EXPLANATORY MEMORANDUM TO

THE CUSTOMS SAFETY, SECURITY AND ECONOMIC OPERATORS REGISTRATION AND IDENTIFICATION (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 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 This instrument forms part of legislation to ensure the United Kingdom (UK) has a customs safety and security regime in place at the end of the transition period following the withdrawal of the UK from the European Union (EU). It introduces a temporary waiver on the requirement for Entry Summary (ENS) declarations from countries that do not currently require them, and changes the timing requirement for the submission of a pre-arrival ENS for all short sea journeys, and a pre-departure Exit Summary (EXS) declaration for short containerised sea journeys.

2.2 The instrument also removes duplication between existing statutory instruments and maintains the power to require registration for an Economic Operators Registration Identification (EORI) number in certain other circumstances which was omitted from a previous statutory instrument.

Explanations

What did any relevant EU law do before exit day?

Safety and Security

2.3 The Union Customs Code (UCC) requires the pre-arrival and pre-departure collection and risk assessing of data about goods by customs authorities.

2.4 The UCC requires the submission of ENS declarations before goods arrive in the EU's customs territory. It also makes provision for different timing requirements for the submission of ENS and pre-departure declarations for movements by sea to and from territories near the customs territory of the EU.

Economic Operators Registration Identification

2.5 The UCC requires businesses which are involved in activities which are covered by customs legislation to register with the customs authority of the member state where the business is established. Businesses not established in the EU are also required to register with a customs authority in the member state where a customs declaration is first lodged or a customs decision is first requested. The UCC also allows for a member state to require registration with a customs authority if otherwise required by the legislation of that member state.

Why is it being changed?

Safety and Security

2.6 The temporary waiver on the requirement for ENS declarations is being introduced to give businesses extra time to prepare to meet this administrative requirement, to mitigate the impact on readiness that the COVID-19 pandemic has had on the logistics industry.

2.7 The list of territories that are allowed later deadlines for submitting their declarations needs updating, as it currently includes places that are not near the UK's customs territory (such as North Africa), and doesn't include places that are near the UK's customs territory (such as France).

Economic Operators Registration Identification

2.8 As explained in subsections 7.7 to 7.10, the UCC registration requirements were due to be incorporated into UK law at the end of the transition period with amendments made via the Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019. However, the necessary amendments to the UCC power to require businesses to register with the customs authority through other legislation was omitted from those regulations. This draft instrument corrects the error and includes all of the necessary amendments to the UCC powers to require businesses to register with the customs authority, including the one which was omitted from the previous instrument, and therefore ensures that there is no change in the UK's registration powers after the end of the transition period. It also revokes the previous regulations.

What will it now do?

Safety and Security

2.9 From 1 January 2021 until 30 June 2021, traders will not be required to submit ENS declarations for movements from the EU. The instrument will also make permanent changes to allow shorter timeframes for the submission of ENS and pre-departure declarations for sea journeys to and from territories near the UK. This reflects the fact that for shorter maritime movements decisions are made much closer to the time of departure about routing, and total journey times from depots may in some cases be less than the current, unamended 4 hour requirement for submitting these declarations.

Economic Operators Registration Identification

2.10 The instrument maintains the UK's existing registration system in full. Businesses are required to register with HMRC if their activities are covered by the UK's customs legislation and they are established in the UK. Businesses which are not established in the UK but will make a declaration in the UK or request a customs decision from HMRC are also required to register with HMRC. The instrument also maintains the ability for future legislation to require businesses which do not fall within any of the previous groups to register with HMRC.

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 amends 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 Regulations 1 and 8 come into force immediately. The effect of regulation 8 is to revoke the Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019 (SI 2019/714), which were not due to come into force until IP completion day. This instrument makes provision in relation to the same matters by amending the Customs Safety and Security Procedures (EU Exit) Regulations 2019, which will itself not come into force until IP completion day.

3.3 The safety and security elements of this instrument only apply to businesses and intermediaries importing goods from the European Union (EU) into Great Britain (GB). The Northern Ireland (NI) Protocol means the unamended, current version of the UCC will continue to apply in respect of movements to and from NI.

3.4 The registration requirements of this instrument apply to those businesses established in Great Britain, making declarations in Great Britain or seeking a customs decision from HMRC.

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)

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

3.6 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. In accordance with the Protocol on Ireland/Northern Ireland, regulations 3, 4(2)(b), 4(2)(c), 4(3) and 5 do not have effect in relation to economic operators whose activities solely relate to trade in goods between Northern Ireland and Ireland, and the remainder of the instrument does not have effect in relation to the movement of goods in either direction between Northern Ireland and Ireland.

5. European Convention on Human Rights

5.1 The Rt Hon Jesse Norman MP has made the following statement regarding Human Rights:

"In my view the provisions of The Customs Safety, Security and Economic Operators Registration and Identification (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument introduces a temporary waiver by making amendments to The Customs Safety and Security Procedures (EU Exit) Regulations 2019 and The

Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2019 (SI 2019/1219) that take effect before those instruments come into force. The SI also reverses changes made to the retained law by EU/2020/877 that were designed to accommodate changes to EU computer systems that are no longer being adopted in GB.

6.2 Currently the main provisions governing the import of goods into, and 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 European Union (Withdrawal) Act 2018 (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. For example, it enables amendments to terminology that is no longer applicable now that the UK has left the EU.

7. Policy background

What is being done and why?

Safety and Security

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 (ENS) and exit summary (EXS) declarations.

