

EXPLANATORY MEMORANDUM TO
THE CUSTOMS SAFETY AND SECURITY PROCEDURES (EU EXIT) (NO. 2)
REGULATIONS 2019

2019 No. 1219

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 This instrument forms part of legislation to ensure the UK has a customs safety and security regime in place after its departure from the European Union (EU). It introduces a discretionary power for HMRC for a period of 12 months to allow businesses a longer period over which to submit safety and security declarations for certain exports and provides further changes in relation to safety & security in the event that no deal is reached for leaving the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 EU law introduced a customs safety and security policy across the EU. The policy is designed for information on goods to be shared and risk assessed before they either arrive in or leave the EU. This is to facilitate the movement of legitimate trade into or out of the EU. Since the UK is a member of the EU Customs Union, currently no declarations are required on goods moving between the UK and the EU.
- 2.3 Goods exported from the EU are covered by a combined customs export declaration containing the relevant safety and security information. If a customs export declaration is not made, a separate exit summary declaration, for safety and security purposes is required.

Why is it being changed?

- 2.4 If the UK leaves the EU without a deal, businesses will be required to collect and submit safety and security information on all goods moving between the UK and the EU. This is a new requirement, given that before exit day safety and security declarations are not needed for the movement of goods between the UK and the EU. Businesses have highlighted concerns in meeting this obligation from exit day, particularly for imports. This instrument allows industry more time to prepare to meet their safety and security obligations.
- 2.5 There is an argument that the legislation does not allow for combined customs export and safety and security declarations to be accepted. Therefore, this instrument removes any ambiguity around this point to allow businesses to submit a combined customs and safety and security export declaration.

- 2.6 Transitional periods, during which entry and exit summary declarations are not required, would allow industry more time to adapt their systems in order to meet their safety and security requirements. They will assist the movement of goods and help ease traffic at the UK-EU border.

What will it now do?

- 2.7 Exporters who have not submitted a combined export declaration may be allowed additional time to submit their declarations. This is subject to HMRC's discretion and the specifics will be set out in a public notice.
- 2.8 The instrument clarifies that a combined export and safety and security declaration can be accepted when exporting goods. This ensures that exporters are not required to submit separate exit summary declarations.
- 2.9 Exit summary declarations for empty containers, empty pallets or empty vehicles not carrying goods moving from the UK to the EU are not required for 6 months from exit day. They are also not required for any spare parts, accessories and equipment for pallets, containers and means of transport. It does not remove the requirement for an exit summary declaration where the pallets, containers, means of transport, associated spare parts, accessories or equipment, are the goods being exported.
- 2.10 The instrument introduces a 12 month transitional period during which there is no requirement for entry summary declarations for goods imported from territories where the UK does not currently require these declarations.
- 2.11 The amendments to the retained EU law contained in this instrument will not have effect in relation to trade in goods between Ireland and Northern Ireland. The Government has set out its approach to avoiding a hard border between Northern Ireland and Ireland: www.gov.uk/guidance/eu-exit-avoiding-a-hard-border-in-northern-ireland-in-a-no-deal-scenario

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This SI is being laid under the made affirmative procedure as there is a need to ensure that this instrument is in place for exit day. The 'made affirmative' procedure provided for in the European Union (Withdrawal) Act 2018 ensures that this instrument is in place for exit day. It is important to have this instrument in place so as to provide confidence and certainty to the public and business and to ensure the effective functioning of the statute book after exit. Using this procedure still allows for parliamentary scrutiny and Parliament will need to approve its making for it to remain in force.
- 3.2 This instrument includes a power to make a public notice that can extend the deadlines by which safety and security declarations for exports must be submitted in particular circumstances. This power is brought into force using the power in section 8(1) of EUWA. This enables the Minister to make such regulations as considered appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the UK from the EU. Section 8(5) allows regulations under section 8(1) to make any provision that could be made by an Act of Parliament.

- 3.3 The instrument comes into force on 31 October 2019 if the UK leaves the EU without a deal. HMRC will only use the power if needed to respond to business un-readiness that is greater than anticipated. If the need arises HMRC will first issue a public notice setting out to whom and what goods the power will apply to assist businesses in preparing for the obligations they will face if the UK leaves the EU without a deal. The power ceases to have effect after 12 months from the date on which the instrument comes into force.

