

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

**2019 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

**2. Purpose of the instrument**

- 2.1 This instrument forms part of legislation to be made under the European Union (Withdrawal) Act 2018 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.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 EU law introduced a Customs safety and security policy across the European security zone. It protects the EU against potential threats as terrorism and the trade from illicit goods such as guns and drugs. The policy is designed for information on goods to be shared and risk assessed before they 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?

- 2.3 The European Union (Withdrawal) Act 2018 provides that direct EU legislation forms part of the UK domestic law. New legislation is required to remedy deficiencies in the EU law to ensure the UK continues to operate a robust safety and security system and meets its international obligations post EU-Exit.

What will it now do?

- 2.4 The instrument removes or replaces references, phrases, processes and terms that will be inoperable in a no deal scenario. It will allow the UK to continue to operate a robust safety and security regime and meet its international obligations. It will also ensure the Authorised Economic Operator (AEO) programme, which provides the security of international supply chains, is maintained.
- 2.5 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.

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Sifting Committees*

3.1 This instrument is being laid for sifting by the Sifting Committees.

#### *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 Safety and security currently sits within the Union Customs Code Regulation (EU) No. 952/2013. Section 3 of the European Union (Withdrawal) Act 2018 (EUWA) provides that direct 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 provision continue to have effect as retained law.

6.2 However, amendments are required that replace references and terminology that will be inoperable in a no deal scenario. For example ‘Customs Authority’ will be replaced with ‘HM Revenue and Customs’. This will allow the United Kingdom to maintain a safety and security regime that replicates the European Union Customs Code.

6.3 Section 8(1) of European Union (Withdrawal) Act 2018 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 introduces legislation to ensure the UK maintains a functioning safety and security regime post EU-Exit and meets its international obligations.

### **7. Policy background**

#### *What is being done and why?*

7.1 The European Union introduced a safety and security policy across Europe, governed by the Union Custom Code (UCC) legislation. The movement of goods such as food produce and clothing consignments from countries outside the EU to Europe require safety and security declarations. Goods moving from the EU to non EU nations also require a declaration. In a no deal scenario the UK will be regarded as a non EU nation and UK exporters to Europe and other nations will have to complete safety and

security declarations. Goods imported to the UK from the EU and other nations will also carry 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 terminology that will enable the (AEO) programme to continue to operate after the UK departure date. For example ‘Customs territory of the Union’ will be replaced with ‘United Kingdom’. This instrument will ensure the UK has a robust (AEO) system in place that replicates the Union Customs Code. 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 United Kingdom, this is HM Revenue and Customs. 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 HM Revenue and Customs (HMRC) can impose a penalty for failure to notify any changes that affect AEO status.

## **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. It addresses deficiencies of retained EU law to operate effectively after 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 Consolidation is not being done. 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 system, and how this will apply to the AEO regime. The key message from the haulier industry and ferry operators at Roll on-Roll off ports is that safety and security requirements will be difficult to meet. However, the UK government will continue to engage with this industry on the application of their safety and security obligations. This includes looking at how information requirements can be made less onerous while continuing to provide our border agencies with a sufficient, accurate risk assessment. These changes are not covered by this instrument and further details on these arrangements will be published in due course.

## **11. Guidance**

- 11.1 Current safety and security requirements for non-EU trade is already within the public domain. Guidance will be published and found at:  
[www.gov.uk/government/publications/import-control-system-how-to-register-enrol-](http://www.gov.uk/government/publications/import-control-system-how-to-register-enrol-)

[and-use](#), on completing safety and security declarations before the UK departure date on 29 March 2019.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is varied. This instrument will introduce an additional administrative and financial burden for businesses that currently trade with the EU. Businesses will need to adapt their process and systems to meet the requirement to make safety and security declarations prior to arrival of goods in the UK. In respect of charities or voluntary bodies this will depend on the nature of their operation activities. Those entities which have regular trade with the EU will be impacted by the new changes.
- 12.2 The impact on the public sector is high. Additional administrative responsibilities will affect UK border agencies. The government recognises further resource requirements 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 (second 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 continual engagement with these businesses. Discussions have identified information they will find difficult to provide, for example, data requirements for submitting safety and security declarations. We are reviewing this data and assisting industry through education in preparation of a ‘No Deal’ outcome.
- 13.3 The basis for the final decision on what action to take to assist small businesses is still under consideration. The government wants to ensure trade flow is facilitated at the UK border without compromising safety and security. HMRC held an engagement event with industry during January 2019 to discuss new safety and security requirements and procedures. HMRC will also publish guidance on its website, social media and have fully resourced customer contact centres, providing business 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 EU Withdrawal Act 2018, no review clause is required.

## **15. Contact**

- 15.1 Tyrone Eugene at HM Revenue and Customs, Telephone 03000 586757 or email: [Tyrone.Eugene@hmrc.gsi.gov.uk](mailto:Tyrone.Eugene@hmrc.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Pamela Mulholland, 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
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	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.

		to include these statements alongside all EUWA SIs	
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. Sifting statement(s)**

- 1.1 The Financial Secretary to the Treasury, the Rt Hon Mel Stride has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:  
‘In my view The Customs Safety and Security Procedures (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)’.
- 1.2 The United Kingdom needs a robust safety and security regime in place to protect its people businesses and environment, in readiness for its departure date. This is to protect against potential threats for example bombs, illegal guns and drug trafficking. The instrument will merely replace terminology and phrases that will no longer be applicable after EU exit day. For example ‘Customs Authority’ will be replaced with ‘HM Revenue and Customs’. The instrument seeks to preserve the status quo as far as possible and does not change the underlying safety and security framework.

#### **2. Appropriateness statement**

- 2.1 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:  
“In my view The Customs Safety and Security Procedures (EU Exit) Regulations 2019 does no more than is appropriate”.
- 2.2 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.

#### **3. Good reasons**

- 3.1 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”.
- 3.2 These are that, following the UK’s withdrawal from the EU, the UK will need to continue a functioning robust safety and security system.

#### **4. Equalities**

- 4.1 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.”

- 4.2 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.”

## **5. Explanations**

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.