EXPLANATORY MEMORANDUM TO

THE CUSTOMS SAFETY AND SECURITY PROCEDURES (EU EXIT) REGULATIONS 2020

2020 No. 1613

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 This instrument forms part of legislation to ensure the United Kingdom (UK) has a contingency option in place in case of border disruption caused by safety and security requirements on exports following the withdrawal of the UK from the European Union (EU). It introduces powers to allow a temporary waiver of the requirement for pre-departure declarations, or temporary modification of the time limit for their submission, by public notice.

2.2 These powers can only be used where necessary to relieve any border disruption.

2.3 The powers are limited to six months. Within this timeframe, the application of any public notices can be further limited: for example, by time, location, sector of trade or type of goods, allowing targeted mitigation.

Explanations

What did any relevant EU law do before exit day?

2.4 The Union Customs Code (UCC) requires the pre-departure collection and risk assessing of data about goods by customs authorities for safety and security purposes.

2.5 The UCC requires the submission of pre-departure declarations before goods leave the EU's customs territory. It also sets timing requirements for the submission of pre-departure declarations for movements depending on mode.

Why is it being changed?

2.6 The public notice powers are being introduced to provide a temporary contingency option for goods leaving Great Britain in the event that requirements for pre-departure declarations cause border disruption after the end of the transition period and temporary legal changes are needed to mitigate this.

What will it now do?

2.7 From 1 January 2021 until 30 June 2021, the powers will allow requirements for pre-departure declarations to be waived by public notice. Public notices could also be used to modify the time limit for submission of pre-departure declarations within this period.

2.8 Public notices can only be published where necessary to address border disruption. Their application can be further limited, for example by time, location, sector of trade or type of goods, allowing targeted mitigation.

3. Matters of special interest to Parliament

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

3.1 This instrument is being laid under the affirmative resolution procedure. This is because it makes provision in relation to similar matters to the Customs Safety and Security Procedures (EU Exit) Regulations 2019 (SI 2019/715), which 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 includes a power to make a public notice that can temporarily waive the requirement for pre-departure declarations, or temporarily modify the time limit for their submission. This power is brought into force using the power in section 8(1) of European Union (Withdrawal) Act 2018 (EUWA). This enables the introduction of such regulations as considered appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the UK from the EU. Section 8(5) of EUWA allows regulations made under section 8(1) to make any provision that could be made by an Act of Parliament. This includes the power to make provisions authorising further provision to be made by way of a public notice. Any notices that are made under this instrument will be published at https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021.

3.3 This instrument only applies to businesses and intermediaries exporting goods from Great Britain. The Northern Ireland Protocol means the unamended, current version of the UCC will continue to apply in respect of movements to and from Northern Ireland.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 The territorial application of this instrument includes Scotland and Northern Ireland.

3.5 The powers under which this instrument is made cover the entire United Kingdom and territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

5.1 The Rt Hon Jesse Norman MP, the 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) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument introduces powers to allow a temporary waiver of the requirement for pre-departure declarations, or temporary modification of the time limit for their submission, by public notice. The provisions of a public notice will temporarily displace any contrary provisions in Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (the Union Customs Code was adopted on 9 October 2013 as Regulation (EU) No 952/2013). This instrument also revokes the power in the Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations (SI 2019/1219) enabling the Commissioners for HMRC to make a public notice that can extend the deadlines by which safety and security declarations for export must be submitted in particular circumstances, which is replaced by the new powers.

6.2 Currently the main provisions governing the export of goods from the UK are set out in directly applicable EU regulations. The Union Customs Code (Regulation (EU) No 952/2013) (UCC) is the overarching legislative framework for customs adhered to by all EU Member States and by the UK during the transition period. The UCC implementing regulation (Regulation (EU) 2015/2447) and delegated regulation (Regulation (EU) 2015/2446) set out further detailed requirements.

6.3 Section 3 of the EUWA provides that direct EU legislation forms part of the UK domestic law as it stands at the end of the transition period. Paragraph 1 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (TCTA) ensures that any EU legislation relating to EU customs duty is replaced by UK regulations made under TCTA. As safety and security provisions do not impose or apply to any EU customs duty, the provisions of the legislation relating to safety and security referred to in section 6.2 above continue to have effect as retained EU law.