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)

- 3.4 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.5 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 United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 Jesse Norman MP Financial Secretary to the Treasury has made the following statement regarding to Human Rights:

“In my view the provisions of The Customs Safety and Security Procedures (No.2) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Safety and security currently sits within the Union Customs Code (Regulation (EU) No. 952/2013) (UCC), which is the overarching legislative framework for customs adhered to by all Member States. Sitting under this regulation are the implementing regulation (Regulation (EU) 2015/2447) and delegated regulation (Regulation (EU) 2015/2446).
- 6.2 Section 3 of EUWA provides that direct EU legislation forms part of the UK domestic law as it stands on exit day. Schedule 7 paragraph 1 of the Taxation (Cross-border Trade) Act 2018 ensures that any EU legislation relating to EU customs duty is replaced by UK regulations made under Taxation (Cross-border Trade) Act 2018. As safety and security provisions do not impose or apply to any EU customs duty, the provisions in section 6.1 above continue to have effect as retained EU law.
- 6.3 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 after the UK leaves the EU.
- 6.4 Section 8(5) allows regulations under section 8(1) to make any provision that could be made by an Act of Parliament. This power is being used to sub-delegate and allow HMRC to issue a public notice, for a period of 12 months, that permits businesses a longer period over which to submit safety and security declarations for certain exports.

6.5 Paragraph 21 of Schedule 7 to EUWA provides that any power to make regulations in EUWA includes power to make transitional provisions.

7. Policy Background

What is being done and why?

- 7.1 In response to the World Customs Organisation's SAFE framework, the EU introduced a safety and security policy governed by the UCC. The policy is aimed at risk assessing the movement of goods such as food produce and clothing to detect prohibited and restricted items before they enter or leave the EU. It also facilitates legitimate goods moving within the EU. Goods arriving from non-EU countries require safety and security entry summary declarations. Goods moving from the EU to non-EU countries require exit summary declarations. In the event of the UK leaving the EU without a deal, UK businesses exporting to the EU will have to complete exit summary declarations. Goods imported to the UK from the EU will require an entry summary declaration. The information on the declaration can then be risk assessed by the UK's border agencies to monitor what goods are coming across the UK border and prevent illicit or dangerous goods from entering.
- 7.2 Entry and exit summary declarations are not required for the movement of goods between the UK and the EU while the UK is an EU Member State. Therefore, although this instrument temporarily removes the requirement for entry and exit summary declarations for the movement of goods between the EU and UK in a no deal scenario, it retains the existing position. As a result, the provisions do not increase the security risk to the UK.
- 7.3 Industry stakeholders have indicated that they will find immediate compliance with the safety and security rules challenging and so these changes are being introduced. This instrument introduces a number of provisions to assist exporters and importers. HMRC will have the power to be flexible and have discretion to extend time limits for submitting exit summary declarations. Traders can continue to submit a combined customs export and safety and security declaration so that exporters are not required to submit a separate exit summary declaration. Furthermore, the requirement for safety and security exit summary declarations for empty containers, empty pallets or empty vehicles not carrying goods moving between the UK and the EU will be removed for 6 months. The requirement is not removed if the vehicles, containers or pallets are the goods being exported in the course of being sold or leased to another person. For 12 months, there will be no requirement for entry summary declarations on goods from territories currently not required to submit these declarations.
- 7.4 HMRC will first issue a public notice if the power is needed. It will set out to whom and to what goods the power will apply. It will also specify goods to which the power will not apply, for example excise goods or goods on the Strategic Export Control List, such as firearms or demolition devices. A full list can be found at <https://www.gov.uk/guidance/uk-strategic-export-control-lists-the-consolidated-list-of-strategic-military-and-dual-use-items>. Additionally the public notice will confirm the power will not apply to goods subject to sanctions on trade in cultural objects and export of objects of cultural interest.

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 EUWA. It addresses deficiencies of retained EU law to operate effectively after the withdrawal of the UK from the EU. 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 The key message from our stakeholder engagement, including with the haulage industry and ferry operators, is that new safety and security requirements cannot be met from exit day. The instrument applies to all modes of transport and allows affected industry sectors enough time to meet their obligations.
- 10.2 The UK government will continue to engage with industry on the application of their new safety and security obligations during the periods that entry and exit summary declarations are not required. This includes looking at how data requirements can be made easier while continuing to provide border agencies with the ability to risk assess effectively.

11. Guidance

- 11.1 Guidance on existing export processes is already available on the Gov.UK website <https://www.gov.uk/guidance/export-declarations-and-the-national-export-system-export-procedures>) and this will be updated before exit day as necessary to reflect the impact of the UK leaving the EU, including the easements being made under this instrument.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is varied. If HMRC uses its discretion to allow exit summary declarations to be submitted after export, then the affected exporters, to be specified in a public notice, will be assisted by this instrument. The power expires after 12 months and businesses will then have additional administrative and financial burdens. They will need to adapt their processes and systems to meet the requirement to make safety and security declarations prior to goods leaving the UK to the EU.
- 12.2 The 12 and 6 month transitional periods for entry and exit summary declarations respectively assists businesses by reducing their administrative costs. After the transitional periods, businesses will need to adapt their processes and systems to meet the requirement to make safety and security declarations prior to the movement of goods across the UK-EU border. In respect of charities or voluntary bodies, this depends on the nature of their operation's activities. Those entities that have regular trade with the EU will be impacted by the new changes.
- 12.3 There is no, or no significant, impact on the public sector. The instrument removes burdens on businesses so does not create any additional resource needs for the public sector.

