

EXPLANATORY MEMORANDUM TO
THE CUSTOMS SAFETY AND SECURITY PROCEDURES (EU EXIT)
REGULATIONS 2019

2019 No. 715

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument forms part of legislation to be made under the European Union (Withdrawal) Act 2018 (EUWA) 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 safety and security regime in place before the date of departure.
- 2.2 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 6 months.
- 2.3 The instrument makes provision to support the operation of the UK and Crown Dependencies customs union, namely that the movement of goods between the UK and the Channel Islands or Isle of Man do not require declarations for safety and security purposes.

Explanations

What did any relevant EU law do before exit day?

- 2.4 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.

Why is it being changed?

- 2.5 The EUWA provides that direct EU legislation forms part of the UK domestic law. New legislation is required to remedy deficiencies in EU law to ensure the UK continues to operate a robust safety and security regime and meet international standards post EU Exit.
- 2.6 Industry have highlighted concerns in meeting their safety and security obligations if the UK leaves the EU without a deal. Phasing in the introduction of entry summary declarations in respect of goods imported from territories where we do not currently require these declarations, will allow industry more time to prepare to meet these obligations.

- 2.7 The UK and Crown Dependencies (comprising the Isle of Man, Bailiwick of Guernsey and Bailiwick of Jersey) are entering into a customs union after the UK departure date. As part of this customs union safety and security declarations will not be required on goods moving between the UK and the Crown Dependencies.

What will it now do?

- 2.8 The instrument removes or replaces references, phrases, processes and terms that will be inoperable in the event of the UK leaving the EU without a negotiated deal. It allows the UK to continue to operate a robust safety and security regime and meet international standards. It also ensures the Authorised Economic Operator (AEO) programme, which protects the security of international supply chains, is maintained.
- 2.9 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 trade in goods between Ireland and Northern Ireland. Further details on the arrangements for trade between Northern Ireland and Ireland will be published as soon as possible.
- 2.10 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 transitional period will be in place for 6 months.
- 2.11 The instrument also provides that safety and security declarations are not required for movements of goods between the UK and the Crown Dependencies.

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 affirmative 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 debate the implications the safety and security requirements may have for trade across the Ireland/Northern Ireland border. 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 This instrument introduces two additional provisions from the original instrument laid on 31 January 2019. Firstly, it 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. Secondly, it supports the operation of the UK and Crown Dependencies customs union. This provision provides that movements of goods between the UK and the Channel Islands or the Isle of Man do not require declarations for safety and security purposes. This instrument needs to come into force on exit day to ensure that we can continue to have a robust safety and security regime in place. This ensures goods entering from outside the EU continue to be risk analysed and it retains the current

position between the UK, EU and Crown Dependencies. 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 reasonable as the changes have to be made as a consequence of other EU exit related issues, such as business readiness. Furthermore, this SI retains the current position in relation to the EU and the Crown Dependencies. While this SI does not allow at least 21 days between the instrument being made and its coming into force on exit day, there is no practical effect as the rules are retained as they currently are. 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 exit day.

- 3.3 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.
- 3.4 There is a strong possibility that businesses, such as hauliers and ferry operators, will suffer immediate hardship if the UK leaves the EU without a negotiated deal. They do not have the systems in place in readiness for exit day. HMRC has engaged with these businesses over several months to explore how their obligations could be met. The decision to introduce the six-month transitional period, and UK-Crown dependency provisions, is a result of these discussions.

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 Financial Secretary to the Treasury has made the following statement regarding Human Rights:
“In my view the provisions of The Customs Safety and Security Procedure (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). 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 dis-applies any direct EU legislation, which became UK domestic law pursuant to section 3 of EUWA, so far as it imposes or applies in relation to any EU customs duty. As safety and security provisions do not impose or apply in relation to any EU customs duty, those provisions continue to have effect as retained law.
- 6.2 However, amendments are required that replace references and terminology that will be inoperable in the event of the UK leaving the EU without a negotiated deal. For example, ‘The customs territory of the Union’ now refers to the United Kingdom of Great Britain and Northern Ireland rather than the EU territories. This allows the United Kingdom to maintain a safety and security regime that replicates the UCC.
- 6.3 Section 8(1) of the EUWA contains a power to make secondary legislation in order for these deficiencies in direct EU legislation to be remedied. For example, it enables

amendments to terminology that is no longer applicable. This instrument ensures the UK continues to operate a robust safety and security regime and meet international standards post EU Exit.

7. Policy background

What is being done and why?