6.4 Section 8(1) of EUWA contains a power to make secondary legislation to remedy deficiencies in retained EU law.

7. Policy background

What is being done and why?

7.1 The World Customs Organisation's SAFE framework sets out international standards for safety and security relating to the movement of goods. The aim of this is to prevent the flow of goods related to illegal activity across the border. Retained legislation, and the UK's support for the SAFE framework, oblige HMRC to collect and risk assess data on goods movements before arrival in or departure from the UK's customs territory. Movements of goods such as food produce and clothing are risk assessed to detect prohibited and restricted items before they enter or leave. This policy also facilitates legitimate goods movement. This is done through entry summary and pre-departure declarations.

7.2 This instrument will introduce powers to allow a temporary waiver of the requirement for pre-departure declarations, or temporary modification of the time limit for their submission, by public notice. The powers will only be available for six months after the end of the transition period, and can only be used to mitigate border disruption.

Any notices published under these powers can be further limited, for example by time, location, sector of trade or type of goods, allowing targeted mitigation.

7.3 The powers are required to ensure a temporary contingency option in the event of border disruption caused by pre-departure safety and security requirements on exports after the end of the transition period. Certain groups, such as hauliers who move goods exclusively to the EU, do not currently make safety and security declarations as, in line with the application of the UCC during the transition period, they are not required for goods moved between the UK and EU member states.

7.4 There may be risks associated with using these powers to implement any temporary waivers; for example, to border security. HMRC will establish a process to assess any need for this contingency option and decide what measures are appropriate in the context of risks.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order 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. 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, but that will be kept under review.

10. Consultation outcome

10.1 Informal consultations have been carried out with stakeholders to assess trader readiness, including independent research by Ipsos MORI and the Road Haulage Association. These consultations indicated that some traders may face challenges meeting pre-departure requirements after the end of the transition period. This legislation will provide flexible contingency options to mitigate the resulting risk of border disruption.

11. Guidance

11.1 There is already guidance on customs matters at https://www.gov.uk/starting-to-import and https://www.gov.uk/starting-to-export.

11.2 All guidance is currently being reviewed and where necessary will be updated prior to the end of the transition period.

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, level of border disruption and any use of this contingency as a result. These temporary powers can only be used where necessary to mitigate border disruption up to 1 July 2021. Any use of public notices to waive or modify pre-departure safety and security requirements on exports will assist business by removing or reducing the administrative burden of making a declaration for whichever movements are in scope. From 1 July 2021, this contingency option

will no longer be available in the event of any border disruption caused by the requirement for pre-departure declarations. The Better Regulation Framework reporting requirements do not apply to anything in force for less than 12 months so a Regulatory Impact Assessment (RIA) has not been produced for this provision.

12.2 The impact on the public sector is that HMRC will need to put temporary processes and procedures in place to be able to publish notices to respond to any border disruption caused by pre-departure safety and security requirements on exports.

12.3 For the reasons given above an Impact Assessment has not been prepared for this instrument.

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 powers set out in this instrument will give the option to reduce pre-departure safety and security requirements on all exporting businesses in the event of border disruption.

14. Monitoring & review

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

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Charlotte Roberts at HMRC Telephone: 03000 522193 or charlotte.roberts@hmrc.gov.uk can be contacted with any queries regarding the instrument.

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

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

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

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), 9 and 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), 9 and 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), 9 and 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), 9 and 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), 9 and 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 exit 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 offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and 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 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit 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 exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 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.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Financial Secretary to the Treasury, the Rt Hon Jesse Norman MP, 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) Regulations 2020 do no more than is appropriate".

1.2 This is the case because the regulation introduces limited powers that would only be used as a contingency option in the case of evidenced need.

2. Good reasons

2.1 The Financial Secretary to the Treasury, the Rt Hon Jesse Norman MP, 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 This is the case because it is appropriate for government to have contingencies available in the event that they are needed to mitigate border disruption that might be caused by the changing customs requirements after the end of the transition period.

3. Equalities

3.1 The Financial Secretary to the Treasury, the Rt Hon Jesse Norman MP, 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 Financial Secretary to the Treasury, the Rt Hon Jesse Norman MP, 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 Jesse Norman 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 2 of the main body of this explanatory memorandum.