EXPLANATORY MEMORANDUM TO

THE WINDSOR FRAMEWORK (DISCLOSURE OF REVENUE AND CUSTOMS INFORMATION) REGULATIONS 2023

2023 No. 623

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue & Customs (HMRC) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The instrument will permit HMRC to share information concerning movements of goods with representatives of the European Union (EU) where this is required for the purposes of the Windsor Framework (WF), agreed between the United Kingdom (UK) and EU on 24 March 2023.

2.2 Data sharing is an important element of the Windsor Framework, ensuring that information is made available by HMRC regarding the movement of goods to enable EU representatives to fulfil the supervision requirements of the Windsor Framework.

2.3 It is intended that the information shared under the powers in this instrument will concern customs, VAT and excise duty.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 The Windsor Framework is an international agreement between the UK and EU. As outlined in the Government's command paper 'The Windsor Framework: a new way forward' (published in February 2023), it restores the smooth flow of trade within the UK internal market and safeguards Northern Ireland's place in the Union.

6.2 Under the terms of the earlier Protocol on Ireland/Northern Ireland and carried through to the revised arrangements, the authorities of the UK are responsible for implementing arrangements relating to the movement of goods, but EU representatives have certain rights, including a right to request information about

activities related to the implementation of provisions on the movement of goods. The practical working arrangements for the exercise of these rights by EU representatives were agreed between the UK and the EU in Decision No 6/2020 of the Joint Committee. This instrument makes provision concerning this information sharing by HMRC.

6.3 In making this statutory instrument, the Commissioners of HMRC (as the appropriate authority) have considered the requirements of section 46(1) of the United Kingdom Internal Market Act 2020 (concerning Northern Ireland's place in the UK internal market and customs territory).

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to provide a specific legal basis on which information relevant to the UK's obligations to the EU under the Windsor Framework can be shared.

Explanations

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

7.2 Current legislation does not include a dedicated provision that enables HMRC to disclose information to EU representatives, as required under the Windsor Framework. Legislation containing a more general information sharing power has been relied upon prior to the coming into force of this instrument in sharing required information with the EU under the Windsor Framework

Why is it being changed?

7.3 HMRC needs to legislate to provide a specific legal basis on which it can fulfil all information sharing obligations agreed in the Windsor Framework.

What will it now do?

7.4 The instrument will establish a new legal basis on which information can be shared. Information disclosed will be subject to the provisions of the Windsor Framework and Union law in relation to the sharing of information. A person who receives information may consequently only use or disclose it further where such use or disclosure is in accordance with those provisions.

7.5 The instrument does not grant new powers or rights to the EU. It provides a basis under which the UK can meet its obligations as agreed in the Windsor Framework.

7.6 Information sharing under the instrument will be subject to existing domestic data protection legislation and the Investigatory Powers Act 2016.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being laid under S8C of the European Union (Withdrawal) Act. It does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not amend any other enactment and as such consolidation is not appropriate.

10. Consultation outcome

10.1 No consultation was required. This instrument does not create any new obligations, it only creates a new information disclosure power that explicitly deals with the sharing of information by the UK to the EU linked to commitments under the Windsor Framework.

11. Guidance

11.1 Guidance for traders and other persons is not required because this instrument only concerns disclosure of information by HMRC to EU representatives.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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 no ongoing costs to businesses are expected as a result of this instrument.

12.4 There are no groups or individuals who will be adversely affected by this instrument, it will not diminish rights, safeguards or impact on equality of opportunity.

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.

13.3 No mitigating action is proposed because the instrument is only a means to provide a legal basis on which to share information. It does not impact or seek to change the way in which that information is created.

14. Monitoring & review

14.1 No specific monitoring arrangements are required. This instrument creates a new information disclosure power that explicitly deals with data sharing arising from the WF.

14.2 A statutory review clause is not required because this instrument does not make regulatory provision in relation to a qualifying activity, as defined in sections 29 and 32 of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 James Wilson and Alex Lillie at HMRC, emails: james.wilson3@hmrc.gov.uk and alex.lillie@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alex Pienaar, Deputy Director for Northern Ireland Customs Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, the Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.