meanings in sections 89A and 89E, respectively. These definitions concern the products eligible for entry to the United Kingdom under tariff rate quota arrangements.

The definition of *UK Quota Table* concerns the products eligible for entry to the United Kingdom under tariff rate quota arrangements and the volumes of tariff rate quotas available.

The *UK Tariff Quota Regulations* means the Customs (Tariff Quotas) (European Union Exit) Regulations 2020 (UK) as in force from time to time. The incorporation of these regulations from time to time is provided for in paragraph 25(5)(aba) of the Export Control Act 1982. These regulations provide the authority in the United Kingdom for the management of tariff rate quotas.

The definition includes a note that the Regulations could in 2021 be viewed on the UK legislation website (<https://legislation.gov.uk>).

Item 4 – Section 6 (definition of *UK withdrawal transition period*)

Item 4 repeals the definition of *UK withdrawal transition period*. As the UK withdrawal transition period concluded on 31 December 2020, this definition is no longer required.

Item 5 – Section 53 (definition of *EU buffalo meat*)

Item 5 omits “referred to in Article 1(1)(b) of the EU Beef and Buffalo Regulation” and substitutes “described under order number 09.4001 in Annex VIII to the EU Tariff Quota Regulation”. This updates the instrument to refer to the parts of the regulation in force that describe buffalo meat for the purposes of tariff rate quota to the European Union.

This is a consequential amendment to items 1 and 2 above which repeal the definition of *EU Beef and Buffalo Regulation* and insert the definition of *EU Tariff Quota Regulation*.

Item 6 – Section 56

Section 56 of the 2019 Order provides the annual access amount for EU buffalo meat for export to the European Union in relation to a quota year is the weight of EU buffalo meat that may, under Article 1(1)(b) of the EU Beef and Buffalo Regulation, be exported from Australia to the European Union in the quota year at the ad valorem duty set out in Article 1(3) of that Regulation.

Item 6 omits “Article 1(1)(b) of the EU Beef and Buffalo Regulation” from section 56 of the 2019 Order and substitutes “order number 09.4001 in Annex VIII to the EU Tariff Quota

Regulation”. This updates the instrument to refer to the parts of the regulation in force that determine tariff rates quota access volumes for buffalo meat to the European Union.

This is a consequential amendment to items 1 and 2 above which repeal the definition of *EU Beef and Buffalo Regulation* and insert the definition of *EU Tariff Quota Regulation* in section 56 of the 2019 Order.

Item 7 – Section 56

Item 7 omits “Article 1(3) of that Regulation” from section 56 of the 2019 Order and substitutes “that order number”. This is a consequential amendment to items 1 and 2 above which repeal the definition of *EU Beef and Buffalo Regulation* and insert the definition of *EU Tariff Quota Regulation* in section 56 of the 2019 Order.

Item 8 – Section 60 (definition of *EU high quality beef*)

Item 8 omits “referred to in Article 2(b) of the EU Beef and Buffalo Regulation” from section 60 of the 2019 Order and substitutes “described under order number 09.4451 in Annex VIII to the EU Tariff Quota Regulation”. This is a consequential amendment to items 1 and 2 above which repeal the definition of *EU Beef and Buffalo Regulation* and insert the definition of *EU Tariff Quota Regulation* in section 56 of the 2019 Order.

Item 9 – Section 62

Item 9 repeals section 62 from the 2019 Order and substitutes a new section that makes provisions for issuing tariff rate quota certificates in the years commencing 1 July 2021, 1 July 2022, 1 July 2023, and 1 July 2024. The section also provides that allocation penalties will not apply for the quota year beginning on 1 July 2021. This provision assists exporters to respond to the market disruption resulting from Brexit.

New subsection 62(1) provides that subject to subsections (2) to (5), the allocation method applies for the purposes of issuing a tariff rate quota certificate in relation to a consignment of EU high quality beef for export to the European Union in a quota year beginning on or after 1 July 2020.

The note to that provision states that the allocation method is set out in Part 3 of Chapter 2 of the Order. By specifying that the allocation method will apply for EU high quality beef TRQ, eligible exporters will be provided an allocation of TRQ volume at the start of the year. This will provide certainty for exporters for a product for which TRQ volumes are, or may be, heavily utilised.

New subsections 62(2), 62(3) and 62(4) provide that with respect to maximum transfer percentages:

- For the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023, subsections 29(2) and 44(2) do not apply
- For the quota year beginning on 1 July 2024, subsections 29(2) and 44(2) apply as if the reference to any of the 3 previous quota years were a reference to the quota year beginning on 1 July 2023

- For the quota year beginning on 1 July 2025, subsections 29(2) and 44(2) apply as if the reference to any of the 3 previous quota years were a reference to the quota years beginning on 1 July 2023 and 1 July 2024.

Subsection 29(1) of the 2019 Order provides that subject to this section, an eligible person for a quota type may apply to the Secretary for an allocation of an amount of tariff rate quota entitlement for that quota type and a quota year.

Subsection 29(2) of the 2019 Order provides that a person is not eligible to apply for an allocation for a quota type and a quota year if, in relation to any of the three previous quota years:

- The person transferred one or more amounts of tariff rate quota entitlement for the quota type and the quota year; and
- The total amounts that the person transferred was more than the amount using the formula set out in that subsection.

Subsection 44(1) of the 2019 Order provides that subject to subsection (2), a person may apply to the Secretary under this section for an allocation of an amount of tariff rate quota entitlement for a quota type and a quota year if:

- The person is an eligible person for the quota type
- The person is not a new entrant for the quota type and the quota year; and
- The person does not, at the time of the application, have a TRQ entitlement for the quota type and quota year.

Subsection 44(2) of the 2019 Order provides that a person is not eligible to apply for an allocation for a quota type and quota year if, in relation to any of the 3 previous quota years:

- The person transferred one or more amounts of tariff rate quota entitlement for the quota type and quota year; and
- The total of the amounts that the person transferred was more than the amount worked out using the formula in that subsection.

The formulae in subsections 29(2) and 44(2) are the maximum transfer percentage multiplied by the sum of all the amounts of tariff rate quota entitlement for the quota type and the quota year that the person has been allocated (*allocations*) and the sum of all amounts of tariff rate quota entitlement for the quota type and quota year that have been transferred to the person (*transfers in*).

Subsections 29(2) and 44(2) of the 2019 Order discourage exporters from applying for an allocation of a quota type in a quota year for the primary purpose of transferring quota to other businesses.

The effect of new subsection 62(2) is that that an exporter will still be eligible to receive TRQ allocations even if they have exceeded the maximum transfer percentage for any of the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023.

The effect of new subsection 62(3) is that for the quota year beginning on 1 July 2024, an exporter will not be able to apply for an allocation of a quota type and a quota year if they have exceeded the maximum transfer percentage in the quota year beginning on 1 July 2023.

The effect of new subsection 62(4) is that for the quota year beginning on 1 July 2025, an exporter will not be able to apply for an allocation of a quota type and a quota year if they have exceeded the maximum transfer percentage in either of the quota years beginning on 1 July 2023 and 1 July 2024.

These new provisions allow exporters to respond to market changes resulting from Brexit by enabling quota entitlements to be transferred to exporters that will utilise them and without penalty to the transferring exporter. Over a three-year period, exporters will be able to develop a history of export to the European Union which will then be used to determine future quota entitlements.

New subsection 62(5) provides that for the quota year beginning on 1 July 2021, no person has an allocation penalty.

