EXPLANATORY MEMORANDUM TO

THE MUTUAL ASSISTANCE ON CUSTOMS AND AGRICULTURAL MATTERS (REVOCATION) (EU EXIT) REGULATIONS 2019

2019 No. 426

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs 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 European Union (Withdrawal) Act 2018 will retain certain direct European Union (EU) law as it stands immediately before the United Kingdom (UK) leaves the EU. In the event that the UK leaves the EU without a deal, this instrument will revoke Council Regulation (EC) No. 515/97 on mutual assistance as this mutual assistance is based on an agreement which is limited to Member States.

Explanations

What did any relevant EU law do before exit day?

2.2 The EU recognised that the abolition of administrative procedures at internal frontiers within the EU would heighten the risk of fraud. As a result it took steps to ensure that all Member States applied similar checks and controls. As a part of this process, all Member States are party to the Convention on Mutual Assistance and Co-operation between Customs Administrations (Naples II), which reinforced Member State cooperation in the combat of illegal activities such as trafficking of illegal goods or significant customs evasion. Council Regulation (EC) No. 515/97 gives a legislative framework on mutual assistance in matters of community customs and agricultural policy. It sets out how Member States will work together to tackle significant evasion in these matters

2.3 For example, under this Regulation Member States may co-operate in joint operations. They are also obliged to share information relating to fraud on the customs system or abuse of the Common Agricultural Policy. This is primarily shared through the electronic means.

2.4 The EU shares a collection of computer applications which allow the exchange of information between all the administrations. This is accessed by operational customs officers throughout the Member States in the course of investigating customs fraud.

Why is it being changed?

2.5 In the event that the UK leaves the EU on the 29 March 2019 with no agreement in place, the UK will no longer be party to Naples II. Council Regulation (EC) No. 515/97 which gives a legislative framework to the sharing of information and co-operation in tackling fraud against the Union customs regime and the EU Common

Agricultural Policy will no longer be relevant. Therefore the instrument will revoke this Regulation insofar as it forms part of the retained EU law.

What will it now do?

2.6 Once revoked, Council Regulation (EU) No. 515/97 will no longer be part of UK law.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was presented as a proposed negative statutory instrument to the sifting committees for consideration on 31 January 2019. The sifting was completed on 12 February 2019 by the European Statutory Instrument Committee (ESIC) and the Secondary Legislation Scrutiny Committee (Sub-Committee B) (SLSC). Both the ESIC and SLSC decided and agreed that the instrument should follow the negative procedure. The reports published by ESIC and SLSC can be found at https://publications.parliament.uk/pa/cm201719/cmselect/cmesic/1933/1933.pdf and https://publications.parliament.uk/pa/ld201719/ldselect/ldseclegb/286/28602.htm respectively. No response is therefore needed by HM Revenue and Customs.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Naples II is an agreement between all Member States to co-operate with each other in order to tackle customs fraud, to protect agricultural levies and to combat other transnational offences such as the trade in drugs and weapons. It was given effect in UK law by the European Communities (Definition of Treaties) (The Convention on Mutual Assistance and Co-operation between Customs Administrations (Naples II)) Order 2001 (S.I. 2001/413).

6.2 To enable cooperation between Member States in matters concerning community legislation concerning customs and agricultural matters, Council Regulation (EC) No. 515/97 was introduced bringing with it a computerised customs information system (CIS) which centrally stores information used to identify the illicit trade in goods when they enter or leave any of the Member States.

6.3 In addition this EU Regulation allows joint operations and mutual assistance, specifically in preventing and detecting customs fraud.

6.4 The measures in this EU Regulation explicitly apply to Member States within the framework of the Union. As a result of the revocation of the European Communities (Definition of Treaties) (The Convention on Mutual Assistance and Co-operation between Customs Administration (Naples II)) Order 2001 by European Union (Definition of Treaties Orders) (Revocation) (EU Exit) Regulations 2018 (S.I. 2018/1012) Naples II will no longer have effect in UK law and the UK will no longer have access to CIS. Nor will the UK be obliged to share information. In the event that the UK leaves the EU without an agreement, none of the provisions within this EU Regulation will have practical application in the UK.

7. Policy background

What is being done and why?

7.1 As set out in 6.4, in the event that the UK leaves the EU on the 29 March 2019 with no agreement in place, the UK will no longer be entitled to the co-operation legislated for in the EU Regulation nor will it be obliged to co-operate with the remaining Member States in operations tackling abuse of the community customs and agricultural policy regimes. Therefore this instrument will revoke the current EU Regulation insofar as it becomes a part of UK law.

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 UK 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 As the purpose of this instrument is to revoke retained EU legislation that will be redundant when the UK leaves the EU, no consolidation is required.

10. Consultation outcome

10.1 As the purpose of this instrument is to revoke retained EU legislation that will be redundant when the UK leaves the EU, no consultation was carried out.

11. Guidance

11.1 This instrument applies to procedures that apply to law enforcement departments within the Member States and no public guidance is necessary.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies as the instrument simply revokes redundant retained EU legislation.

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

12.3 This instrument is one of a group of instruments covered by a single overarching HM Revenue and Customs impact assessment which was published on 25 February 2019 and is 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 does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 HM Revenue and Customs are looking to establish possible alternative methods of obtaining information, such as building up information from customs records on trade between the UK and the EU which was previously not required.

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

15. Contact

15.1 Marilyn Stephenson at HM Revenue and Customs; Telephone: 03000 594713 or email: marilyn.stephenson@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Pamela Mulholland, Deputy Director for Customs EU Exit, at HM Revenue and Customs 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. Sifting statement(s)

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

"In my view the Mutual Assistance on Customs and Agricultural Matters (Revocation) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because the instrument will revoke Council Regulation (EC) No. 515/97 on mutual assistance because it explicitly applies to Member States within the framework of the Union. In the event that the UK leaves the EU on the 29 March 2019 with no agreement in place, none of the provisions within this EU Regulation will apply to the UK. The EU legislation applies to the protection of EU customs tariffs and common agricultural funding which will no longer apply to the UK and cooperation in these areas will no longer be relevant to the UK.

2. Appropriateness statement

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

"In my view the Mutual Assistance on Customs and Agricultural Matters (Revocation) (EU Exit) Regulations 2019 do no more than is appropriate".

2.2 This is the case because if the UK is no longer party to the agreements of mutual cooperation such as Naples II which set out mutual assistance throughout the Member States. The retained direct EU legislation which sets out the protection of EU customs tariffs and the protection of the common agricultural policy will no longer apply to the UK and is therefore redundant.

3. Good reasons

3.1 The Financial Secretary to the Treasury, the Rt Hon 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".

3.2 The instrument will revoke retained direct EU legislation which will be redundant.

4. Equalities

4.1 The Financial Secretary to the Treasury, the Rt Hon Mel Stride has made the following statement(s):

"The 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."

4.2 The Financial Secretary to the Treasury, the Rt Hon 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."

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.