

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (REVOCATION OF RETAINED DIRECT EU LEGISLATION,
ETC.) (EU EXIT) REGULATIONS 2019

2019 No.

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees and the Joint Committee on Statutory Instruments.

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 an independent customs regime in place before the date of departure.
- 2.2 It will revoke retained EU legislation which will not be needed if the UK leaves the EU without a negotiated deal and ensure that imports and exports between the Channel Islands and the UK are excluded from the collection of trade statistics.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The EU has adopted a number of regulations and issued a number of decisions, in relation to customs arrangements entered into with non EU countries. These regulations and decisions enable the UK to fulfil its international customs and trade related obligations with non-EU countries and abide by EU decisions related to membership of international bodies and conventions. If the UK leaves the EU without a negotiated deal, these regulations and EC decisions serve no purpose.
- 2.4 Currently no trade statistics are collected on imports from or exports to the Channel Islands in keeping with EU customs union requirements.

Why is it being changed?

- 2.5 A number of EU regulations and decisions which would become part of UK domestic law when the UK leaves the EU will need to be revoked. These are EU customs arrangements entered into with non-EU countries.
- 2.6 This instrument also revokes legislation relating to EU acceptance of suggestions, changes to conventions and membership of international bodies, such as those relating to EU Information Technology development and establishing specific EU wide common programmes.
- 2.7 The UK and the Crown Dependencies (comprising the Isle of Man, Bailiwick of Guernsey and Bailiwick of Jersey) are entering into a customs union when the UK leaves the EU. As part of this customs union, no trade statistics are to be collected on

imports from or exports to the Channel Islands. The requirement to collect trade statistics information already exempts the Isle of Man, since the requirement only applies for imports and exports. Movements of goods between the UK and Isle of Man are not classed as imports/exports.

What will it now do?

2.8 This instrument will ensure that the UK has a functioning independent customs regime in place by preventing the retention of inappropriate EU legislation on the UK statute books, in the event of the UK leaving the EU without a negotiated deal.

2.9 The instrument also makes provision to maintain the current position of not collecting trade statistics for imports to and exports from the Channel Islands.

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 of special interest the Joint Committee on Statutory Instruments.

3.2 The regulations introduced by this instrument will come into force on exit day. Consequently, the 21 day convention will be breached. Commissioners for HMRC take the 21 day rule convention extremely seriously and only break it in exceptional circumstances. The Commissioners regret the breach of the rule but consider that exceptional circumstances apply in this case.

3.3 The UK has always underlined its solid commitment to securing a negotiated deal with the EU and for this reason has sought to achieve further concessions on the Withdrawal Agreement, following the expression of views in Parliament. It was not considered appropriate to bring forward this legislation as these changes have been made as a consequence to other EU exit related issues (e.g. import and export provisions). It has therefore not been possible to finalise this SI until those positions have been agreed. Furthermore, this SI retains the current position in relation to the Crown Dependencies. While this SI would violate the 21 day rule, there is no practical effect as the rules are retained as they currently are.

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 EUWA provides that all direct EU legislation will form part of domestic law when the UK leaves the EU

6.2 Paragraph 1 of Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (TCTA) provides that all retained direct EU legislation relating to EU customs duty will cease

to have effect. This will not affect direct EU legislation that relates to non-duty customs matters.

- 6.3 This instrument therefore revokes direct EU legislation that is irrelevant or inappropriate to an independent UK customs regime after the UK leaves the EU without a negotiated deal.
- 6.4 The provision for trade statistics is within EU regulation (EC) No 471/2009, brought into UK legislation by The Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2019, (SI 2019/47).
- 6.5 This instrument will ensure that trade statistics are not recorded for imports from or exports to the Channel Islands.

7. Policy background

What is being done and why?