Allocation penalties normally apply to exporters who do not use and do not return unused amounts of TRQ allocations by a specified date. Allocation penalties encourage the timely return of unused TRQ entitlements in order to make them available to other exporters. This subsection removes any allocation penalties for the quota year starting on 1 July 2021. The effect of this provision is that exporters who may have experienced a disruption to their export plans in the quota year commencing 1 July 2020 will not be penalised for potentially holding on to quota entitlements.

Item 10 – Section 63

Section 63 of the 2019 Order sets out the annual access amount for EU high quality beef for export to the European Union in relation to a quota year.

This item omits “Article 2(b) of the EU Beef and Buffalo Regulation” from section 63 of the 2019 Order and substitutes “order number 09.4451 in Annex VIII to the EU Tariff Quota Regulation”. This is a consequential amendment to items 1 and 2 above which repeal the definition of *EU Beef and Buffalo Regulation* and insert the definition of *EU Tariff Quota Regulation*.

Item 11 – Section 63

This item omits “Article 1(3) of that Regulation” from section 63 of the 2019 Order and substitutes “that order number”.

This is a consequential amendment to item 1 above which repeals the definition of *EU Beef and Buffalo Regulation* from section 6 of the 2019 Order and to item 2 above which inserts the definition of *EU Tariff Quota Regulation* in that section.

Item 12 – At the end of section 66

This item adds a note at the end of section 66 of the 2019 Order that provides that this section does not apply in relation to the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023 (see section 135).

Section 66 of the 2019 Order provides that a consignment is an eligible past export for EU high quality beef for export to the European Union in relation to a quota year if:

- It is a consignment of high quality beef exported to the European Union, and
- A tariff rate quota certificate was issued in relation to the consignment in the period:
 - beginning on the 1 May that is 38 months before the start of the quota year; and
 - ending on 30 April in the calendar year in which the quota year starts.

The note clarifies that section 66 will not apply for a three-year period which is a transitional period following Brexit. This Amendment Order introduces a new provision at Item 20 below for calculating eligible past exports for the purposes of allocating TRQ in the quota years commencing on 1 July 2021, 1 July 2022, and 1 July 2023.

Item 13 – Subsection 68(3)

This item omits “300” and substitutes “200” in subsection 68(3) of the 2019 Order. The effect of this amendment is that the penalty pool threshold for EU high quality beef for export to the European Union in relation to a quota year is reduced from 300 tonnes to 200 tonnes.

Paragraph 33(2)(b) provides that no exporter will have an allocation penalty due to having unused quota entitlements if the uncommitted annual access amount is greater than the penalty pool threshold. The allocation penalty takes the form of a reduced quota allocation in the next quota year and is to discourage exporters from retaining quota entitlements that they will not use, and which might be able to be used by other exporters. The uncommitted annual access amount is the total quota volume that has not been allocated to any specific exporter, but which is available to be allocated to any exporter on a first come, first served basis. If the uncommitted quota available is greater than the penalty pool threshold it demonstrates that no exporter is being prevented from accessing tariff rate quota volumes.

The reduction in the penalty pool threshold reflects that the total access volume to the European Union has been reduced.

Item 14 – Section 70

Item 14 repeals section 70 of the 2019 Order and substitutes a new section 70 that specifies the new entrant amount and new entrant cap for EU high quality beef for the year commencing 1 July 2020 and for all subsequent years.

New subsection 70(1) provides that the new entrant access amount for EU high quality beef for export to the European Union is:

- In relation to the quota year beginning on 1 July 2020—500 tonnes; and
- In relation to a later quota year—250 tonnes.
- The new entrant access cap for EU high quality beef for export to the European Union is:
 - In relation to the quota year beginning on 1 July 2020—100 tonnes; and
 - In relation to a later quota year—80 tonnes.

The new entrant access amount is the amount of quota set aside for exporters who are new to the quota market or who have only entered the quota market in the previous two years. The new entrant cap is the maximum amount of quota that any one exporter can access as a new entrant.

The new entrant access amount makes it possible for exporters who are new to the export of high quality beef to the European Union to get a commercially meaningful quota allocation and establish a history of export that allows them to receive quota allocations through the processes used in section 30 of the 2019 Order.

The new entrant access amount and new entrant access caps for the quota year beginning on 1 July 2020 reproduce those in the 2019 Order (500 tonnes and 100 tonnes, respectively). The Amendment Order reduces the new entrant access amount and new entrant access cap in relation to later quota years to 250 tonnes and 80 tonnes, respectively. These figures reflect the reduced volume of exports of TRQ for high quality beef to the European Union resulting from Brexit.

Item 15 – Section 71 (table item 1)

Item 15 omits “quota number 09.4522 in Annex III(A) to the EU Dairy Regulation” and substitutes “order number 09.4522 in Annex IX to the EU Tariff Quota Regulation” in table item 1 of section 71 of Division 4 of Chapter 3 of the 2019 Order. Table item 1 of section 71 of the 2019 Order deals with EU WTO dairy goods that are covered by tariff quotas (in this case, cheese for processing).

This is a consequential amendment to item 1 above which repeals the definition of *EU Dairy Regulation* from section 6 of the 2019 Order and to item 2 above which inserts the new definition *EU Tariff Quota Regulation* in section 6 of the 2019 Order.

Item 16 – Section 71 (table item 2)

Item 16 omits “quota number 09.4521 in Annex III(A) to the EU Dairy Regulation” and substitutes “order number 09.4521 in Annex IX to the EU Tariff Quota Regulation” in table item 2 of section 71 of Division 4 of Chapter 3 of the 2019 Order. Table item 2 of section 71 of the 2019 Order deals with EU WTO dairy goods that are covered by tariff rate quotas (in this case, whole cheddar cheese).

This is a consequential amendment to item 1 above which repeals the definition of *EU Dairy Regulation* from section 6 of the 2019 Order and to item 2 above which inserts the new definition *EU Tariff Quota Regulation* in section 6 of the 2019 Order.

Item 17 – Section 74

Item 17 omits “EU Dairy Regulation” and substitutes “EU Tariff Quota Regulation” in section 74 of the 2019 Order. Section 74 provides that the annual access amount for a kind of EU WTO dairy goods for export to the European Union in relation to a quota year is the weight of the goods of that kind that may, under the EU Dairy Regulation, be exported from Australia to the European Union in the quota year at a reduced tariff rate.

This is a consequential amendment to item 1 above which repeals the definition of *EU Dairy Regulation* from section 6 of the 2019 Order and to item 2 above which inserts the new definition of *EU Tariff Quota Regulation* in section 6 of the 2019 Order.

Item 18 – After Part 3 of Chapter 3

Item 18 inserts a new Part 3A in Chapter 3 of the 2019 Order to create the United Kingdom as a distinct destination for products covered by tariff rate quotas and includes details for the two products that are covered by tariff rate quotas, buffalo meat and high quality beef. Division 1 of new Part 3A provides details for UK buffalo meat and Division 2 of new Part 3A provides details for UK high quality beef. These divisions replicate the provisions for managing tariff rate quotas for these products for the European Union that are included under Part 1 of Chapter 3.

New section 89A of new Division 1 of Part 3A defines *UK buffalo meat* as boneless buffalo meat of a kind that may, under the UK Tariff Quota Regulations, be exported from Australia to the United Kingdom under quota number 05.4001.

New section 89B defines *Quota year* for UK buffalo meat for export to the United Kingdom as a period of 12 months beginning on 1 July.

The quota year for UK buffalo meat is the same as the quota year for EU buffalo meat. The annual access amount is the 12-month period during which the annual access amount can be used.