- 7.1 The EU introduced a safety and security policy governed by the UCC legislation. The movement of goods from non-EU countries to the EU require safety and security entry summary declarations. Goods moving from the EU to non-EU nations require exit summary declarations. In the event of the UK leaving the EU without a negotiated deal, the UK will not be a part of the EU and UK exporters to the EU and other nations will have to complete safety and security declarations. Goods imported to the UK from the EU and other nations will require a safety and security declaration. The information on the declaration can then be risk analysed by our border agencies to monitor what goods are coming across the UK border and prevent illegal goods from entering.
- 7.2 The EU safety and security policy also introduced the Authorised Economic Operator (AEO) programme. This instrument will replace and amend terminology that enables the AEO programme to continue to operate after the UK exit date. For example, ‘The customs territory of the Union’ now refers to the United Kingdom of Great Britain and Northern Ireland rather than the EU territories. This instrument ensures the UK has a robust AEO programme in place that replicates the UCC. In order to receive AEO status, traders must complete an application process. Once considered reliable and compliant in their customs operations and they meet certain criteria, they are issued with an AEO authorisation by the customs authority. In the UK, this is HMRC. One of the benefits of AEO authorisation is faster custom control clearances and operating within secure supply chains in line with World Customs Organisation requirements. Within the safety and security regime, HMRC can impose a penalty for failure to notify any changes that affect AEO status.
- 7.3 In response to feedback from industry that safety and security obligations cannot be met on exit day, a transitional period for six months will be introduced so that safety and security entry summary declarations are not required on goods imported into the UK from the EU. The risk to safety and security remains the same during the six-month period given that goods from the EU are not currently subject to safety and security checks. The transitional period does not apply to non-EU traders that already comply with the currently safety and security regulations.
- 7.4 The provisions relating to the Crown Dependencies retain the status quo treatment whereby goods moving between the UK and the Crown Dependencies do not require safety and security declarations.

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 This is new legislation and therefore consolidation is not required.

10. Consultation outcome

10.1 No formal consultation regarding this instrument has taken place as it sets out the scope of the safety and security regime, and how this will apply to the AEO programme. The key message from our stakeholder engagement with the haulage industry and ferry operators is that safety and security requirements will be difficult to meet. The six-month transitional period will apply to all modes of transport and allow these sectors enough time to meet their obligations.

10.2 The UK government will continue to engage with this industry on the application of their safety and security obligations after the transitional period. This includes looking at how data requirements can be easier while continuing to provide our border agencies the ability to risk assess effectively. This instrument does not cover any further data requirement changes and more detail on these arrangements will be published before the transitional period ends.

11. Guidance

11.1 Current safety and security requirements for non-EU trade is already within the public domain. Guidance on completing safety and security declarations before the UK departure date will be published and found at:
www.gov.uk/government/publications/import-control-system-how-to-register-enrol-and-use.

12. Impact

12.1 The impact on business, charities or voluntary bodies is varied. The transitional period facilitates trade flow for importers from the EU to the UK. Thereafter, these businesses will have additional administrative and financial burdens. They will need to adapt their processes and systems to meet the requirement to make safety and security entry summary declarations prior to arrival of goods in the UK. 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.

12.2 The impact on the public sector is reduced for the first six months. Essentially, businesses importing goods from territories where we do not currently require entry summary declarations will not have to submit them. Thereafter, additional administrative responsibilities will affect UK border agencies. The government recognises the need for additional resource to cope with additional customs arrangements and on 18 August 2018 announced an extra 300 border staff in preparation for 'No Deal' and an additional 1,000 staff in the future.

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>

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 a six month transitional period removing the requirement to file entry summary declarations on imports from the EU. UK traders who export goods to the Channel Islands will not be required to submit pre-departure declarations for safety and security purposes. The UK government is engaging with these traders and discussions have identified information they will find difficult to provide. We are reviewing this data and assisting industry through education in the event of the UK leaving the EU without a negotiated deal.
- 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 other 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 any queries regarding the instrument.
- 15.2 Lee Farrington, Deputy Director for Customs EU Exit at HM Revenue and customs can confirm this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Mel Stride 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, the Rt Hon Mel Stride, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view The Customs Safety and Security Procedures (EU Exit) Regulations 2019 does no more than is appropriate”.
- 1.3 This is the case because the amendments made by the instrument seek to preserve the status quo as far as possible and although they will now apply at different borders, do not change any aspects of the existing safety and security regime.
- 1.4 A provision to introduce a transitional period for six months on entry summary declarations on imported goods to the UK from the EU will assist to facilitate trade flow if leaving the EU without a negotiated deal.
- 1.5 A provision to exempt safety and security pre-departure declarations on good movements from UK to the Channel Islands is a result of the UK-Crown Dependencies customs union comprising the UK Isle of Man, Bailiwick of Jersey and Bailiwick of Guernsey.

2. Good reasons

- 2.1 The Financial Secretary to the Treasury, 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 a functioning robust safety and security regime. The transitional period will provide businesses enough time to prepare to meet their safety and security obligations at the end of the six months.
- 2.3 The instrument ensures the trade relationship between the UK and Channel Islands retain the status quo whereby safety and security pre-departure declarations are not required on goods imported from the UK to the Channel Islands.

3. Equalities

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

“In relation to the instrument, I, 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.