

EXPLANATORY MEMORANDUM TO
THE CUSTOMS MISCELLANEOUS NON-FISCAL PROVISIONS AND
AMENDMENTS ETC. (EU EXIT) REGULATIONS 2020

2020 No. 1624

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 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 The effect of the European Union Withdrawal Agreement (EUWA) and the Northern Ireland Protocol (Protocol) is that certain provisions of European Union (EU) law will continue to apply in Northern Ireland (NI) after the end of the transition period, while in Great Britain (GB) those same provisions are modified to operate in the context of the United Kingdom (UK) having left the EU. As previous amendments to the relevant legislation applied across the whole of the UK, it is necessary to make changes to address the different regimes applying in NI and GB, and to deal properly with certain movements of goods between NI and GB.
- 2.2 This instrument makes amendments and modifications in the following fields of legislation:
- customs safety and security procedures, including entry summary declarations and the registration of businesses;
 - application of the Customs and Excise Management Act 1979 (CEMA) and Finance Act 1994 (FA94) to movements between NI and GB for non-duty purposes;
 - statistical data collected on trade of goods between the UK and members of the EU to ensure the legislation enables HMRC to collect and process trade statistics.

Explanations

What did any relevant EU law do before exit day?

- 2.3 EU law implements a customs safety and security policy across the EU. Information on goods is shared and risk assessed before the goods arrive in or leave the EU to facilitate legitimate trade into and out of the EU.
- 2.4 CEMA provides the basis for many customs administration and enforcement powers and Part 1 FA94 sets out enforcement rules, including those concerning keeping of records, requirements to provide information and HMRC's powers of entry.
- 2.5 The UK currently applies EU rules on the collection of statistical data, obtained from businesses.

Why is it being changed and what will it do now?

- 2.6 Regulations 3, 4, 5, 9 and 10 of this instrument make the following amendments:
- a) Regulation 3 concerns entry summary declarations (ENS). These contain safety and security information about the goods being moved into the customs territory. The modification ensures that an ENS will be required for the movement of goods from NI into GB, where those goods are subject to customs duty under section 30C of the Taxation (Cross-border) Act 2018 (TCTA). If the goods are not subject to a charge under section 30C TCTA, goods entering GB from NI will not require an ENS. In addition, it ensures that the benefit of the short straits time limits (that apply to goods arriving in GB by sea from Republic of Ireland (ROI) and Channel and other nearby ports) will also apply to the limited number of goods arriving by sea from NI ports that require ENS. It means that the time by which the ENS must be lodged is two hours before a sea vessel carrying goods from NI arrives at the first port of entry into GB. Without this regulation earlier time limits would apply for an ENS to be lodged, which would present an unnecessary burden for the movement of goods arriving by sea from NI ports.
 - b) Regulation 4 concerns Economic Operation Registration and Identification. It ensures that the registration requirements, in relation to goods imported and exported into and out of GB also apply to goods moving from NI into GB, where those goods are subject to a charge under section 30C TCTA.
 - c) Regulation 5 ensures appropriate penalties apply to failures to comply with regulations 3 and 4.
 - d) Regulations 9 and 10 revoke provisions relating to movements between ROI and NI, because EU law continues to apply to those movements.
- 2.7 Regulation 6 of this instrument ensures CEMA applies to movements between GB and NI for the purpose of enforcing prohibitions and restrictions on the movement of goods, people and vehicles. Without this amendment, CEMA enforcement powers could not be used in relation to movements between GB and NI where there was no connection to customs duty. As EU customs legislation is applied in NI under the Protocol, this instrument applies CEMA in NI as if CEMA had not been amended by Part 2 of Schedule 7 TCTA, and as if goods moving into and out of NI from and to GB were imports and exports. The amended version of CEMA will apply in GB to movements from NI to GB as if they were imports, and movements from GB to NI as if they were exports.
- 2.8 Regulation 7 of this instrument ensures the enforcement provisions at Chapter III, Part 1 FA94, including HMRC's powers to require the production of documents or to remove documents or enter premises, can be used where there are export formalities under EU law in relation to restricted or prohibited goods. This regulation applies in NI for the movement of goods from NI to GB.
- 2.9 Regulation 8 of this instrument makes minor amendments to the Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/47) to ensure they work properly, both in NI, where EU statistical rules will continue to apply, and in GB, where they will not.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being laid using the urgent procedure under the European Union (Withdrawal) Act 2018. The regulations introduced by this instrument will come into force at the end of the transition period. The government takes the use of such powers extremely seriously and only considers doing so in exceptional circumstances. The minister has made the required declaration why it is necessary in this case in Part 2 of the Annex to this explanatory memorandum.
- 3.2 Regulations 8(3), (4) and (6) of these regulations correct minor errors in the Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/47). The procedure for free issue of copies of this instrument has not been applied in this instance as this amendment is a very small proportion of the overall instrument. HMRC has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice (5th edition) to consult the SI Registrar.