New section 89C sets out the method for issuing tariff rate quota certificates. That section provides that the first come, first served method applies for the purposes of issuing a tariff rate quota certificate in relation to a consignment of UK buffalo meat for export to the United Kingdom:

- In the quota year beginning on 1 July 2020 for the issue of certificates on or after 1 January 2021; and
- In a quota year beginning on or after 1 July 2021.

Note 1 to new section 89C provides that the first come, first served method is set out in Part 1 of Chapter 2.

Note 2 to new section 89C provides that before 1 January 2021, the United Kingdom was included in the European Union for the purposes of this instrument.

Under the first come first served method of allocating amounts of tariff rate quota, any exporter may access Australia's volume of tariff rate quota and the department will continue to issue tariff rate quota certificates until the annual access amount is reached. The first come first served method is appropriate for exports that, like buffalo meat, are not expected to utilise a large proportion of the available access amount.

New section 89D provides that the annual access amount for UK buffalo meat for export to the United Kingdom in relation to a quota year is the weight of UK buffalo meat that may, as set out in the UK Quota Table, be exported from Australia to the United Kingdom in the quota year at the quota duty rate for quota number 05.4001 in the UK Quota Table.

Annual access amounts of products covered by tariff rate quotas are defined and controlled by the importing country through their own regulations. For the United Kingdom these amounts are listed in the UK Quota Table which is inserted by Item 3 of this Amendment Order.

Item 18 also inserts new Division 2 into new Part 3A of the 2019 Order. That new Division deals with UK high quality beef.

New section 89E defines *UK high quality beef* to mean meat of a kind that may, under the UK Tariff Quota Regulations, be exported from Australia to the United Kingdom under quota number 05.4451.

New section 89F provides that a *quota year* for UK high quality beef for export to the United Kingdom is a period of 12 months beginning on 1 July.

The quota year for UK high quality beef is the same as the quota year for EU high quality beef. The quota year is the 12-month period during which the annual access amount can be used.

New section 89G sets out the method for issuing tariff rate quota certificates for UK high quality beef.

New subsection 89G(1) provides that subject to subsections (2) to (7), the allocation method applies for the purposes of issuing a tariff rate quota certificate in relation to a consignment of UK high quality beef for export to the United Kingdom:

- In the quota year beginning on 1 July 2020 for the issue of certificates on or after 1 January 2021; and
- In a quota year beginning on or after 1 July 2021.

Note 1 to this section provides that the allocation method is set out in Part 3 of Chapter 2.

Note 2 to this section provides that before 1 January 2021, the United Kingdom was included in the European Union for the purposes of this instrument.

Under the allocation method, exporters may apply for an allocation of tariff rate quota prior to the start of the quota year. Based on the amount applied for and a history of prior exports, allocations are made to exporters allowing them to plan their annual exports around the allocated amount. The allocation method is appropriate for exports such as high quality beef that are expected to utilise a large proportion of the available access amount in some, or most, quota years.

New subsection 89G(2) provides that for the quota year beginning on 1 July 2020:

- Division 2 of Part 3 of Chapter 2 (allocation of quota at beginning of quota year) does not apply; and
- The Secretary may allocate amounts of tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in that quota year in accordance with section 131.

This new subsection amends subsection 1 for the quota year beginning on 1 July 2020 such that quota allocations for UK high quality beef can be made directly by the Secretary. Quota

allocations are usually made before the start of the quota year. Due to the transition period for the United Kingdom leaving the European Union occurring in the middle of the quota year it is necessary to provide the Secretary with the discretion to allocate amounts of quota directly. As detailed in new section 131 (inserted by item 20), a process to split each exporter's quota entitlement will take place to apportion each exporter's current quota allocation between the United Kingdom and the European Union as separate destinations.

New subsections 89G(3), (4) and (5) deal with the maximum transfer percentages for the quota years beginning on 1 July 2021, 1 July 2022, 1 July 2023, 1 July 2024 and 1 July 2025.

New subsection 89G(3) provides that for the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023, subsections 29(2) and 44(2) do not apply.

New subsection 89G(4) provides that for the quota year beginning on 1 July 2024, subsections 29(2) and 44(2) apply as if the reference to any of the 3 previous quota years were a reference to the quota year beginning on 1 July 2023.

New subsection 89G(5) provides that for the quota year beginning on 1 July 2025, subsections 29(2) and 44(2) apply as if the reference to any of the 3 previous quota years were a reference to the quota years beginning on 1 July 2023 and 1 July 2024.

Subsection 29(1) of the 2019 Order provides that subject to this section, an eligible person for a quota type may apply to the Secretary for an allocation of an amount of tariff rate quota entitlement for that quota type and a quota year.

Subsection 29(2) of the 2019 Order provides that a person is not eligible to apply for an allocation for a quota type and a quota year if, in relation to any of the three previous quota years:

- The person transferred one or more amounts of tariff rate quota entitlement for the quota type and the quota year; and
- The total amounts that the person transferred was more than the amount using the formula set out in that subsection.

Subsection 44(1) of the 2019 Order provides that subject to subsection (2), a person may apply to the Secretary under this section for an allocation of an amount of tariff rate quota entitlement for a quota type and a quota year if:

- The person is an eligible person for the quota type
- The person is not a new entrant for the quota type and the quota year; and
- The person does not, at the time of the application, have a TRQ entitlement for the quota type and quota year.

Subsection 44(2) of the 2019 Order provides that a person is not eligible to apply for an allocation for a quota type and quota year if, in relation to any of the 3 previous quota years:

- The person transferred one or more amounts of tariff rate quota entitlement for the quota type and quota year; and
- The total of the amounts that the person transferred was more than the amount worked out using the formula in that subsection.

The formulae in subsections 29(2) and 44(2) are the maximum transfer percentage multiplied by the sum of all the amounts of tariff rate quota entitlement for the quota type and the quota

year that the person has been allocated (*allocations*) and the sum of all amounts of tariff rate quota entitlement for the quota type and quota year that have been transferred to the person (*transfers in*).

Subsections 29(2) and 44(2) of the 2019 Order discourage exporters from applying for an allocation of a quota type in a quota year for the primary purpose of transferring quota to other businesses.

The effect of new subsection 89G(3) is that that an exporter will still be eligible to receive TRQ allocations even if they have exceeded the maximum transfer percentage for any of the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023.

The effect of new subsection 89G(4)) is that for the quota year beginning on 1 July 2024, an exporter will not be able to apply for an allocation of a quota type and a quota year if they have exceeded the maximum transfer percentage in the quota year beginning on 1 July 2023.

The effect of new subsection 89G(5) is that for the quota year beginning on 1 July 2025, an exporter will not be able to apply for an allocation of a quota type and a quota year if they have exceeded the maximum transfer percentage in either of the quota years beginning on 1 July 2023 and 1 July 2024.

These provisions allow exporters to respond to market changes resulting from Brexit by enabling quota entitlements to be transferred to exporters that will utilise them and without penalty to the transferring exporter. Over a three-year period, exporters will be able to develop a history of export to the European Union which will then be used to determine future quota entitlements.

New subsection 89G(6) provides that for the quota year beginning on 1 July 2021, no person has an allocation penalty.

Allocation penalties are dealt with by section 33 of the 2019 Order. Section 33 provides that a person has an allocation penalty for a quota type and a quota year if, as at the end of the annual application day for the quota type and quota year, the total weight for which the tariff weight quota certificates have been issued to the person in relation to consignments of that quota type in relation to the previous quota year is less than the amount worked out using the formula in that section.

