EXPLANATORY MEMORANDUM TO

THE CUSTOMS (ECONOMIC OPERATORS REGISTRATION AND IDENTIFICATION) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

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 purpose of this instrument is to amend European Union (EU) regulations which are being brought into force in the United Kingdom (UK) by the European Union (Withdrawal) Act 2018 (EUWA). The instrument will ensure that the UK has a customs regime in place and ready to take effect from the date of departure to ensure registration of traders when the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 Since 1 July 2009, there has been a requirement within the EU for persons who are involved in activities covered by the customs legislation to register with the customs authorities. Registration is required for persons established in the EU, who must register with the customs authorities in the Member State in which they are established. Registration is also required for persons not established in the EU, where they first make a declaration or apply for a decision in the EU. Once registered, a person is given an Economic Operator Registration Identification (EORI) number and an EORI record is created. An EORI number is used to make a customs declaration and is also used to apply for customs simplifications, approvals and decisions.

Why is it being changed?

2.3 EU customs legislation (The Union Customs Code (UCC)), needs to be changed so that it applies specifically to the United Kingdom and not the whole customs territory of the EU. Also references to "customs authorities" are changed to "HMRC". Certain other minor deletions remove UCC rules not needed once the UK is outside the EU customs territory.

What will it now do?

2.4 The UK will have an independent EORI system that will now only apply to traders who are resident or operating in the United Kingdom after EU exit.

2.5 The UK Government is committed to avoiding a hard border between Northern Ireland and Ireland and will do everything in its power to ensure that no new physical infrastructure is introduced at the land border in the event of no deal. The amendments to the retained EU law contained in this instrument will not have effect in relation to economic operators whose only customs activities consist of the trade of goods

between Northern Ireland and Ireland. Further details on the arrangements for trade between Northern Ireland and Ireland will be published as soon as possible.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This 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. In its 18th Report of Session 2017-2019, the ESIC recommended that the instrument should be subject to the negative procedure. In its 16th Report of Session 2017-2019, the SLSC recommended that the instrument be upgraded to the affirmative resolution procedure as they believe the House may wish to debate the implications which the instrument may have for trade across the Ireland/Northern Ireland border. The Rt Hon Mel Stride MP, Financial Secretary to the Treasury has agreed to the recommendation of the SLSC and the instrument is now being laid as draft affirmative.

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)

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

3.3 The powers under which this instrument is made cover the entire United Kingdom and the 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 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 Mel Stride MP has made the following statement regarding Human Rights:

"In my view the provisions of the Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 As a member of the EU, customs was the exclusive competence of the EU and its rules were predominantly laid down by the Union Customs Code Regulation (EU) No. 952/2013, and its subordinate legislation, the Commission Delegated Regulation (EU) 2015/2446 and Commission Implementing Regulation (EU) 2015/2447.

6.2 By virtue of section 3 of EUWA all of these regulations will be incorporated into domestic UK law on and after exit day.

6.3 When paragraph 1 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (TCTA) is commenced most of the provisions contained within those regulations will cease to have effect, in so far as they relate to EU customs duty/import duty. They will be replaced by provision made by and under TCTA.

6.4 The provisions relating to EORI number will however, continue to have effect as "retained EU law" as defined by section 6(7) of EUWA. This instrument is therefore being made using the powers in section 8(1) of EUWA which enables amendments to be made to retained EU law to prevent, remedy or mitigate deficiencies (as defined in section 8(2) of EUWA) in that law following exit day.

7. Policy background

What is being done and why?

7.1 In the event of a no deal scenario the UK intends to closely model its customs systems on what currently applies under UCC rules. One of the key planks of the UCC is its universal customs identifier (EORI number). It uniquely identifies the registered trader in terms of its name and address, thus allowing accurate identification of any person making declarations or applying for customs decisions or authorisations.

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 EUWA 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 EU. 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 This is new legislation and therefore no consolidation is required.

10. Consultation outcome

10.1 As the purpose of this instrument is to ensure that customs legislation currently governed by the EU is provided for in UK legislation, no formal consultation was carried out.

11. Guidance

11.1 The latest guidance on EORI number and how to acquire a UK EORI was updated in November 2018 and is available at: https://www.gov.uk/guidance/get-a-uk-eori-number-to-trade-within-the-eu

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited to those entities which currently trade only between the EU and UK or overseas businesses that will in future import into the UK. There is a low level of impact per business as it is a one-off action and it will only take a few minutes to apply for an EORI number. All that is required is entry of some simple data items (name, address etc.).

12.2 There is no, or no significant, impact on the public sector because the EORI number allocation is an automated process requiring no additional resource.

12.3 This instrument will be covered by an overarching HMRC impact assessment (second edition) which will be published and available on the website at https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to ensure the current application process has been made as simple as possible. Applying for an EORI number will only take a few minutes using an on-line application.

13.3 The basis for the final decision on what action to take to assist small businesses was to ensure accessibility to all by requesting the minimum amount of data readily available to any small business.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to monitor the total number of registrations and reasons for failure of any unsuccessful registrations.

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

15. Contact

15.1 Peter Vojak at HMRC Telephone: 03000 585370 or email: Peter.Vojak@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Pamela Mulholland Deputy Director for EU Exit Policy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Mel Stride, 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 13, 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 16, 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, Mel Stride, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because: the instrument is only changing references to reflect the fact that the UK will no longer be a member of the EU customs union. Though the current rules of the UCC are being retained in respect of the registration of businesses for customs purposes the actual UCC rules are deficient in terms of their definition of the "customs territory of the Union" which needs amended to say "United Kingdom" and consequential changes to make the rules appropriate for application to the UK after it leaves the EU. No policy changes are involved.

2. Good reasons

2.1 The Financial Secretary to the Treasury, Mel Stride, 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: the instrument is only changing references to reflect the fact that the UK will no longer be a member of the EU customs union. Though the current rules of the UCC are being retained in respect of the registration of businesses for customs purposes the actual UCC rules are deficient in terms of their definition of the "customs territory of the Union" which needs amended to say "United Kingdom" and consequential changes to make the rules appropriate for application to the UK after it leaves the EU. In the absence of these changes the UK law in this area would use a definition of the territorial application of the law beyond the borders of the UK.

3. Equalities

3.1 The Financial Secretary to the Treasury, Mel Stride, 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, Mel Stride has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Mel Stride 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.