

EXPLANATORY MEMORANDUM TO
THE CASH CONTROLS (AMENDMENT) (EU EXIT) REGULATIONS 2019
2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury 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 retained European Union (EU) law to ensure that it works to collect information from individuals who are carrying cash in excess of £10,000 into or out of the United Kingdom (UK) in the event that the UK leaves the EU without an agreement.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Regulation (EC) No. 1889/2005 required all individuals who brought cash into or out of the EU to declare these amounts to the customs authorities in the Member State which they first enter or leave. The data was compiled centrally and used by the EU Member States to identify risks such as money laundering.

Why is it being changed?

- 2.3 The UK will no longer be a Member State so the EU Regulation will no longer apply to the UK as a non-member state. The Government needs to preserve this Regulation to ensure that the UK is able to continue to collect data about the movement of large amounts of cash.

What will it now do?

- 2.4 The legislation will apply to any individual carrying cash into and out of the UK whether or not to or from the EU. This will enable the UK to build its own risk profiles, which will be used to identify and intercept cash which is being carried by individuals. For example, this policy will enable the Government to identify those who are suspected of money laundering or linked to terrorist activity funded by cash.
- 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 individuals carrying cash 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 discuss what will happen to cash controls between the North and South of Ireland after exit day. 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.
- 3.2 As a result, there is unlikely to be sufficient time to allow at least 21 days between the instrument being made and its coming into force on exit day. HMRC considers this to be reasonable because the amendments made by the instrument seek to preserve the status quo, with the exception that the limit is changed to £10,000 from 10,000 euros. This is not a new policy but an existing, well understood and established policy which will, as a result of this instrument, apply additionally to cash movements between the UK and EU as well as between the UK and non-EU countries. The declaration is not onerous so the additional burden is modest. The public have had notice of the changes via publication of a draft notice on gov.uk and communications with customers will increase if no deal becomes likely. HMRC's engagement and communication with customers on this policy will not be affected by there being fewer than 21 days' notice of the instrument coming into force. Any burden is outweighed by the importance of bringing the instrument into force on the day the UK exits the EU so that the UK is able to build immediately its risk profiles to identify and intercept cash where appropriate.

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)

- 3.3 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.4 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 Cash Controls (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The UK currently applies EU rules which place an obligation on individuals to declare cash amounts above 10,000 euros which they transport across external borders. This is set out in Regulation (EC) No. 1889/2005. This enables customs authorities to detain amounts of money which are found at the border, where a declaration has not been made, pending investigation into its source and use.
- 6.2 Section 3 of the European Union (Withdrawal) Act 2018 incorporates Regulation (EC) No. 1889/2005 into domestic law on and after exit day.
- 6.3 Section 8 of the European Union (Withdrawal) Act 2018 allows for deficiencies in the legislation imported to be remedied. For example amending terminology which no longer is applicable.
- 6.4 A draft of the notice proposed to be made under Article 3(3) of Regulation (EC) No. 1889/2005, as amended by regulation 2(4)(b) of this instrument, is available at <https://www.gov.uk/government/publications/draft-notice-to-be-made-under-the-cash-controls-regulation-ec-no-1889-2005-amendment-eu-exit-regulations-2019>. When finalised, the notice will be published on gov.uk and a hard copy will be available for inspection free of charge at HM Revenue and Customs, 100 Parliament Street, London SW1A 2BQ.

7. Policy background

What is being done and why?

- 7.1 Information about the transportation of large amounts of cash is one of the tools used by the Government to combat illegal activities, including the funding of terrorism. This instrument ensures that information about cash being transported internationally will continue to be collected, and that the UK will be enabled to continue to intercept cash which is linked to the funding of terrorism and to other illegal activities.
- 7.2 Declarations, provide information which can be used to target risks. The form in current use is a paper version only. However, the UK will be making electronic declarations possible. Where cash is discovered which has not been declared, this provides customs authorities the opportunity to carry out further investigations.
- 7.3 The instrument changes EU references that are no longer appropriate. For example by substituting the term “United Kingdom” for “Community” or “Member State” the legislation will apply at the UK’s borders. The threshold in this instrument will be set in sterling instead of euros to avoid expressing UK legislation in terms of euros, and to avoid linking the threshold to the euro as this fluctuates.
- 7.4 This instrument also removes obligations to share information with the European Commission.

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 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 Guidance setting out the changes in obligations on travellers will be available on gov.uk before exit day.

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

12.4 It applies current EU legislation to the UK border, and requires only the completion of a simple declaration by the individual who is carrying the cash. Should an individual carry money on behalf of a business, charity or voluntary body, the responsibility for making the declaration will lie with the individual who is carrying the cash. They must however state the name of the business, charity or voluntary body on the declaration to whom the cash belongs.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses unless individual employees carry cash on the behalf of the business.

13.2 There are no measures proposed to minimise the impact on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small business is based on the fact that because the declaration is made on a simple form (that is easy to complete), there is no such requirement to take further action in assisting small businesses. It requires no more than is currently required between the EU and the rest of the world. However, these declarations are now additionally required between the UK and the EU.

14. Monitoring & review

14.1 The approach to monitoring this legislation is to record the number of declarations that are made, the points of entry, and the amounts of cash declared against current estimates.

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

15. Contact

- 15.1 Catherine Osborne at HM Revenue and Customs; Telephone: 03000 536971 or email: catherine.osborne@hmrc.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. Appropriateness statement

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

“In my view the Cash Controls (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate.”

- 1.2 This is the case because the amendments made by the instrument seek to preserve the status quo with the minor exception that the limit is now changed to £10,000 rather than 10,000 euros. Currently cash controls are applied between the UK and all countries other than those of the European Union. Under this instrument the requirement to complete a declaration will additionally apply to movements of cash between the UK and the EU. These controls require the carrier to make a declaration stating the amount of cash they carry across the border. This declaration can be made by a form which will be available in paper and electronic version, and by telephone in limited circumstances. Further details of how to submit the declaration will be provided by HMRC in a public notice published on gov.uk. This instrument does not change the underlying scheme for operation of cash controls.

2. Good reasons

- 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 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 that, following the UK’s withdrawal from the EU, the UK will need to continue to monitor cash being transported to and from the UK.

3. Equalities

- 3.1 The Financial Secretary to the Treasury, the Rt Hon 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, 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 draft instrument, I, the Rt Hon 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.