Allocation penalties normally apply to exporters who do not use and do not return unused TRQ allocations by a certain date. Allocation penalties encourage the timely return of unused TRQ entitlements in order to make them available to other exporters. New subsection 89G(6) removes any allocation penalties for the quota year starting on 1 July 2021 and means that exporters who may have experienced a disruption to their export plans in the quota year commencing 1 July 2020 will not be penalised for potentially holding on to quota entitlements.

New subsection 89G(7) provides that for the purposes of the application of section 28 (new entrants), an allocation of standard tariff rate quota entitlement or supplementary tariff rate quota entitlement under the *Export Control (High Quality Beef Export to the European Union Tariff Rate Quotas) Order 2016* (as in force before it was repealed) is taken to have been an

allocation of tariff rate quota entitlement for UK high quality beef for export to the United Kingdom.

New entrants are provided for by section 28 of the 2019 Order. As quota allocations are made in proportion to prior export history, new entrant amounts are used to reserve a portion to the total allocation to be used by exporters without an established export history. Once an exporter has received a quota allocation through the process described in Part 3 of the Order, they are no longer considered a new entrant and are not eligible to access this reservation.

This new subsection clarifies that for the purpose of defining a new entrant, prior quota allocations to the European Union under the *Export Control (High Quality Beef Export to the European Union Tariff Rate Quotas) Order 2016* (the 2016 Order) are also considered to be allocations to the United Kingdom.

The 2016 Order was repealed in 2019. However, a person is defined in subsection 28(2) of the 2019 Order as a *first year new entrant* for a current quota year if, relevantly, they have not been issued a tariff rate quota entitlement under section 30 or 45 for the quota type and the current quota year or any of the 3 quota years preceding the current quota year.

Accordingly, allocations of tariff rate quota entitlements under the 2016 Order can determine whether a person is a new entrant for the purposes of section 28 of the 2019 Order and is eligible to apply for an amount of tariff rate quota as a new entrant under Subdivision B of Division 5 of Part 3 of the 2019 Order.

New section 89H provides that an annual access amount for UK high quality beef for export to the United Kingdom in relation to a quota year is the weight of UK high quality beef that may, as set out in the UK Quota Table, be exported from Australia to the United Kingdom in the quota year at the quota duty rate for quota number 05.4451 in the UK Quota Table.

Annual access amounts of products covered by tariff rate quotas are defined and controlled by the importing country through their own regulations. For the United Kingdom these amounts are listed in the UK Quota Table which is inserted by item 3 of this Amendment Order.

New section 89J deals with application and reclamation days for the export of UK high quality beef for export to the United Kingdom.

New subsection 89J(1) provides that the annual application day for UK high quality beef for export to the United Kingdom for a quota year is 16 May in the calendar year in which the quota year starts.

New subsection 89J(2) provides that the reclamation day for UK high quality beef for export to the United Kingdom for a quota year is 15 February in the quota year.

This new section sets the date that applications for tariff rate quota allocations must be received by in order to be considered for allocations in the next quota year. This is relevant to the requirement in subsection 29(3) of the 2019 Order that an application [for an amount of tariff rate quota entitlement for a particular quota type and quota year] must be made before the annual application day for the quota type and quota year. This is further relevant where a provision of Chapter 3 of the 2019 Order provides that the allocation method applies for the

purposes of issuing a tariff rate quota certificate in relation to a consignment of a quota type for export in a quota year.

This section also specifies the reclamation date by which a person must give written notice to the Secretary stating either:

- The amount of tariff rate quota entitlement that the person is returning; or
- The amount of additional tariff rate quota entitlement that the person is applying for; or
- That the person does not intend to either return their tariff rate quota entitlement or apply for additional tariff rate quota entitlement.

These dates are the same as those for tariff rate quota allocations for high quality beef to the EU.

New section 89K provides that an *eligible person* for UK high quality beef for export to the United Kingdom is a person who holds a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997* allowing the holder to export UK high quality beef to the United Kingdom.

New section 89L provides that a consignment is an *eligible past export* for UK high quality beef for export to the United Kingdom in relation to a quota year if:

- It is a consignment of UK high quality beef exported to the United Kingdom; and
- A tariff rate quota certificate was issued in relation to the consignment in the period:
 - Beginning on the 1 May that is 38 months before the start of the quota year; and
 - Ending on 30 April of the calendar year in which the quota year starts.

The note to this section provides that this section does not apply in relation to the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023 (see section 135).

This new section defines the products that are to be considered *eligible past exports* for the purpose of calculating quota allocations for UK high quality beef. Section 6 of the 2019 Order defines *eligible past exports* for a quota type and a quota year to mean an export of a consignment that is specified under Chapter 3 to be an eligible past export for the quota type in relation to the quota year. The definition is relevant to the calculation of amounts of quota (specifically, to the calculation of tariff rate quota entitlement allocated from the standard access amount under section 31). It is also relevant to the formula used to calculate an applicant's initial individual entitlement for a quota type and a quota year under section 32 and the formula used to calculate an applicant's tariff rate quota entitlement after the reclamation day under section 46.

The note to this section reflects the fact that additional provisions have been inserted by item 20 for calculating eligible past exports for the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023.

New section 89M provides that the minimum quota allocation for UK high quality beef for export to the United Kingdom in relation to a quota year is 1 tonne.

Section 6 of the 2019 Order defines *minimum quota allocation* for a quota type and a quota year to mean the amount specified under Chapter 3 to be the minimum quota allocation for

that quota type in relation to that quota year. Under paragraph 31(1)(b) of the 2019 Order, for the purposes of paragraph 30(2)(b), the amount of the tariff rate quota entitlement to be allocated to an applicant for a quota type and a quota year is nil (if the amount of the applicant's redistributed individual entitlement is less than the minimum quota allocation for the quota type and the quota year and paragraph 31(1)(a) does not apply).

If an applicant's quota allocation calculated under section 31 of the 2019 Order is less than the minimum quota allocation, that applicant will be allocated no quota. This provision is in place to limit quota allocations to a minimum commercial volume.

New section 89N deals with penalties for UK high quality beef for export to the United Kingdom.

New subsection 89N(1) provides that the required usage percentage for UK high quality beef for export to the United Kingdom is 90 per cent.

New subsection 89N(2) provides that the penalty individual threshold for UK high quality beef for export to the United Kingdom in relation to a quota year is 10 tonnes.

New subsection 89N(3) provides that the penalty pool threshold for UK high quality beef for export to the United Kingdom in relation to a quota year is 200 tonnes.

This new section replicates the penalty amounts in the 2019 Order for EU high quality beef.

Penalty amounts apply if exporters do not use at least 90 per cent of their quota allocation or fail to return unused quota to be accessed by other exporters. The penalty individual threshold sets a level of quota entitlement that if the exporter's remaining quota entitlement is below when penalties are assessed, no penalty will be applied. The penalty pool threshold sets the maximum amount of quota that must be available as being unreserved and unallocated if penalties are to be applied. If more than the penalty pool threshold quota volume is available for any exporter to access on a first come first served basis, then no penalties will be assessed irrespective of the quota usage percentage for each exporter.

New section 89P provides that the maximum transfer percentage for UK high quality beef for export to the United Kingdom is 50 per cent.

Subsection 29(2) of the 2019 Order provides that a person is not eligible to apply for an allocation for a quota type and a quota year if, in relation to any of the 3 previous quota years:

- The person transferred one or more amounts of tariff rate quota entitlement for the quota type and the quota year that the person has been allocated; and
- The total amounts that the person transferred was more than the amounts worked out using the formula in that provision.