7.2 This instrument will:

- provide for a temporary waiver for 6 months from 1 January 2021 on entry summary declarations (ENS) for goods imported to Great Britain from the EU and territories currently not required to submit an ENS. This forms part of the staging in of customs controls at the end of the transition period, as announced by the government on 12 June 2020.
- amend the deadline by which an ENS declaration must be submitted for maritime movements for short sea journeys for containerised and non-containerised movements. This will be from 24 hours pre-loading and 4 hours

pre-arrival respectively, to 2 hours pre-arrival for both, reflecting the specific challenges for goods moved on these short journeys.

- amend the deadline by which a pre-departure declaration needs to be submitted for maritime containerised cargo from 24 hours pre-loading to 2 hours pre-loading.

7.3 The temporary waiver is required to address the adverse impacts of COVID-19 on businesses' preparations for the new requirements on goods imported into Great Britain from EU member states for safety and declarations. Certain groups, such as hauliers who move goods exclusively within 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 The standard pre-arrival timing requirement for the submission of an ENS for maritime movements is 4 hours pre-arrival for non-containerised cargo, and 24 hours pre-loading for containerised cargo. Short sea journeys benefit from reduced deadlines, where both modes have a 2 hour pre-arrival requirement. For the pre-departure submission of an EXS, the standard timing requirement for containerised cargo is a 24 hour pre-loading. Short sea containerised journeys benefit from a reduced deadline, where there is a 2 hour pre-departure requirement. This instrument will grant these timings to short sea journeys where they are not currently provided for. This will be achieved by altering the list of territories that are granted these timings in the retained legislation to better reflect that the retained UCC applies to the geography of the UK, rather than the EU.

7.5 Without this change, the default ENS timing would create significant challenges for the flow of goods through ports that use roll-on roll-off vehicle movements. A large proportion of hauliers will need to change which consignments they are picking up, and/or their port or time of departure, less than 4 hours before arrival and so would be unable to submit an ENS to that timescale. For example, the 4 hour limit would require an ENS declaration to be submitted 2½ hours before the departure of a Calais to Dover ferry, whereas many hauliers have not decided which ferry sailing they will be taking, or even whether they are taking a ferry or the Eurotunnel, until they arrive near Coquelles (the Eurotunnel Terminal in France) or Calais. If large numbers of hauliers had to wait at ports having submitted their ENS late, significant congestion and disruption at ports would result.

7.6 A 4 hour pre-arrival deadline would disadvantage trade moving goods by means of shortsea journeys, as Eurotunnel (road) movements have a one-hour limit and short air journeys (less than four hours) must only submit their declaration prior to departure.

Economic Operators Registration and Identification

7.7 In preparation for the withdrawal of the UK from the EU, the UK needed its own legislation to require economic operators to register with HMRC (in essence replacing the UCC rules requiring businesses interacting with EU customs law to register with a customs authority). Amendments were therefore made to the retained EU legislation through the Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019 to create a UK registration system.

7.8 The Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019 did not cover a registration requirement on non-economic operators where there is a requirement to register in other UK legislation. Additionally, there is an overlap between those regulations and the Safety and Security Procedures (EU Exit) Regulations 2019 with both regulations making changes to the same part of the retained law.

7.9 This instrument will revoke the Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019, insert into the Safety and Security Procedures (EU Exit) Regulations 2019 those parts of the Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019 which are not already included, and maintain a registration requirement on those where such a requirement is set out in UK legislation.

7.10 This change does not impose an additional registration requirement on businesses by itself but allows for other rules to require registration with HMRC.

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 An informal consultation was carried out with members of the Joint Customs Consultative Committee on the proposals covered in this instrument. The Joint Customs Consultative Committee is an HMRC-sponsored forum established to exchange views on, and discuss proposed changes to, customs procedures and documentation relating to the entry and clearance of goods. A virtual reading room on the full draft instrument was conducted on 25 September 2020 with members of the Joint Customs Consultative Committee, who were able to discuss the draft legislation with policy officials.

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. The 6-month period waiving the requirement for ENS declarations will assist business by removing the administrative

burden of making a declaration during this time. Once this period finishes, businesses will be required to complete these declarations and will need to ensure processes and systems are in place in order that they can meet this requirement prior to goods leaving the UK to the EU. 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 shorter timeframes for the submission of ENS and EXS declaration for maritime movements described in this memorandum fall below the threshold for producing a RIA as they are not expected to affect the ongoing administrative costs to businesses of submitting the declarations.

12.3 The EORI registration requirement on non-economic operators to register with the customs authority is a technical amendment addressing an omission from previous EU Exit legislation intended to align with the UCC.

12.4 The impact on the public sector is that HMRC will need to put processes and procedures in place so ENS and pre-departure declarations are submitted within the relevant timescales.

12.5 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 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 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 Stuart Pyle at HMRC Telephone: 03000 541389 or stuart.pyle@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Matthew Sabourin and Tessa Robins, Deputy Directors 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, Security and Economic Operators Registration and Identification (Amendment etc.) (EU Exit) Regulations 2020 do no more than is appropriate".

1.2 This is the case because it seeks to support and enable business to meet their obligations while keeping as close to the practical effects of the Union Customs Code as possible following the end of the transition period. It allows more time for businesses to prepare for making safety and security declarations and by amending the time limits for submitting Entry Summary and pre-departure declarations, more flexibility to businesses in moving goods via short sea journeys.

1.3 Additionally it requires businesses to register for an Economic Operators Registration Identification number with HMRC, in line with existing EU rules.

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 the provisions provide business time to be ready to meet the administrative requirements of safety and security obligations.

2.3 Additionally it ensures that the legislation requiring businesses to register with HMRC is complete and correct and covers all of the scenarios reasonably envisaged.

3. Equalities

3.1 The Financial Secretary to the Treasury, the Rt Hon Jesse Norman MP, has made the following statement:

"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.