

EXPLANATORY MEMORANDUM TO

THE CUSTOMS (SAFETY AND SECURITY PROCEDURES) REGULATIONS 2021

2021 No. 1011

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument waives an obligation to submit entry summary information in respect of certain goods (as set out in section 7.1-7.4) removed from Northern Ireland to Great Britain, which only pass through the Republic of Ireland during that movement.
- 2.2 The instrument also waives an obligation to submit exit summary information in respect of certain goods (as set out in section 7.5-7.8) removed from Great Britain to Northern Ireland, which move under common transit procedures through the Republic of Ireland during that movement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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.
- 4.3 The provisions of this instrument apply to certain movements between Northern Ireland and Great Britain that pass through the Republic of Ireland.

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 The requirements to lodge an entry summary declaration or a pre-departure declaration (safety and security information) are set out in Article 127 and 263 of Regulation (EU) No 952/2013 of the European Parliament and of the Council (Union Customs Code). Waivers from these requirements to lodge declarations in specified cases are provided in Article 104 and 245 of the Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, which this instrument amends.
- 6.2 These Articles in European Union (EU) legislation continue to have effect in the United Kingdom as retained EU law under section 3 of the European Union (Withdrawal) Act 2018, subject to modifications made in the Customs Safety and

Security Procedures (EU Exit) Regulations 2019 (SI 2019/715), the Customs Safety, Security and Economic Operators Registration and Identification (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1379), the Customs (Declaration Modification) Regulations 2021 (SI 2021/695) and the Customs Safety and Security Procedures (EU Exit) Regulations 2021 (SI 2021/778). The effect of section 3(2) of the European Union (Withdrawal) Act 2018 is that EU legislation only continues to apply as retained EU law in the United Kingdom to the extent that this EU legislation does not have effect, and is not to have effect, by virtue of section 7A of that Act. Section 7A concerns implementation of the United Kingdom's withdrawal agreement with the EU, and gives EU legislation concerning entry summary declaration and pre-departure declarations effect in respect of Northern Ireland, in accordance with this agreement. EU legislation, as it applies in Northern Ireland as a result of the United Kingdom's withdrawal agreement, is not therefore retained EU law and this instrument will not therefore modify the entry summary declaration and pre-departure declaration rules that apply in Northern Ireland.

- 6.3 The rules that apply in Great Britain include a temporary waiver (until 31 December 2021) from the requirement to submit an entry summary declaration for goods imported from the EU and other territories where an entry summary declaration was not required before 1 January 2021.
- 6.4 These rules also provide for a temporary waiver (until 30 September 2021) from the requirement to submit a pre-departure declaration in Great Britain for two categories of movements. These are: empty pallets, containers and vehicles being moved under a transport contract to the EU (and to other countries for which pre-departure declarations were not required before 31 December 2020); and goods in Roll-on Roll-off vehicles where there is a requirement for a pre-departure declaration.
- 6.5 This instrument is being made under section 166A of the Customs and Excise Management Act 1979 (CEMA), as inserted by the European Union (Future Relationship) Act 2020 and will amend retained EU law (as described above) which continues to apply in Great Britain. Section 166C(6) of CEMA, which was also introduced by the European Union (Future Relationship) Act 2020, provides that a power to make regulations under section 166A of CEMA may be exercised by modifying any enactment (which includes retained EU law).

7. Policy background

What is being done and why?

Qualifying Northern Ireland goods moved from Northern Ireland to Great Britain through the Republic of Ireland

- 7.1 This instrument makes provision in relation to certain qualifying Northern Ireland goods (as defined in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454)) that are removed from Northern Ireland to Great Britain, and which pass through the Republic of Ireland during that movement. These goods retain their status as United Kingdom domestic goods, even though they are temporarily outside the United Kingdom during their movement between Northern Ireland and Great Britain. Because these are United Kingdom domestic goods, they are not subject to any customs duty charge when they are re-imported to the United Kingdom by entering Great Britain from the Republic of Ireland.