The formula is the maximum transfer percentage (being the maximum transfer percentage for the quota type) multiplied by the combined sum of all the amounts of tariff rate quota entitlement for the quota type and quota year that the person has been allocated and the sum of all of the amounts of tariff rate quota entitlement for the quota type and quota year that have been transferred to the person.

If, in relation to any of the three previous quota years, the transfer of the total amount of quota entitlements for high quality beef for export to the United Kingdom exceeded the amount worked out using the formula in subsection 29(2) of the 2019 Order, the transferring exporter will not be eligible to apply for an allocation of that quota type in the current quota year.

The purpose of the maximum transfer percentage for UK high quality beef (when read with subsection 29(2) of the 2019 Order) is to deter exporters from applying for and receiving quota allocations for the primary purpose of transferring those allocations to other exporters.

New section 89Q deals with the new entrant access amounts of UK high quality beef for export to the United Kingdom.

New subsection 89Q(1) provides that the *new entrant access amount* for UK high quality beef for export to the United Kingdom in relation to a quota year is 250 tonnes.

New subsection 89Q(2) provides that the *new entrant access cap* for UK high quality beef for export to the United Kingdom in relation to a quota year is 80 tonnes.

Section 27 of the 2019 Order relevantly provides that the *new entrant access amount* for a quota type and a quota year, means the weight specified under Chapter 3 to be the new entrant access amount for that quota type in relation to that quota year. Section 27 of the 2019 Order relevantly provides that the *new entrant access cap* for a quota type and a quota year, means the weight specified under Chapter 3 to be the new entrant access cap for that quota type in relation to that quota year.

The new entrant access amount makes it possible for exporters who are new to the export of high quality beef to get a commercially meaningful quota allocation and establish a history of export that allows them to receive quota allocations through the processes used in section 30 of the 2019 Order. These amounts match those in the Amendment Order for EU high quality beef.

Item 19 – Section 129

Item 19 repeals section 129 of the 2019 Order.

Subsection 129(1) of the 2019 Order provides that despite the repeal of the *Export Control (Beef Export to the USA Tariff Rate Quota) Order 2016*, that instrument continues to apply in relation to a quota year ending before 1 January 2020.

Subsection 129(2) provides that despite the repeal of the *Export Control (Dairy Produce Tariff Rate Quotas) Order 2016*, that instrument continues to apply in relation to a quota year ending before 1 July 2020.

Subsection 129(3) provides that despite the repeal of the *Export Control (High Quality Beef Export to the European Union Tariff Rate Quotas) Order 2016*, that instrument continues to apply in relation to a quota year ending before 1 July 2020.

Subsection 129(4) provides that despite the repeal of the *Export Control (Japan-Australia) Economic Partnership Agreement Tariff Rate Quotas) Order 2016*, that instrument continues to apply in relation to a quota year ending before 1 April 2020.

This section was included in the 2019 Order as a transitional provision to ensure that the previously repealed orders in relation to TRQ for beef to the United States, dairy, high quality beef for export to the European Union, and various products for export to Japan would continue to apply for quota years that ended before 1 January 2020, 1 July 2020 or 1 April 2020 (as relevant).

As all the quota years to which this provision applied have now elapsed, the section is no longer required.

Item 20 – Part 2 of Chapter 7

Item 20 repeals Part 2 of Chapter 7 of the 2019 Order and inserts a new Part 2 of Chapter 7. That Part sets out the transitional arrangements for establishing the United Kingdom as a separate quota destination from the European Union for exports of buffalo meat and high quality beef, and in revising and making allocations for high quality beef for both markets. For the start of the quota year commencing on 1 July 2020, a single high quality beef quota allocation was made for the European Union including the United Kingdom and this allocation now needs to be split and apportioned between the two quota destinations. Quota allocations were not made for buffalo meat as tariff rate quota is available to any exporter on a first come first served basis.

Item 20 inserts seven sections into Part 2 of Chapter 7.

New section 129 deals with exports to the United Kingdom for which tariff rate quota certificates were issued as exports to the European Union.

New subsection 129(1) provides that if a tariff rate quota certificate was issued for a consignment to be exported to the United Kingdom on the basis that it was a consignment of EU buffalo meat for export to the European Union, the issue of the certificate does not prevent the consignment from also being considered to be a consignment of UK buffalo meat.

New subsection 129(2) provides that if a tariff rate quota certificate was issued for a consignment to be exported to the United Kingdom on the basis that it was a consignment of EU high quality beef for export to the European Union, the issue of the certificate does not prevent the consignment from also being considered to be a consignment of UK high quality beef.

The effect of this section is that exports of buffalo meat and high quality beef to the European Union can also be considered exports of those products to the United Kingdom. This section recognises that prior to 1 January 2021, the European Union included the United Kingdom for the purposes of tariff rate quota allocations of EU high quality beef and allows for the correct counting of total exports to the United Kingdom when allocating amounts of tariff rate quotas and providing tariff rate quota certificates after commencement.

New subsection 130(1) provides that the Secretary may, to take account of the withdrawal of the United Kingdom from the European Union, vary the amount of a person's tariff rate quota

entitlement for EU high quality beef for export to the European Union in the quota year beginning on 1 July 2020.

New subsection 130(2) provides that in deciding the new amount of a person's tariff rate quota entitlement, the Secretary must take the following into account:

- The amount the European Union determines is the weight of EU high quality beef that may be exported from Australia to the European Union in the period from 1 January 2021 to 30 June 2021 at the ad valorem customs duty set out in order number 09.4451 in Annex VIII to the EU Tariff Quota Regulation
- The consignments of EU high quality beef for export to a member country of the European Union (not including the United Kingdom) in the quota year beginning on 1 July 2020 for which tariff rate quota certificates have been issued (including consignments that have not yet been accepted for entry into the member country)
- The amount of each person's tariff rate quota entitlement for EU high quality beef for export to the European Union in the quota year beginning on 1 July 2020.

The note to this subsection provides that before 1 January 2021, the United Kingdom was included in the European Union for the purposes of this instrument.

New subsection 130(3) provides that in deciding the new amount of a person's tariff rate quota entitlement, the Secretary may also have regard to any other matter the Secretary reasonably believes is relevant.

New subsection 130(4) provides that if the Secretary varies the amount of a person's tariff rate quota entitlement under subsection (1), the Secretary must give the person a written notice stating the new amount of the entitlement.

This new section allows the Secretary to vary the tariff rate quota entitlements for high quality beef to the European Union to take account of the total quota volume previously available for exports to the European Union being split between the European Union and the United Kingdom from 1 January 2021. The revised weight of EU high quality beef that may be exported from Australia to the European Union for the period from 1 July 2020 to 30 June 2021 has been published in Annex VIII to the EU Tariff Quota Regulation. The remaining quantity of tariff rate quota from 1 January 2021 to 30 June 2021 was published on the European Commission's tariff rate quota website at https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/trqs_en.

The Secretary may vary the quota entitlements for each exporter having regard to the amount of each person's tariff rate quota entitlement in the quota year beginning 1 July 2020 and the consignments of EU high quality beef for export to a member country of the European Union (other than the United Kingdom) in the quota year beginning 1 July 2020 for which tariff rate quota certificates have been issued (including consignments that have not yet been accepted by the member country).