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 (see the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited by the Act or by the instrument.

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 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of the Customs Miscellaneous Non-fiscal Provisions and Amendments etc. (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018.
- 6.2 This instrument:
- modifies the application of
 - Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code;
 - Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013;
 - Commission Delegated Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013;

- the above three instruments were all previously amended by the Customs Safety and Security Procedures (EU Exit) Regulations 2019 (SI 2019/715), the Customs Safety and Security Procedures (EU Exit) (No.2) Regulations 2019 (SI 2019/1219) and the Customs Safety, Security and Economic Operators Registration and Identification (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1379);
- amends the Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2019;
- revokes Regulation 1(3) of the Customs Safety and Security Procedures (EU Exit) Regulations 2019;
- revokes Regulation 1(4) of the Customs Safety, Security and Economic Operators Registration and Identification (Amendment etc.) (EU Exit) Regulations 2020.

7. Policy background

What is being done and why?

- 7.1 The instrument makes regulations in relation to goods subject to the customs duty charges introduced by the Taxation (Post-transition Period) Act 2020, following the agreement of the Protocol. The Protocol has the effect that certain provisions of EU law will continue to apply to NI after the end of the transition period, while in GB those same provisions are modified to operate in the context of the UK having left the EU.
- 7.2 As previous amendments to the relevant legislation were laid to apply across the whole of the UK, it is necessary to alter these in the context of the Protocol retaining EU law in relation to movements of goods between GB and NI.
- 7.3 This instrument makes amendments and modifications to the following fields of legislation:
- customs safety and security procedures, including entry summary declarations and the registration of businesses;
 - application of the CEMA and FA94 to movements between NI and GB for non-duty purposes;
 - statistical data collected on trade of goods between the UK and members of the EU to ensure the legislation enables HMRC to collect and process trade statistics.

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 the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. 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 At present there is no intention to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 No formal consultation regarding this instrument has taken place. However, the instrument, together with the Taxation (Post-transition Period) Act 2020, make provision in relation to the application of certain provisions in the Protocol. Consultation on the practical implications of the Protocol has taken place with businesses. Throughout the transition period, the NI Stakeholder Engagement Team (Niset) have consulted with a wide range of businesses and representative bodies who would be impacted. The Niset were keen to include in the conversation, businesses who would be new to customs activity and involvement with HMRC.
- 10.2 In the early part of the transition period, despite COVID restrictions, the Niset managed to run a number of data gathering exercises engaging with both large businesses and small and medium sized enterprises in key sectors of the NI economy; the aim was to identify how their supply chains worked and subsequent trade flows. The Niset also ran engaged on areas such as tariffs and goods 'at risk' of being moved to the EU.
- 10.3 In particular, the Niset set up a NI Protocol Joint Customs Consultative Committee (JCCC) sub-group to provide a forum for NI businesses specifically. This involved regular meetings on prominent aspects during the development of the Protocol and new guidance. This group includes Business Representation Bodies and Associations across the agri-food, retail, manufacturing, logistics and transport sectors, accountancy bodies in both NI and Ireland; and the Federation of Small Businesses. This has given these bodies a voice to present key concerns within their industry and allow HMRC to understand their industry and the problems that the implementation of the Protocol may present for them. Some 1-2-1 meetings were also accommodated with representative bodies to discuss papers they presented in support their key issues.
- 10.4 Whilst, these main JCCC forums highlighted varying issues from sector to sector, some sector-based forums were also supported to allow areas for example, agri-food to be discussed more comprehensively. The Niset further supported individual representative body events as organised for their members. Separate conversations have also been accommodated with utility providers.
- 10.5 The Niset have acted as a conduit in feeding all issues raised across our stakeholder engagement to policy colleagues, government departments and ultimately Joint Committee discussions to ensure that they were considered in the formulating of decisions made in relation to the Protocol.
- 10.6 Consultation with businesses will continue.

