

EXPLANATORY MEMORANDUM TO
THE STATISTICS OF TRADE (AMENDMENT ETC.) (EU EXIT) REGULATIONS
2019

2019 No. 47

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 Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to amend European Union (EU) regulations which are being brought into force in the United Kingdom (UK) by the EU Withdrawal Act, to ensure that UK legislation is in place to collect information required for trade statistics after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 EU Regulation 638/2004 established a common framework for the systematic production of statistics relating to the trading in goods between Member States. This is termed Intrastat.
- 2.3 EU Regulation 1982/2004 set up measures for implementing EU Regulation 638/2004, ensuring that each Member State collects similar information and applies the general framework to specific types of movements of goods.
- 2.4 EU Regulation 471/2009 established a common framework for the systematic production of statistics relating to the trade in goods between Member States and non-Member States. This is termed Extrastat.
- 2.5 EU Regulation 92/2010 makes further provisions about the nature of data to be recorded about Extrastat trade to ensure that information recorded and shared by each Member State is consistent
- 2.6 EU Regulation 113/2010 provides additional rules for the compilation of statistical data and applies the general framework to specific types of movement of goods entering and leaving the Member States.

Why is it being changed?

- 2.7 The UK will no longer be a Member State so the EU Regulations will no longer apply to the UK as a non-member State. The government need to preserve these Regulations to ensure that trade in goods statistics continue to be collected, compiled and disseminated and remain consistent with worldwide standards. The preserved EU legislation will enable the ongoing collection of Extrastat trade statistics data where a customs declaration is required, and will allow the continuation of Intrastat for trade

in goods between the UK and the remaining EU Member States. This is to ensure that there is no loss of statistical data, which is needed to meet international reporting requirements.

What will it now do?

- 2.8 This instrument ensures that the UK has the continued right to collect statistical information about trade in goods. It will also ensure that the nature of the information is consistent with the information currently collected. Most of this information will now be obtained through customs declarations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was presented as a proposed negative statutory instrument to the sifting committees for consideration on 5 December 2018. The sifting was completed on 18 December 2018 with the proposed instrument recommended for the negative procedure and not recommended for an upgraded procedure. No response is therefore needed by HM Revenue and Customs.

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 The UK currently applies EU rules on the collection of statistical data, obtained from businesses. These are set out in the EU Regulations 638/2004, 1982/2004, 471/2009, 92/2010 and 113/2010. In addition minor changes will be necessary to the Statistics of Trade (Customs and Excise) Regulations 1992. This is a piece of UK legislation that requires minor changes to ensure the terminology and references are consistent.
- 6.2 Section 2 of the European Union (Withdrawal) Act 2018 ensures the collection of trade statistics will continue to apply in the UK after the UK leaves the EU.
- 6.3 The instrument changes EU references that are no longer appropriate. For example, by substituting the term “United Kingdom” for “Community” or “Member States”, we are limiting the scope of the legislation to that this will only apply to the UK’s jurisdiction.

7. Policy background

What is being done and why?

- 7.1 Statistics about the nature of goods imported and exported are collected across all countries and are an essential economic indicator. They form part of the National Accounts and Balance of Payments compilation, as well as serving a variety of HM Government, commercial and academic purposes.
- 7.2 International standards are adopted from the United Nation's International Merchandise Trade Statistics framework. In international trade, trade statistics for goods are usually collected from customs declarations. One notable exception to this is trade statistics between EU Member States (including the UK currently), where there are no customs declarations and another system (Intrastat) has been developed.
- 7.3 In the event of a no agreement being reached when the UK leaves the EU, trade statistics relating to imports and exports of goods will in most cases be collected from customs declarations.
- 7.4 The Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2019 preserves the ability to collect trade statistics both through customs declarations and also through Intrastat declarations should customs declarations not be required. For example, Intrastat declarations might be needed if any changes are introduced which remove the need for customs declarations.

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 As the purpose of this instrument is to ensure that customs legislation currently governed by the EU is provided for in UK legislation, no formal consultation was carried out.

11. Guidance

- 11.1 Guidance on information collected through 'Intrastat' on UK trade in goods with EU Member States is published on GOV.UK. This guidance is currently being reviewed in the event of a "No Deal" outcome and if necessary new versions would be published prior to the 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 is one of a group of instruments covered by a single overarching HMRC impact assessment which was published on 4 December 2018 and is available on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.
- 12.4 Trade statistics information would be collected from customs declarations which are required for fiscal reasons and would be required anyway for UK-EU trade in goods in a no deal scenario. Therefore the use of the information contained on the declarations does not result in an additional burden.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by some small businesses.
- 13.2 No particular action is being taken to minimise the impact of the requirements on small businesses.
- 13.3 The basis for this decision not to take action to assist small businesses is that the requirement to submit Intrastat returns already exists under EU legislation. Under this instrument, the number of businesses that will need to complete Intrastat returns will reduce and most statistical data will be taken from customs declarations.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out above in section 7 of this EM, 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 Catherine Osborne at HM Revenue and Customs Telephone: 03000 536971 or email: catherine.osborne@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 that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Mel Stride 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.

		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 Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the amendments made by the instrument seek to preserve the status quo as far as possible and do not change the underlying scheme for the collection of trade statistics.

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 Statistics of Trade (Amendment etc.) (EU Exit) Regulations 2018 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 do not change any aspects of the existing system for the collection of trade in goods statistics.

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 to collect trade in goods statistical data.

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.