This section will manage the total of all TRQ entitlements of EU high quality beef for export to the EU such that it does not exceed the available volume of quota as determined by the European Union. This section will also manage the revision of allocations such that they are proportionate to what exporters had prior to the variations being made. If the Secretary varies the amount of a person's tariff rate quota entitlement under this section, the Secretary must notify the person in writing of the amount of their new entitlement.

New section 131 deals with the allocation of UK high quality beef entitlements for the quota year beginning on 1 July 2020.

New subsection 131(1) provides that if the Secretary has, under section 130, varied the amount of a person's tariff rate quota entitlement for EU high quality beef for export to the European Union in the quota year beginning on 1 July 2020, the Secretary may:

- Allocate the person an amount of tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in that quota year; or
- If the person has previously been allocated an amount of tariff rate quota entitlement for UK high quality beef for export to the United Kingdom under this section—vary the amount of the entitlement.

New subsection 131(2) provides that in deciding the amount, or the new amount, of a person's tariff rate quota entitlement, the Secretary must take the following into account:

- The amount the United Kingdom determines is the total weight of UK high quality beef that may be exported from Australia to the United Kingdom in the period from 1 January 2021 to 30 June 2021 at the quota duty rate for quota number 05.4451 in the UK Quota Table
- The consignments of UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2020 for which tariff rate quota certificates have been issued (including consignments that have not yet been accepted for entry into the United Kingdom)
- The amount of each person's tariff rate quota entitlement for EU high quality beef for export to the European Union in the quota year beginning on 1 July 2020
- If the Secretary has previously allocated amounts of tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2020 under this section—the amount of each person's entitlement.

Note 1 to subsection 131(2) states that before 1 January 2021, the United Kingdom was included in the European Union for the purposes of this instrument.

Note 2 to subsection 131(2) states that a tariff rate quota certificate might have been issued for a consignment of UK high quality beef on the basis that it was a consignment of EU high quality beef for export to the European Union (see subsection 129(2)).

New subsection 131(3) provides that in deciding the amount, or the new amount, of a person's tariff rate quota entitlement, the Secretary may also have regard to any other matter the Secretary reasonably believes is relevant.

New subsection 131(4) provides that if the Secretary allocates a person an amount of tariff rate quota entitlement under subsection (1), the Secretary must give the person a written notice stating the amount of the entitlement.

New subsection 131(5) provides that if the Secretary varies the amount of a person's tariff rate quota entitlement under subsection (1), the Secretary must give the person a written notice stating the new amount of the entitlement.

This new section allows the Secretary to create or vary a tariff rate quota entitlement for high quality beef to the United Kingdom to take account of the United Kingdom being established as a separate quota destination from the European Union.

This section is a consequential amendment to section 130 above which allows the Secretary to vary the amount of a person's tariff rate quota entitlement of EU high quality beef for export to the European Union in the quota year beginning 1 July 2020.

Where an exporter's quota entitlement for high quality beef to the European Union is varied, the person will be allocated an amount of tariff rate quota entitlement for UK high quality beef for export to the United Kingdom for the quota year beginning 1 July 2020. The total volume of tariff rate quota entitlement for EU high quality beef for export to the European Union that was available prior to 31 December 2020 has been split between the United Kingdom and the European Union. The Secretary must consider the amount the United Kingdom has determined as the total amount of UK high quality beef that may be exported from Australia to the United Kingdom in the period from 1 January 2021 to 30 June 2021 in deciding the amount or the new amount of the person's tariff rate quota entitlement .

New section 132 deals with the determination of uncommitted access amounts.

Subsection 132(1) provides that the Secretary may by legislative instrument, to take account of the withdrawal of the United Kingdom from the European Union, determine that, at a particular time during the quota year beginning on 1 July 2020:

- A specified weight is taken to be the uncommitted annual access amount for EU high quality beef for export to the European Union in the quota year; and
- A specified weight is taken to be the uncommitted new entrant access amount for EU high quality beef for export to the European Union in the quota year; and
- A specified weight is taken to be the uncommitted standard access amount for EU high quality beef for export to the European Union in the quota year; and
- A specified weight is taken to be the uncommitted annual access amount for UK high quality beef for export to the United Kingdom in the quota year;
- A specified weight is taken to be the uncommitted new entrant access amount for UK high quality beef for export to the United Kingdom in the quota year; and
- A specified weight is taken to be the uncommitted standard access amount for UK high quality beef for export to the United Kingdom in the quota year.

Subsection 132(2) provides that the Secretary may exercise the power to determine weights at a particular time in relation to more than one time during the quota year beginning on 1 July 2020.

Subsection 132(3) provides that if the Secretary decides to make a determination under subsection (1), the Secretary must take the following into account:

- The amount the European Union determines is the weight of EU high quality beef that may be exported from Australia to the European Union in the period from 1 January 2021 to 30 June 2021 at the ad valorem customs duty set out in order number 09.4451 in Annex VIII to the EU Tariff Quota Regulation
- The amount the United Kingdom determines is the total weight of UK high quality beef that may be exported from Australia to the United Kingdom in the period from

1 January 2021 to 30 June 2021 at the quota duty rate for quota number 05.4451 in the UK Quota Table

- The consignments of EU high quality beef for export to a member country of the European Union (not including the United Kingdom) in the quota year beginning on 1 July 2020 for which tariff rate quota certificates have been issued (including consignments that have not yet been accepted for entry into the member country)
- The consignments of UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2020 for which tariff rate quota certificates have been issued (including consignments that have not yet been accepted for entry into the United Kingdom)
- The amount of each person's tariff rate quota entitlement for EU high quality beef for export to the European Union in the quota year beginning on 1 July 2020
- If the Secretary has allocated amounts of tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2020 under section 131—the amount of each person's entitlement.

Note 1 to subsection 132(3) provides that before 1 January 2021, the United Kingdom was included in the European Union for the purposes of this instrument.

Note 2 to subsection 132(3) provides that a tariff rate quota certificate might have been issued for a consignment of UK high quality beef on the basis that it was a consignment of EU high quality beef for export to the European Union (see subsection 129(2)).

Subsection 132(4) provides that in making a determination under subsection (1), the Secretary may also have regard to any other matter the Secretary reasonably believes is relevant.

This new section allows the Secretary to determine specified weights that are taken to be uncommitted access amounts, uncommitted new entrant access amounts and uncommitted standard access amounts for high quality beef for export to both the EU and the UK at a particular time during the quota year beginning on 1 July 2020.

Uncommitted access amounts are amounts of tariff rate quota that are available to be allocated to exporters.

Section 27 of the 2019 Order defines *uncommitted standard access amount* for a quota type and a quota year at a particular time as the standard access amount for that quota type and quota year reduced by the sum of:

- The total weight for which tariff rate quota certificates have been issued in relation to consignments of that quota type for export in that quota year using the standard access quota; and
- The total tariff rate quota entitlements of all persons for that quota type and quota year.

Section 27 of the 2019 Order further defines *standard access amount* for a quota type and a quota year as the weight that is the difference between the annual access amount for that quota type and quota year and the new entrant access amount for that quota type and quota year.

Uncommitted new entrant access amounts are amounts of tariff rate quota that are only available to new entrants. Section 27 of the 2019 Order defines the *uncommitted new entrant access amount*, for a quota type and a quota year at a particular time as the difference between:

- The new entrant access amount for that quota type and quota year; and
- The total weight for which tariff rate quota certificates have been issued in relation to consignments of that quota type for export in that same quota year using new entrant access quota.

New entrant access amount is also defined in section 27 to mean, for a quota type and a quota year, the weight specified under Chapter 3 to be the new entrant access amount for that quota type in relation to that quota year.