- 12.4 This instrument will be covered by an overarching HMRC impact assessment (Third edition) which 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>

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 introduce this instrument that gives HMRC discretionary power for a period of up to 12 months to allow a longer period over which exporters can submit safety and security declarations. The instrument removes the requirement for exit summary declarations for empty means of transport, empty containers and pallets for 6 months. Additionally, entry summary declarations are not required for imports for 12 months from territories currently not required to submit these. This reduces administrative costs on these businesses and help to alleviate trade traffic at the EU-UK border.
- 13.3 The basis for the final decision on what action to take to assist small businesses is to ensure trade flow is facilitated without compromising safety and security. HMRC held an engagement event with industry in January 2019 to discuss new safety and security requirements and procedures. Guidance will be published online and on social media platforms and HMRC have customer contact centres that can provide advice on what to do leading up to the UK departure date.

14. Monitoring and review

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out in this explanatory memorandum and to ensure burdens on business are carefully monitored.
- 14.2 As the instrument is made under the EUWA, no review clause is required.

15. Contact

- 15.1 Tyrone Eugene at HM Revenue and Customs, Telephone 03000 586757 or email: Tyrone.Eugene@hmrc.gov.uk can be contacted with queries regarding the instrument.
- 15.2 Charlotte Axson, Deputy Director for Customs EU Exit at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jesse Norman MP Financial Secretary to the Treasury can confirm 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
Appropriateness	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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
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, 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 and Security Procedures (EU Exit) (No. 2) Regulations 2019 does no more than is appropriate.”

1.2 This is the case because it seeks to support and enable businesses to meet their obligations while keeping as close to the practical effects of the UCC as we can immediately after exit day. It allows more time for businesses to adapt their systems and processes in readiness if the UK leaves the EU without a deal.

1.3 The instrument gives HMRC the discretion for a period of 12 months to allow a longer period over which to submit exit summary declarations for certain exports. This allows more time for businesses to adapt their systems and processes if the UK leaves the EU without a deal.

1.4 The instrument allows traders to submit a combined export and safety and security declaration rather than being required to submit separate exit summary declarations for safety and security purposes.

1.5 The instrument provides for a 6 month transitional period during which exit summary declarations are not required in respect of empty vehicles not carrying goods, empty containers and pallets exported to the EU. This allows more time for businesses to adapt their systems and processes if the UK leaves the EU without a deal.

1.6 The instrument temporarily removes the requirement to submit safety and security information via entry summary declarations for goods being imported from territories where we do not currently require entry summary declarations. This includes, for example, the EU, Norway, and Switzerland. This transitional period will be in place for 12 months. This allows businesses more time to prepare for the UK leaving the EU without a deal.

2. Good reason

2.1 The Financial Secretary to the Treasury, 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 they are a reasonable course of action”.

2.2 This is the case because the provisions provide businesses enough time to prepare to meet their safety and security obligations. They will avoid administrative costs as entry and exit summary declarations will temporarily not be required in certain circumstances. When importing goods into the UK and returning empty vehicles, empty containers or empty pallets to the EU, entry and exit summary declarations will not be required.

3. Equalities

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

“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”.

3.2 The Financial Secretary to the Treasury, Jesse Norman MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Jesse Norman, 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.

5. Sub-Delegation

5.1 The Financial Secretary to the Treasury, Jesse Norman MP, has made the following statement:

“In my view it is appropriate to create a relevant sub-delegated power in The Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2019.

5.2 This is appropriate because the powers in this instrument will only be used if it is considered appropriate A public notice will set out to whom and what goods the power will apply to assist businesses in preparing for the obligations they will face if the UK leaves the EU without a deal. It can swiftly be applied through a public notice, which will facilitate goods moving across the UK-EU border. The powers will not be used to impose additional burdens on businesses and they cease to have effect after 12 months from the date on which the instrument comes into force.

6. Urgency

6.1 The Financial Secretary to the Treasury, Jesse Norman MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view by reason of urgency, it is necessary to make The Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2019, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

6.2 There is a need to ensure that this instrument is in place for exit day. The Government has concluded that the ‘made affirmative’ procedure provided for in the European Union (Withdrawal) Act 2018 ensures that this instrument is in place for exit day. The Government considers it important to urgently have this instrument in place so as to provide confidence and certainty to the public and business and to ensure the effective functioning of the statute book after exit. Using this procedure still allows for parliamentary scrutiny and Parliament will need to approve its making for it to remain in force