

EXPLANATORY MEMORANDUM TO

THE DATA-GATHERING POWERS (RELEVANT DATA) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 1221

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury 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 The purpose of this instrument is ensure that HMRC can obtain information relevant to the liability for import Value Added Tax (VAT) of overseas suppliers sending goods to the United Kingdom (UK) in postal packets, in the event of the UK leaving the European Union (EU) without a deal. Postal operators are specified as a category of data holders from whom data may be required under Schedule 23 to the Finance Act 2011 (Schedule 23) and this instrument amends the Data-gathering Powers (Relevant Data) Regulations 2012 (SI 2012/847) (the 2012 Regulations) to specify the categories of data that the Commissioners for Her Majesty's Revenue and Customs (Commissioners) can require postal operators to supply.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument is necessary to deal with the consequences of the UK leaving the EU without a deal. It will therefore only come into force on a day specified in a separate instrument using powers in section 52 of Taxation (Cross-border Trade) Act 2018 (TCTA) in the event that the UK leaves the EU without a deal.

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 whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of 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 Schedule 23 allows HMRC to issue notices to relevant data holders requiring them to provide relevant data to assist HMRC with the efficient and effective discharge of its tax functions. Relevant data for the purposes of the Schedule is specified in the 2012 Regulations.
- 6.2 Schedule 23 was amended by the Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019 (SI 2019/397) to insert a new description of data holder, ‘postal operator’, and to provide that where a person is a data holder solely in their capacity as a postal operator then the powers under Schedule 23 to require the production of data can only be exercised in relation to the discharge of HMRC’s tax functions relating to VAT. The regulations amending Schedule 23 provide that they will come into force on a day to be appointed by the Treasury.
- 6.3 This instrument amends the 2012 Regulations to define the types of data that can be requested from postal operators. It also specifies that it will come into force on a day to be appointed by the Treasury.
- 6.4 Section 52 of TCTA (section 52) provides that the maker of any ‘relevant subordinate legislation’ may provide that that legislation comes into force on such day or days as the Treasury may by regulations appoint. Section 52(1) defines ‘relevant subordinate legislation’ as any subordinate legislation within the meaning of the Interpretation Act 1978 made under TCTA or any other enactment relating to VAT, any duty of customs or any excise duty. Section 57(1) of TCTA provides (amongst other things) that Section 52 comes into force on the day on which that Act is passed. TCTA received Royal Assent on 13 September 2018.

7. Policy background

What is being done and why?

- 7.1 In the event that the UK leaves the EU without a deal, it is necessary to ensure the UK’s VAT regime operates as required.
- 7.2 The Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 (SI 2018/1376) (Postal Packets Regulations) (which will come fully into force if the UK leaves the EU without a deal) make an overseas supplier liable for the import VAT on any consignment of goods sent into the UK in a postal packet if the value of those goods is £135 or less. Overseas suppliers may discharge their liability by either:
- registering with HMRC and accounting for any import VAT due on a periodic return; or
 - paying the import VAT due to the postal operator who will make a payment to HMRC on their behalf.
- 7.3 In order to ensure compliance with this new regime HMRC will need to gather a range of information. Much of this information will be held by third parties involved in the transactions such as online marketplaces which facilitate sales made by overseas suppliers and postal operators that deliver the goods to UK customers.
- 7.4 Schedule 23 allows HMRC to require a relevant data holder to provide the Department with relevant data that it holds, as specified in the 2012 Regulations. Schedule 23 has been amended to include postal operators as a new description of

data holder. This instrument amends the 2012 Regulations to specify the relevant data that postal operators may be required to provide to HMRC in connection with the delivery of goods sent into the UK in a postal packet. The amendments to Schedule 23 and to the 2012 Regulations will only take effect if the Treasury appoint a day for their commencement and that commencement will depend on whether the UK leaves the EU without a deal.

- 7.5 The definition of a postal operator is wide – it covers any person who carries parcels from one place to another or who receives, collects, sorts or delivers parcels. A parcel must be capable of being sent by post but this does not mean that the definition of a parcel is limited to parcels which are in fact transmitted by universal service providers and therefore the definition of postal operator includes anyone who conveys a parcel.

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 United Kingdom from the European Union because it, together with other legislation relating to VAT will ensure that the UK's VAT regime operates as required after EU exit.

9. Consolidation

- 9.1 This instrument amends the Data-gathering Powers (Relevant Data) Regulations 2012. There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 Whilst no formal consultation on the legislation has been carried out, HMRC are continuing to engage informally with postal operators and other key stakeholders in this sector to understand how the information can be provided in the least burdensome way.

11. Guidance

- 11.1 Existing guidance on www.gov.uk will be updated where necessary and will be available prior to commencement of this instrument.

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 (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>
- 12.4 The instrument does not impose additional requirements on postal operators to collect data it does not already collect or to make changes to their systems. Prior to serving a data holder notice, HMRC will consult with individual postal operators to understand the information they hold, the format in which the information is held and the format in which it can be provided to HMRC.

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 the impact of the requirements on small businesses (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the rules are by necessity of general application.

14. Monitoring & review

- 14.1 This instrument will be kept under review through communications with key stakeholder groups in the sector and the Joint VAT Consultative Committee (made up of a wide range of representatives), to ensure that it meets the policy objectives set out in section 7 above.
- 14.2 The instrument does not include a statutory review clause because it relates to tax and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Shapi Masendu at HMRC, Telephone: 03000 593074, or email: shapi.masendu@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Eileen Patching, Deputy Director, VAT Principles and Risk, Indirect Tax Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jesse Norman, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.