This is a consequential amendment to the creation of separate tariff rate quota entitlements for the European Union and the United Kingdom.

New section 133 specifies the effect of issuing tariff rate quota certificates after access amounts have been determined.

New subsection 133(1) provides that this section applies if:

- The Secretary makes a determination under subsection 132(1); and
- After the time for which the Secretary specified access amounts in the determination, the Secretary issues a tariff rate quota certificate to a person in relation to:
 - A consignment of EU high quality beef for export to the European Union in the quota year beginning on 1 July 2020; or
 - A consignment of UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2020.

New subsection 133(2) provides that at the time the tariff rate quota certificate is issued, the uncommitted annual access amount for the quota type of the consignment and the quota year is taken to be reduced by:

- If the person does not have a tariff rate quota entitlement for the quota type and quota year—the weight for which the tariff rate quota certificate is issued; or
- If the person has a tariff rate quota entitlement for the quota type and quota year that is less than the weight for which the tariff rate quota certificate is issued—the difference between the 2 weights.

New subsection 133(3) provides that if the tariff rate quota certificate is issued under section 36 then, at the time the tariff rate quota certificate is issued, the uncommitted new entrant access amount for the quota type of the consignment and the quota year is taken to be reduced by the weight (if any) for which the certificate is issued using new entrant access quota.

New subsection 133(4) provides that if the tariff rate quota certificate is issued under section 36 then, at the time the tariff rate quota certificate is issued, the uncommitted standard access amount for the quota type of the consignment and the quota year is taken to be reduced by:

- If the person does not have a tariff rate quota entitlement for the quota type and quota year—the weight (if any) for which the tariff rate quota certificate is issued using standard access quota

- If the person has a tariff rate quota entitlement for the quota type and quota year that is less than the weight for which the tariff rate quota certificate is issued—the difference between the weight for which the tariff rate quota certificate is issued using standard access quota and the person’s entitlement.

This new section provides for reducing the uncommitted access amount for a quota type and a quota year as a result of issuing a tariff rate quota certificate. The effect of this section is that if an exporter requesting a tariff rate quota certificate does not have a tariff rate quota entitlement for a quota type and a quota year or does not have a sufficient tariff rate quota entitlement for the consignment, that the tariff rate quota certificate will use a portion of the uncommitted access amount and the uncommitted access amount will be consequently reduced.

New section 134 sets out the effect of cancelling tariff rate quota certificates after access amounts have been determined.

New subsection 134(1) provides that this section applies if:

- The Secretary makes a determination under subsection 132(1); and
- After the time for which the Secretary specified access amounts in the determination, the Secretary cancels a tariff rate quota certificate issued to a person for:
 - A consignment of EU high quality beef for export to the European Union in the quota year beginning on 1 July 2020; or
 - A consignment of UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2020.

New subsection 134(2) provides that to avoid doubt, this section (apart from subsection (3)) applies whether the tariff rate quota certificate was issued before or after the time for which the Secretary specified access amounts.

The note to this provision states that subsection (3) applies in certain circumstances when a certificate was issued before 1 January 2021.

New subsection 134(3) provides that if the consignment is a consignment of UK high quality beef for which a certificate was issued on the basis that it was a consignment of EU high quality beef for export to the European Union then, at the time the tariff rate quota certificate is cancelled:

- The person’s tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in the quota year is increased by the amount (if any) that the person’s tariff rate quota entitlement for EU high quality beef for export to the European Union in the quota year was reduced when the certificate was issued; and
- Despite subsection 119(5), the person’s tariff rate quota entitlement for EU high quality beef for export to the European Union in the quota year is not increased.

The note to this provision states that for other consignments, the same tariff rate quota entitlement that was reduced when the certificate was issued will be increased upon cancellation because the certificate is taken never to have been issued (see subsection 119(5)).

New subsection 134(4) provides that at the time the tariff rate quota certificate is cancelled, the uncommitted annual access amount for the quota type of the consignment and the quota year is taken to be increased by:

- If the person's tariff rate quota entitlement for the quota type and quota year is increased by the cancellation—the difference (if any) between the weight of the consignment and the amount of that increase; or
- If the person's tariff rate quota entitlement is not increased—the weight of the consignment.

New subsection 134(5) provides that if the tariff rate quota certificate is cancelled before the reclamation day for the quota type of the consignment and quota year then, at the time the certificate is cancelled, the uncommitted new entrant access amount for the quota type and the quota year is taken to be increased by the weight (if any) for which the certificate was issued using new entrant access quota.

New subsection 134(6) provides that if the tariff rate quota certificate is cancelled before the reclamation day for the quota type of the consignment and quota year then, at the time the certificate is cancelled, the uncommitted standard access amount for the quota type and quota year is taken to be increased by:

- If the person's tariff rate quota entitlement for the quota type is increased by the cancellation—the difference (if any) between the weight for which the certificate was issued using standard access quota and the amount of that increase; or
- If the person's tariff rate quota entitlement is not increased—the weight (if any) for which the certificate was issued using standard access quota.

This new section provides the mechanism for managing quota entitlements and uncommitted access amounts when tariff rate quota certificates are cancelled. This is required as tariff rate quota certificates may have been issued for consignments of high quality beef to be exported to the United Kingdom while the United Kingdom was still a part of the European Union for the purposes of tariff rate quota allocations.

If a tariff rate quota certificate for a consignment of high quality beef that was destined for the United Kingdom is cancelled, the effect of this section is that the quota volume will be recredited to the exporter's recently created United Kingdom tariff rate quota entitlement, or to the uncommitted access amount for the quota type and quota year for the United Kingdom as appropriate. This is a consequence of the United Kingdom being managed as a separate quota destination from the European Union and is required to keep the total available access amount to each of the United Kingdom and the European Union accurate.

New section 135 deals with the calculation of eligible past exports.

New subsection 135(1) provides that this section sets out the method for determining, for the purposes of the application of sections 31, 32 and 46, a person's total weight of eligible past exports for:

- EU high quality beef for export to the European Union in each of the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023; and
- UK high quality beef for export to the United Kingdom in each of the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023.

Section 31 of the 2019 Order concerns the calculation of a person's tariff rate quota entitlement from the standard access amount and section 32 deals with the initial calculations of tariff rate quota entitlement. Section 46 of the 2019 Order concerns the calculation of tariff rate quota entitlement to be allocated to an applicant for a quota type and a quota year after the reclamation day.

The formula in section 31 of the 2019 Order requires the applicant's eligible past exports (among other things) to be taken into account in determining the amount of tariff rate quota entitlement to be allocated to an applicant for a quota type and a quota year. An applicant's eligible past exports are also part of the formula used to calculate a person's initial individual entitlement for a quota type and a quota year in section 32 of the 2019 Order.

New subsection 135(2) provides that sections 66 and 89L do not apply in relation to the quota years mentioned in paragraphs (1)(a) and (b).

Section 66 of the 2019 Order provides that a consignment is an eligible past export for EU high quality beef for export to the European Union in relation to a quota year if:

- It is a consignment of EU high quality beef exported to the European Union; and
- A tariff rate quota certificate was issued in relation to the consignment in the period:
 - Ending on the 1 May that is 38 months before the start of the quota year; and
 - Ending on 30 April of the calendar year in which the quota year starts.

New section 89L (inserted by item 18 above) provides for when a consignment is an eligible past export for UK high quality beef for export to the United Kingdom in relation to a quota year.

