

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (RECORDS) (EU EXIT) REGULATIONS 2019

2019 No. 113

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument forms part of legislation to be made under the Taxation (Cross-border Trade) Act 2018 to ensure, that in the event of the United Kingdom (UK) leaving the European Union (EU) without a negotiated deal, the UK has a Customs regime in place before the date of departure. It provides a requirement for those involved in customs matters to retain relevant records. The records to be retained, and the form and period of retention of these records will be set out in a notice that will be published before the instrument comes into effect.
- 2.2 The instrument will enable current record-keeping requirements set out in EU law to be replicated in UK law following EU Exit.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument makes provision by reference to things to be specified in a notice published by HMRC. We note the need for explicit vires to sub-delegate and the consideration that the Joint Committee on Statutory Instruments gave to the draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (in the 30th report of session 2017 – 2019). The Taxation (Cross-border Trade) Act 2018 (“the Act”) under which this instrument is made, does include the express power to sub-delegate in section 32(8)(b), which provides that any power to make regulations under Part 1 of the Act includes a power conferring a discretion on any specified person to do anything by or under, or for the purposes of, the regulations and a power to make provision by reference to things specified in a notice. To provide clarity on how the customs regime will operate after EU exit the notice is being published in a draft format alongside this instrument. The final version, which will have legal force, will be published before this instrument comes into force.
- 3.2 This instrument will come into force pursuant to regulations made under Section 52 of the Act.

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 Financial Secretary to the Treasury, The Rt Hon Mel Stride, has made the following statement regarding Human Rights:

“In my view the provisions of the Customs (Records) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The law relating to record-keeping requirements in relation to customs is currently set out in both UK law and in EU law.
- 6.2 Article 51 of the Union Customs Code, Regulation (EU) No 952/2013 (“UCC”) sets out a common framework across the EU for the keeping of documents and other information for the purposes of customs controls.
- 6.3 In addition the Customs Trader (Accounts and Records) Regulations 1995 (S.I. 1995/1203 “the 1995 Regulations”), made under Section 21 of Finance Act 1994, set out the types of records that are required to be kept by customs traders, the format in which those documents must be kept and preserved and the period for which the records must be preserved.
- 6.4 This instrument is made under section 30 of the Act and provides for requirements currently in the UCC that cannot be made under section 21 of the Finance Act 1994; for example, due to restrictions on who regulations made under that section can apply to and the period of time for which the obligation to preserve records can be imposed. In addition, the instrument provides for the record keeping obligation under the UCC to continue to have effect in relation to persons subject to such an obligation immediately before exit day.
- 6.5 As explained above, the power to make provision by reference to things specified in a notice is set out in section 32(8)(b) of the Act.
- 6.6 This instrument comes into force on such day as the Treasury may by regulations under section 52 of the Act appoint and are subject to the made affirmative procedure in consequence of section 32(2) and (3)(c) of the Act.

7. Policy background

What is being done and why?

- 7.1 The instrument provides that a person who either directly (for example as an importer or an exporter) or indirectly (for example an intermediary) is involved in a transaction involving customs must retain records. It is important that records are kept to provide evidence of how transactions were dealt with, to avoid errors, and prove the actions of both the customs authorities and other parties involved. This instrument will operate

alongside the requirements set out in the 1995 Regulations and will enable current record-keeping requirements set out in EU law to be replicated in UK law following EU Exit.

- 7.2 The records to be kept and preserved, the form in which these records are to be kept and the period for which the records must be kept and preserved is to be specified in a notice.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the UK from the EU because it replicates in UK legislation provisions currently in EU law.

9. Consolidation

- 9.1 Consolidation is not appropriate because this instrument does not amend any other legislation.

10. Consultation outcome

- 10.1 No consultation was conducted as the instrument introduces no additional requirements on any sector. Existing businesses dealing exclusively with the EU will be required to fulfil the same record-keeping requirements as other businesses.

11. Guidance

- 11.1 In the event of a “no-deal” outcome, businesses would, broadly, apply the same customs rules to goods moving between the UK and the EU as currently apply in cases where goods move between the UK and a country outside the EU. This includes requirements in relation to the preservation of records. HMRC already has guidance on this area published on [GOV.UK](https://www.gov.uk). This instrument introduces a new notice that will be linked to that guidance, which will be updated ahead of commencement of the regulation

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 will be covered by an overarching HMRC Impact Assessment (second edition) that 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> .
- 12.4 It will not introduce any new record-keeping requirements and therefore should have no new impact other than for customers that are involved with customs procedures for the first time. Even for these customers the impact would be small because such customers would be expected to retain their EU related business records in order to comply with existing requirements for other taxes such as Self-Assessment, VAT and/or Corporation Tax.

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 highlight the existing guidance for record-keeping requirements.
- 13.3 The basis for the final decision on what action to take to assist small businesses was that, because this instrument maintains the status quo, a simple reminder to small businesses would be sufficient. It is anticipated that a reference to this requirement will be included in communications sent to small businesses engaging in customs procedures for the first time.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives, and to ensure burdens on business are carefully monitored and reviewed.
- 14.2 The regulation does not include a statutory review clause by virtue of the exemption set out in Section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015. Section 28(3)(a) sets out that there is an exemption where provisions are in connection to a tax or duty.

15. Contact

- 15.1 Anthony Allgood at the HM Revenue and Custom Telephone: 03000 586892 or email: Anthony.Allgood@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.