11. Guidance

- 11.1 There is no guidance for the Statistics of Trade provisions. The UK Statistics Authority publish extensive guidance on statistical standards and classifications in accordance with their statutory role.
- 11.2 Current safety and security requirements for non-EU trade are already within the public domain. Guidance on completing safety and security declarations, before and after 1 January 2021 can found at <https://www.gov.uk/guidance/register-to-make-an-entry-summary-declaration>.

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies.
- 12.2 The provisions do not introduce any requirement beyond what has already been agreed, or is a necessary consequence of what has been agreed in the Protocol. There are not expected to be any continuing costs.
- 12.3 The impact on the public sector is mainly the costs incurred by HMRC in setting up the Trader Support Service (TSS). The TSS has been set up by the UK government to help all traders, regardless of size and at no additional cost, to move their goods between GB and NI, and to import goods into NI from the rest of the world.
- 12.4 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.
- 12.5 An assessment was made of the impact of the European Union (Withdrawal Agreement) Bill in 2019 and is available here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841245/EU_Withdrawal_Agreement_Bill_Impact_Assessment.pdf.

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 majority of businesses will be able to access the TSS, at www.gov.uk/guidance/trader-support-service.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 HMRC email: customseuexitlegislation@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alex Pienaar, Deputy Director for Customs EU Exit, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that 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 |
| Appropriate-ness | 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 | Set out the 'good reasons' for creating a criminal offence, and the penalty attached. |

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|---|--------------------------|---|--|
| | | 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | |
| 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 14, 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 15, 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 Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Customs Miscellaneous Non-fiscal Provisions and Amendments etc. (EU Exit) Regulations 2020 do no more than is appropriate”.

- 1.2 This is the case because the instrument does no more than is appropriate to ensure that the legislation being amended continues to operate much as before the UK exited the EU, but in the context of the UK no longer being a member of the EU and the EUWA and the Protocol applying EU customs legislation in NI after the end of the transition period.

2. Good reasons

- 2.1 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, 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 The effect of the EUWA and the Protocol is that certain provisions of EU law will continue to apply in NI after the end of the transition period, while in GB those same provisions are modified. As previous amendments to the relevant legislation applied across the whole of the UK, it is necessary to make changes to address the different regimes applying in NI and GB, and to deal properly with certain movements of goods between NI and GB.

3. Equalities

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

“In relation to the instrument, I, the Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, 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. Urgency

- 5.1 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, 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 Miscellaneous Non-fiscal Provisions and Amendments etc. (EU Exit) Regulations 2020, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

- 5.2 This is because it is vital that this instrument comes into force at the end of the transition period. Royal Assent to the Taxation (Post-transition Period) Bill is, however, required before this instrument can be laid. This instrument will therefore be laid as soon as possible after Royal Assent to the Taxation (Post-transition Period) Bill. The consequences of delaying this instrument by using non-urgent powers are that the amendments and modifications required to make changes to address the different regimes applying in NI and GB, and to deal properly with certain movements of goods between NI and GB would not be in place in time (that is at the end of the transition period).