- 7.1 TCTA sets out the customs regime in relation to customs duty that will apply when the UK leaves the EU, along with a range of secondary legislation already laid in Parliament (in November 2018 and January 2019) and to be laid in 2019, before the UK leaves EU. The non-duty customs areas, which includes existing customs legislation as set out in the Union Customs Code (UCC), its subordinate legislation and additional regulations and decisions will be retained in UK law, post-EU Exit through provisions in EUWA.
- 7.2 Several EU regulations and decisions which would become part of UK domestic law will need to be revoked after the UK leaves the EU without a negotiated deal. These relate to measures taken by the EU in relation to customs arrangements entered into with non-EU countries. This instrument also revokes legislation relating to EU acceptance of suggestions, changes to conventions and membership of international bodies, such as those relating to EU Information Technology development and establishing specific EU wide common programmes.
- 7.3 The provisions relating to the Channel Islands retain the existing treatment whereby imports and exports to the Channel Islands are not recorded for UK trade statistics purposes. Retaining current arrangements for trade between the UK and Crown Dependencies was a guiding principle in developing the UK Crown Dependencies Customs union which will take effect when the UK leaves the EU.

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 This is new legislation and therefore no consolidation is required.

10. Consultation outcome

- 10.1 The purpose of this instrument is simply to remove inappropriate and irrelevant legislation that would otherwise be in force if the UK leaves the EU without a negotiated deal on 29 March 2019. The provision relating to the Channel Islands retains the existing treatment whereby imports from and exports to the Channel Islands are not recorded for UK trade statistics purposes. It is considered that no consultation is required.

11. Guidance

- 11.1 Guidance for customs legislation in preparation for EU Exit without a negotiated settlement is already available at: <https://www.gov.uk/government/publications/partnership-pack-preparing-for-a-no-deal-eu-exit/changes-to-customs-excise-and-vat-you-need-to-know-about-if-there-is-no-deal>. This will be updated to reflect any further changes before the date of departure from EU.

12. Impact

- 12.1 There is no impact on business, charities and voluntary bodies as a consequence of this instrument as it is only intended for purposes of removing legislative anomalies in retained legislation, and ensures existing import and export trade statistics provisions for the Channel Islands in place, if the UK leaves the EU without a negotiated deal on 29 March 2019.
- 12.2 There would also be no impact of this instrument on the public sector as the amendments do not introduce any new policies.
- 12.3 This instrument is one of a group of instruments covered by a single (third edition) overarching HMRC impact assessment which will be published before 29 March 2019 and will be 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 No specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).
- 13.3 HMRC Notices and customs guidance already in place will assist small businesses to decide what action to take when this instrument comes into force.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that 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 this 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 can be contacted with any queries regarding the instrument.
- 15.2 Pamela Mulholland, Deputy Director for [Customs EU-Exit at HM Revenue Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Mel Stride Financial Secretary to the Treasury can confirm this 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
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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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 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 (Revocation of Retained Direct EU Legislation, Etc.) (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 A number of EU regulations and decisions becoming part of UK domestic law if the UK leaves the EU without a negotiated deal, will need to be revoked from the UK Customs legislation. These relate to measures taken by the EU in relation to customs arrangements entered into with non EU countries. This instrument also revokes legislation relating to EU acceptance of suggestions, changes to conventions and membership of international bodies. The negative procedure is appropriate for this instrument as all this instrument does is to revoke redundant legislation; it does not create new rights or obligations and does not represent a significant change of policy.
- 1.3 The provision relating to the Channel Islands retain the existing treatment whereby imports from and exports to the Channel Islands are not recorded for UK trade statistics purposes, when the UK leaves the EU without a negotiated deal.

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 (Revocation of Retained Direct EU Legislation, Etc.) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 2.2 If the UK leaves the EU without a negotiated deal on 29 March 2019, it will not need to abide by EU legislation or decisions. All legislative references which would tie the UK to EU legislation will be removed from the customs legislation in force after we have left the EU. The instrument will not require trade statistics information in relation to imports and exports between the UK and the Channel Islands.

3. Good reasons

- 3.1 The Financial Secretary to the Treasury, Rt Hon 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 by revoking unnecessary EU legislation, the UK will not need to be tied to EU legislation or decisions, when it leaves the EU. The provision to exempt

reporting of trade statistics between the Channel Islands and the UK is a result of the UK-Crown Dependencies customs union comprising the UK, Isle of Man, Bailiwick of Jersey and Bailiwick of Guernsey. The Isle of Man is exempt from the requirement to collect import and export trade statistics, and it does not have direct imports or exports with non-EU countries.

4. Equalities

4.1 The Financial Secretary to the Treasury, Rt Hon 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, Rt Hon 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.