

EXPLANATORY MEMORANDUM TO
THE CROSS-BORDER TRADE (PUBLIC NOTICES) (EU EXIT) (REVOCATION)
REGULATIONS 2019

2019 No. 1380

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 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 revokes the Cross-border Trade (Public Notices) (EU Exit) Regulations 2019 (S.I. 2019/1307). The Cross-border Trade (Public Notices) (EU Exit) Regulations 2019 would have provided the Treasury with a temporary power for six months to issue public notices on the basis of recommendations made by the Commissioners for HMRC, to suspend, relieve, and in some cases, modify obligations and associated sanctions arising under customs, Value Added Tax (VAT) and excise regimes.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The Cross-border Trade (Public Notices) (EU Exit) Regulations 2019, which this instrument revokes, come into force on exit day. This instrument is being laid less than 21 days before it comes into force so that those Regulations are revoked before exit day. There will be no disadvantage caused by the shorter period of time between the instrument being laid and coming into effect.

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 United Kingdom.
- 4.2 The territorial application of this instrument 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 This instrument is made under the Taxation (Cross-border Trade) Act 2018 (TCTA). Upon leaving the European Union (EU), the United Kingdom (UK) will establish an independent customs regime under TCTA. TCTA also includes provision to amend existing VAT and excise legislation in connection with the withdrawal of the UK from the EU.
- 6.2 This instrument revokes the Cross-border Trade (Public Notices) (EU Exit) Regulations 2019 to remove the temporary power for the Treasury to issue public notices to suspend, relieve, and in some cases, modify obligations and associated sanctions arising under customs, VAT and excise regimes.

7. Policy background

What is being done and why?

- 7.1 The Cross-border Trade (Public Notices) (EU Exit) Regulations 2019 would have provided the Treasury with a temporary power for six months to issue public notices on the basis of recommendations made by the Commissioners for HMRC. The public notices could be in force for periods of up to sixty days and only be given where it was considered to be in the public interest and appropriate as a consequence of, or otherwise in connection with, the UK's withdrawal from the EU.
- 7.2 This temporary arrangement was a pragmatic contingency to give the Treasury and HMRC the flexibility to act quickly in an unpredictable environment after the UK's departure from the EU.
- 7.3 After the Cross-border Trade (Public Notices) (EU Exit) Regulations 2019 were laid, a concern was expressed over the legality of the regulations as drafted and on review the Treasury and HMRC considered it appropriate to revoke. The Treasury and HMRC plan to introduce legislation if needed to make any changes after exit.

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 revokes the Cross-border Trade (Public Notices) (EU Exit) Regulations 2019 which made provision for the customs, VAT and excise regime in the event of the UK leaving the EU without a withdrawal agreement.

9. Consolidation

- 9.1 Consolidation is not relevant to this instrument as it does no more than revoke another instrument.

10. Consultation outcome

- 10.1 This measure was not subject to public consultation. As the purpose of this instrument is to remove legislation that has not yet come into effect and has no direct impact on business, charities and voluntary bodies, no formal consultation has been carried out.

11. Guidance

- 11.1 There will be no changes to the guidance available at <https://www.gov.uk/government/collections/trading-with-the-eu-if-the-uk-leaves-without-a-deal> as that guidance had not been update to reflect the Cross-border Trade (Public Notices) (EU Exit) Regulations 2019.

12. Impact

- 12.1 There is no, or no significant, impact on businesses, charities and voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the instrument revokes the Cross-border Trade (Public Notices) (EU Exit) Regulations 2019 which were a contingency measure that had not come into effect.

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 this instrument revokes the Cross-border Trade (Public Notices) (EU Exit) Regulations 2019 and so that legislation will not have any impact on small businesses.

14. Monitoring & review

- 14.1 There is no monitoring or review of this instrument as it revokes legislation which has not yet come into force.
- 14.2 A statutory review clause is not included within these regulations because the instrument relates to a tax or duty, 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 Holly West at HMRC Telephone: 03000 571293 or email: holly.west@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Sabourin, Deputy Director for Customs Border Processes and Declarations at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.