EXPLANATORY MEMORANDUM TO

THE CUSTOMS SAFETY AND SECURITY PROCEDURES (EU EXIT) (NO. 2) REGULATIONS 2021

2021 No. 1445

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument extends for six months the duration of a waiver from the obligation to submit pre-arrival safety and security entry summary (ENS) declarations for imports from territories where such a declaration was not required before the United Kingdom's (UK) exit from the European Union (EU). This includes, for example, the EU, Norway and Switzerland. Before the introduction of this instrument the waiver was in place until 31 December 2021; this instrument will extend the waiver until the end of 30 June 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments:

3.1 This instrument is made under section 8(1) of the European Union (Withdrawal) Act 2018 (EUWA) and is subject to the draft affirmative procedure under paragraph 1(3) of Schedule 7 to EUWA. This is because it amends provisions of retained EU law previously amended by the Customs Safety and Security Procedures (EU Exit) Regulations 2019 (SI 2019/715). That instrument was laid as a proposed negative for sifting by the European Statutory Instruments Committee (ESIC) and the Secondary Legislation Scrutiny Committee (Sub-Committee A) (SLSC) on 31 January 2019, but was upgraded to the affirmative procedure following recommendations by the ESIC in its 18th Report of Session 2017- 2019 and the SLSC in its 16th Report of Session 2017- 2019.

3.2 This instrument comes into force on 31 December 2021. This is necessary to ensure that the waivers already provided continue to have effect without any break.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of the Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The existing waiver from the requirement to submit ENS declarations for movements where they were not required before the UK's departure from the EU is in Article 104(5) of Commission Delegated Regulation (EU) 2015/2446 (the Delegated Regulation). This was inserted by the Customs Safety and Security Procedures (EU Exit) Regulations 2019 and is being amended by this instrument, to change the end date of the waiver from 31 December 2021 to 30 June 2022.

7. Policy background

What is being done and why?

7.1 The government is extending the suspension of ENS declaration requirements for imports where there were no requirements for those movements prior to the UK's departure from the EU, as part of the decision to delay further the introduction of certain border controls on incoming goods from the EU announced in September 2021.

7.2 This is to support businesses facing challenges in meeting new safety and security requirements due to disruption caused by COVID-19 and in the context of challenges to global supply chains.

7.3 ENS declarations are made before goods arrive into a customs territory. Information from the declarations is used to form part of a risk assessment of goods for safety and security threats. The risk assessment facilitates the movement of legitimate goods and provides information for targeting dangerous goods, such as drugs and firearms, before arriving at the border by air, sea, rail and road. These declarations will provide extra information for our security processes - but the delay now does not make us less safe. Existing intelligence sources will continue to be used to secure our borders in the same way as they are now.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 The Union Customs Code (UCC) requires the pre-arrival and pre-departure collection and risk assessing of data about goods by customs authorities. Before the end of the transition period, the UCC and the Delegated Regulation required the submission of ENS declarations before goods arrived in the EU's customs territory. The UCC now applies as retained law and, in accordance with Articles 127 and 128, requires ENS declarations and risk assessment in respect of goods arriving in Great Britain (GB) from the EU's customs territory as well as from the rest of the world. Article 104 of the Delegated Regulation provides waivers from this obligation. Article 104 was amended by the Customs Safety and Security Procedures (EU Exit) Regulations 2019 which inserted a waiver until 30 June 2021 from the requirement to lodge an ENS declaration for goods brought from a place where such a declaration was not required before exit day. This date has been amended, most recently by the Customs Safety and Security Procedures (EU Exit) Regulations 2021 (SI 2021/778) which changed the date to 31 December 2021.

Why is it being changed?

7.5 The waiver from the obligation to submit ENS declarations for imports from territories where such a declaration was not required before the UK's exit from the EU

is being extended in response to global supply chain issues and continuing pressures arising from the COVID-19 pandemic, which has impacted industry readiness for the introduction of full customs controls on the previously proposed date of 1 January 2022.

What will it now do?

7.6 Following the changes brought in by this instrument, the waiver from a requirement to submit ENS declarations for goods moved into GB from territories where such a declaration was not required before exit day will be extended so that instead of ending on 31 December 2021 it will end on 30 June 2022. This means that ENS declarations will be required on these movements from 1 July 2022.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the powers in section 8(1) of the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

8.2 In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 No consolidation is planned, as the waiver is time limited.

10. Consultation outcome

10.1 Whilst no formal consultation has taken place, the waiver from ENS declaration requirements is part of the government's approach to the staging in of customs controls, which is being introduced in response to global supply chain issues and on-going pressures arising from the COVID-19 pandemic, which has impacted industry readiness for the introduction of full customs controls on the previously proposed date of 1 January 2022. In these circumstances, the government has decided to delay further some elements of the new controls, including the requirement for safety and security declarations.

11. Guidance

11.1 Guidance on safety and security requirements can be found at https://www.gov.uk/topic/business-tax/import-export.

12. Impact

12.1 The impact on businesses, charities and voluntary bodies is expected to vary depending on their level of trade with the EU. As this instrument will introduce an additional six-month waiver to the requirement to make an ENS declarations, it will assist business by removing the administrative burden of making a declaration during this time and will give them additional time to prepare for this requirement.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it extends an existing facilitation for business.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that the changes set out in this instrument will give businesses more time to prepare for making safety and security declarations.

14. Monitoring & review

14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out in section 7.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Danya Sarayreh at HMRC Telephone: 03000 575385 or email: danya.sarayreh1@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Matthew Sabourin, Deputy Director for Customs Declaration Policy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Appropriateness statement

1.1 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2021 do no more than is appropriate".

1.2 This is the case because they seek to support and enable businesses to meet their obligations by allowing more time for businesses to prepare for making safety and security declarations.

2. Good reasons

2.1 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are supporting businesses affected by COVID-19 providing them with additional time to prepare for safety and security declaration requirements.

3. Equalities

3.1 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

3.2 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, the Rt Hon Lucy Frazer QC MP have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

4. Explanations

4.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.