

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCE ACT 2011, SCHEDULE 23 (DATA-GATHERING POWERS)**  
**(AMENDMENT) (EU EXIT) REGULATIONS 2019**

**2019 No. 397**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury (the Treasury) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument is one of a number of instruments to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) in preparation for the United Kingdom's (UK) exit from the European Union (EU). In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure the UK's Value Added Tax (VAT) regime operates as required.
- 2.2 The Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1376) introduced a new regime for goods imported into the UK in postal packets (e.g. parcels): <http://www.legislation.gov.uk/ukxi/2018/1376/made>.
- 2.3 The purpose of this instrument is to enable HMRC to ensure that overseas businesses sending goods to the UK in postal packets comply with those regulations. To do this effectively HMRC will require information on such imports and therefore will need to obtain data from various parties involved in these transactions. The instrument amends current data gathering legislation to add 'postal operators' as a category of data holders from which data may be required.

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

*Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 This instrument, which is subject to the affirmative procedure, is necessary to deal with the consequences of the UK leaving the EU without a deal. It will therefore only come into force on a date or dates specified in a separate instrument in the event that the UK withdraws from the EU without a negotiated arrangement.

*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 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom. The territorial application of this instrument is not limited either 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 Mel Stride, Financial Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Finance Act 2011, Schedule 23 (Data-gathering Powers) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

## **6. Legislative Context**

6.1 Schedule 23 to the Finance Act 2011 allows HMRC to issue notices to data holders requiring them to provide relevant data to assist with the efficient and effective discharge of HMRC’s tax functions. Relevant data for the purposes of the Schedule is specified in Treasury regulations made under powers in paragraph 1(3) of the Schedule.

6.2 This instrument amends Schedule 23 to add postal operators as a category of data holder that HMRC can require to provide it with data.

6.3 This instrument is made using powers in section 51 and 52 of TCTA which provide that the Treasury may make regulations that they consider appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU (section 51), and to appoint a day for the regulations to come into force (section 52). Section 51 includes the power to amend any Act of Parliament.

6.4 Section 57(1) of TCTA provides, amongst other things, that sections 51 and 52 (Part 5: other provisions connected with the withdrawal from the EU) come into force on the day on which the Act is passed. TCTA received Royal Assent on 13 September 2018.

## **7. Policy background**

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

7.1 In the event that the UK withdraws from the EU without a negotiated arrangement, it is necessary to ensure the UK’s VAT regime operates as required.

7.2 The Value Added Tax (Postal Packets and Amendment) (EU Exit) Regulations 2018 make an overseas supplier liable for the import VAT on any consignment of goods sent into the UK in a ‘postal packet’ if the value of the goods it contains is £135 or less. Overseas suppliers may discharge their liability by either:

- registering with HMRC and accounting for any import VAT due on a periodic return; or
- paying the import VAT due to the postal operator who will make a payment to HMRC on their behalf.

7.3 In order to ensure compliance with this new regime HMRC will need to gather a range of information. Much of this will be held by third parties involved in the transactions such as online marketplaces which facilitate sales made by overseas suppliers and postal operators that deliver the goods to UK customers.

7.4 Schedule 23 to the Finance Act 2011 provides that a ‘relevant data holder’ can be made to provide HMRC with data that it holds, as specified in separate regulations.

Online marketplaces are currently relevant data holders for the purposes of Schedule 23 and this measure provides that postal operators will also fall within the Schedule. However, this will only apply in relation to HMRC discharging its function in relation to VAT.

7.5 The definition of a “postal operator” is wide – it covers any person who carries parcels from one place to another or who receives, collects, sorts or delivers parcels. A parcel must be capable of being sent by post but this does not mean that the definition of a parcel is limited to parcels which are in fact transmitted by universal service providers and therefore the definition of parcel operator includes anyone who conveys a parcel.

7.6 Subsequent regulations will be introduced to set out in detail the type of data that postal operators hold which they may be required to provide to HMRC in connection with the delivery of parcels covered by the scheme.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

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, and other legislation made under TCTA, will ensure that the UK’s VAT regime operates as required after EU exit.

## **9. Consolidation**

9.1 This instrument amends Schedule 23 to the Finance Act 2011. There are no plans to consolidate this legislation.

## **10. Consultation outcome**

10.1 Whilst no formal consultation on the legislation has been carried out, HMRC have engaged informally with key stakeholder groups in the postal sector.

## **11. Guidance**

11.1 Existing guidance on [www.gov.uk](http://www.gov.uk) will be updated where necessary and will be available prior to commencement of this instrument.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

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>

12.4 The instrument does not impose additional requirements on postal operators to collect data, but defining them as data holder means that HMRC can require them to provide data that they hold.

## **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 employing up to 50 people as the rules are by necessity of general application to the sector.

#### **14. Monitoring & review**

14.1 This instrument will be kept under review through communications with key stakeholder groups in the sector and the Joint VAT Consultative Committee (made up of a wide range of representatives), to ensure that it meets the policy objectives set out in section 7 above.

14.2 The instrument does not include a statutory review clause because it relates to tax and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

#### **15. Contact**

15.1 Shapi Masendu at HMRC, Telephone: 03000 593074, or email: shapi.masendu@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Eileen Patching, Deputy Director VAT Principles and Risk, Customs and Indirect Tax Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mel Stride MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.