- 7.2 Safety and security information requirements apply when these goods are re-imported to the United Kingdom from the Republic of Ireland and the relevant entry summary declaration will be required before these goods arrive in Great Britain.
- 7.3 However, the requirement to submit an entry summary declaration for goods arriving in Great Britain from the Republic of Ireland is currently waived by a temporary waiver that applies to all goods arriving in Great Britain from the EU until 31 December 2021.
- 7.4 This instrument will introduce a permanent waiver from the requirement to submit an entry summary declaration for qualifying Northern Ireland goods arriving in Great Britain from the Republic of Ireland to support the movement of goods from Northern Ireland to Great Britain when the current temporary waiver comes to an end. This waiver will apply from 1 January 2022 and will apply only to qualifying Northern Ireland goods meeting the conditions set out at regulation 26(5) of the Customs (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1605), which arrive in Great Britain having moved through the Republic of Ireland.

Goods moved indirectly from Great Britain to Northern Ireland through the Republic of Ireland under Common Transit Convention procedures

- 7.5 Regarding the part of this instrument relating to the exit of goods, a requirement to provide safety and security information (in the form of a pre-departure declaration) applies to most goods leaving Great Britain for the EU and the rest of the world. A declaration may therefore need to be submitted upon departure for goods moving from Great Britain to Northern Ireland through the Republic of Ireland. Subject to existing waivers, there are currently no legal provisions to exempt goods removed to Northern Ireland from Great Britain via the Republic of Ireland from this declaration requirement.
- 7.6 Pre-departure declarations are however temporarily waived for the export of two categories of goods from Great Britain until 30 September 2021, as set out in 6.4.
- 7.7 This instrument will provide a further waiver of safety and security pre-departure declaration requirements for goods leaving Great Britain for the Republic of Ireland, when the goods are destined for Northern Ireland. This waiver will apply indefinitely from 1 October 2021, the end of the current temporary waiver.
- 7.8 To ensure that goods cannot avoid safety and security requirements when they are not destined for Northern Ireland, the waiver will only apply to goods being moved under the common transit procedure in accordance with the Common Transit Convention where the transit procedure ends in Northern Ireland. This common transit procedure allows goods to move within and between countries that are contracting parties to the Convention with duty being paid in the final country of destination.

8. European Union Withdrawal and Future Relationship

- 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 relates to the movement of goods between Northern Ireland and Great Britain via the Republic of Ireland.

9. Consolidation

- 9.1 No consolidation is planned, but that will be kept under review.

10. Consultation outcome

- 10.1 No formal consultation regarding this instrument has taken place.
- 10.2 A virtual reading room on the full draft instrument was conducted on 11 August 2021 with members of the Joint Customs Consultative Committee, who were able to discuss the draft legislation with policy officials. The Joint Customs Consultative Committee is an HMRC-sponsored forum established to exchange views on and discuss proposed changes to customs procedures and documentation relating to the entry and clearance of goods.

11. Guidance

- 11.1 Guidance on safety and security requirements can be found at <https://www.gov.uk/topic/business-tax/import-export>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The instrument will allow businesses to continue to benefit from moving certain goods between Great Britain and Northern Ireland, via the Republic of Ireland, without the administrative burden of lodging an entry summary declaration or a pre-departure declaration.
- 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 it establishes a permanent arrangement for existing facilitations and maintains the status quo for business.

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 regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the measures in this instrument support small businesses by removing administrative requirements, and as such there is no need for specific action to minimise the impact.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out in section 7.
- 14.2 As this instrument is not made by a Minister of the Crown, no review clause is required.

15. Contact

- 15.1 Danya Sarayreh at HMRC, Telephone: 0300 057 5385 or email: danya.sarayreh1@hmrc.gov.uk, or Emil Fischer at HMRC, Telephone: 03000 517157 or email: emil.fischer@hmrc.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Matthew Sabourin, Deputy Director for Customs Declarations Policy, 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.