New subsections 135(1) and (2) provide an alternative method for calculating eligible past exports to the EU and UK for the purpose of obtaining tariff rate quota entitlements in the quota years beginning on 1 July 2021, 1 July 2022, and 1 July 2023. This is a consequence of establishing the United Kingdom as a separate quota destination for the export of high quality beef from the European Union.

Sections 66 and 89L of the 2019 Order make quota allocations to exporters based on a three-year export history, up to the amount of quota requested by each exporter under those provisions. Allocations of tariff rate quota entitlements for high quality beef are made in proportion to each exporter's prior exports into each of the European Union and United Kingdom. However, as tariff rate quota for exports of high quality beef to the European Union and the United Kingdom were managed as a single process prior to the end of the Brexit transition period which ended on 31 December 2020, and as no exporter has separate export history to the United Kingdom, sections 66 and 89L of the 2019 Order cannot be used to calculate tariff rate quota entitlements for the quota years beginning on 1 July 2021, 1 July 2022, or 1 July 2023.

Quota year beginning on 1 July 2021

New subsection 135(3) provides that a person's combined past exports amount for 2021 is the sum of:

- The total weight of consignments of EU high quality beef exported by the person to the European Union for which tariff rate quota certificates were issued in the period beginning on 1 May 2018 and ending on 30 April 2021 (including exports to the

United Kingdom for which certificates were issued on the basis that a consignment was a consignment of EU high quality beef); and

- The total weight of consignments of UK high quality beef exported by the person to the United Kingdom for which tariff rate quota certificates were issued in the period beginning on 1 January 2021 and ending on 30 April 2021.

New subsection 135(4) provides that if the person is an applicant for tariff rate quota entitlement for EU high quality beef for export to the European Union in the quota year beginning on 1 July 2021, the person's total weight of eligible past exports for that quota type and quota year is 34.6993% of the person's combined past exports amount for 2021.

New subsection 135(5) provides that if the person is an applicant for tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2021, the person's total weight of eligible past exports for that quota type and quota year is 65.3007% of the person's combined past exports amount for 2021.

The effect of new subsection 135(3) is that a person's combined past exports for the purposes of determining tariff rate quota allocations in the year beginning 1 July 2021 shall be each exporter's total exports to the European Union (including the United Kingdom) over a three-year period from 1 May 2018 to 30 April 2021 and the total weight of consignments of UK high quality beef exported by the person to the United Kingdom for which tariff rate quota certificates were issued between 1 January and 30 April 2021.

For tariff rate quota allocations to the European Union, this total is multiplied by 34.6993%. This figure reflects the proportion of the annual access amount available for access to the European Union from 1 July 2021, compared with the total annual access volume available to both the EU and UK.

For tariff rate quota allocations to the United Kingdom, the total is multiplied by 65.3007%. This figure reflects the proportion of the annual access amount available for access to the UK from 1 July 2021, compared with the total annual access volume available to the European Union and the United Kingdom combined.

Quota year beginning on 1 July 2022

New subsection 135(6) provides that a person's combined past exports amount for 2022 is the sum of:

- The total weight of consignments of EU high quality beef exported by the person to the European Union for which tariff rate quota certificates were issued in the period beginning on 1 May 2019 and ending on 30 April 2021 (including exports to the United Kingdom for which certificates were issued on the basis that a consignment was a consignment of EU high quality beef); and
- the total weight of consignments of UK high quality beef exported by the person to the United Kingdom for which tariff rate quota certificates were issued in the period beginning on 1 January 2021 and ending on 30 April 2021.

New subsection 135(7) provides that if the person is an applicant for tariff rate quota entitlement for EU high quality beef for export to the European Union in the quota year beginning on 1 July 2022, the person's total weight of eligible past exports for that quota type and quota year is the sum of:

- 34.6993% of the person’s combined past exports amount for 2022; and
- The total weight of consignments of EU high quality beef exported by the person to the European Union for which tariff rate quota certificates were issued in the period beginning on 1 May 2021 and ending on 30 April 2022.

New subsection 135(8) provides that if the person is an applicant for tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2022, the person’s total weight of eligible past exports for that quota type and quota year is the sum of:

- 65.3007% of the person’s combined past exports amount for 2022; and
- The total weight of consignments of UK high quality beef exported by the person to the United Kingdom for which tariff rate quota certificates were issued in the period beginning on 1 May 2021 and ending on 30 April 2022.

The effect of new subsections 135(6), (7) and (8) is that the eligible past exports for the purposes of determining tariff rate quota allocations in the year beginning 1 July 2022 shall be calculated in two steps.

The first step is to calculate the person’s combined past exports amount for the quota year beginning on 1 July 2022 in accordance with subsection 135(6).

The second step is to determine the weight of the person’s past eligible exports for the quota type and quota year beginning on 1 July 2022 in accordance with subsection 135(7) or 135(8). This amount will depend on whether the person is an applicant for a tariff rate quota entitlement for EU high quality beef for export to the European Union or an applicant for a tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2022.

Quota year beginning on 1 July 2023

New subsection 135(9) provides that a person’s combined past exports amount for 2023 is the sum of:

- The total weight of consignments of EU high quality beef exported by the person to the European Union for which tariff rate quota certificates were issued in the period beginning on 1 May 2020 and ending on 30 April 2021 (including exports to the United Kingdom for which certificates were issued on the basis that a consignment was a consignment of EU high quality beef); and
- The total weight of consignments of UK high quality beef exported by the person to the United Kingdom for which tariff rate quota certificates were issued in the period beginning on 1 January 2021 and ending on 30 April 2021.

New subsection 135(10) provides that if the person is an applicant for tariff rate quota entitlement for EU high quality beef for export to the European Union in the quota year beginning on 1 July 2023, the person’s total weight of eligible past exports for that quota type and quota year is the sum of:

- 34.6993% of the person’s combined past exports amount for 2023; and
- The total weight of consignments of EU high quality beef exported by the person to the European Union for which tariff rate quota certificates were issued in the period beginning on 1 May 2021 and ending on 30 April 2023.

New subsection 135(11) provides that if the person is an applicant for tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2023, the person's total weight of eligible past exports for that quota type and quota year is the sum of:

- 65.3007% of the person's combined past exports amount for 2023; and
- The total weight of consignments of UK high quality beef exported by the person to the United Kingdom for which tariff rate quota certificates were issued in the period beginning on 1 May 2021 and ending on 30 April 2023.

The effect of new subsections 135(9), (10) and (11) is that the eligible past exports for the purposes of determining tariff rate quota allocations in the year beginning 1 July 2023 shall be calculated in two steps.

The first step is to calculate the person's combined past exports amount for the quota year beginning on 1 July 2023 in accordance with subsection 135(9).

The second step is to determine the weight of the person's past eligible exports for the quota type and quota year beginning on 1 July 2023 in accordance with subsection 135(10) or subsection 135(11). This amount will depend on whether the person is an applicant for a tariff rate quota entitlement for EU high quality beef for export to the European Union or an applicant for a tariff rate quota entitlement for UK high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2023.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021* (the Amendment Order) is to amend the *Export Control (Tariff Rate Quotas) Order 2019*. The Amendment Order permits the Secretary to adjust tariff rate quota administration in the Order to cater for the United Kingdom ending its Brexit transition period on 31 December 2020 and the consequential requirement to create separate tariff rate quotas for each of the European Union and the United Kingdom for buffalo, beef and dairy products, and makes other consequential amendments.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Debbie Langford
Assistant Secretary
Residues and Food Branch
Exports and Veterinary Division
Department of Agriculture, Water and the Environment