

EXPLANATORY MEMORANDUM TO
THE CUSTOMS SAFETY AND SECURITY PROCEDURES (EU EXIT)
REGULATIONS 2021

2021 No. [XXXX]

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The instrument extends for six months the duration of a waiver from the obligation to submit pre-arrival safety and security entry summary declarations for imports from territories where such a declaration was not required before the United Kingdom's (UK) exit from the European Union (EU). This includes, for example, the EU, Norway and Switzerland. This waiver is currently in place until 30 June 2021 and will now expire on 31 December 2021.
- 2.2 The instrument also provides a waiver from 1 July 2021 until 30 September 2021 from the requirement to submit exit summary declarations for:
 - movements of empty pallets, containers and modes of transport being moved under a transport contract, where such a declaration was not required before the UK's exit from the EU, and
 - all roll-on roll-off (RoRo) movements of goods.
- 2.3 These requirements are currently waived by public notice until 30 June 2021.

Explanations

What did any relevant EU law do before exit day?

- 2.4 Commission Delegated Regulation EUR/2015/2446 required the submission of pre-arrival entry summary declarations for all movements from outside the EU and some other related countries such as Norway and Switzerland. It also required the submission of exit summary declarations in some cases, including those covered by this instrument.

Why is it being changed?

- 2.5 Changes are being made to the safety and security regime as part of the wider extension of the staging in of customs controls. The entry summary and exit summary declaration requirements are being waived in specific cases until the end of the 2021 (for entry summary declarations) and the end of September 2021 (for exit summary declarations) to allow businesses impacted by COVID-19 additional time to prepare to meet these and other customs requirements arising from the UK's departure from the EU.

What will it now do?

- 2.6 Following the changes brought in by this instrument, the waiver from a requirement for an entry summary declaration for goods moved into Great Britain (GB) from territories that did not require these before 1 January 2021 will be extended from 30 June 2021 until 31 December 2021. This means that such declarations will be required on these movements from 1 January 2022.
- 2.7 Following the changes brought in by this instrument, the waiver from the requirement for an exit summary declaration for (a) all RoRo movements, and (b) all movements of empty pallets, containers and modes of transport being moved under a transport contract, from GB to territories where such a declaration was not required before the UK's exit from the EU, will be extended until 30 September 2021. This means that exit summary declarations will be required on these movements from 1 October 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is made under section 8(1) of the European Union (Withdrawal) Act 2018 (EUWA), and is therefore subject to the draft affirmative procedure under paragraph 1(3) of Schedule 7 to EUWA. This is because it amends provisions of retained EU law previously amended by the Customs Safety and Security Procedures (EU Exit) Regulations 2019 (SI 2019/715). That instrument was laid as a proposed negative for sifting by the European Statutory Instruments Committee (ESIC) and the Secondary Legislation Scrutiny Committee (Sub-Committee A) (SLSC) on 31 January 2019, but was upgraded to the affirmative procedure following recommendations by the ESIC in its 18th Report of Session 2017- 2019 and the SLSC in its 16th Report of Session 2017- 2019.
- 3.2 This instrument comes into force on 1 July 2021. This is necessary to ensure that the waivers already provided continue to have effect without any break.

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)

- 3.3 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.4 The powers under which this instrument is made cover the entire United Kingdom and 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 United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of the Customs Safety and Security Procedures (EU Exit) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The existing waiver from the requirement to submit entry summary declarations for movements where they were not required before the UK's departure from the EU, implemented by the Customs Safety and Security Procedures (EU Exit) Regulations 2019, is being amended by this instrument, to change the end date of the waiver from 30 June 2021 to 31 December 2021.
- 6.2 With regard to the exit summary declaration measure within this instrument, a previous statutory instrument, the Customs Safety and Security Procedures (EU Exit) Regulations 2020 (SI 2020/1613) was introduced in December 2020 and granted the Commissioners for HMRC the power to waive or vary exit summary declaration requirements by public notice between 1 January 2021 and 30 June 2021, where they feel it is necessary to do so to avoid border disruption. The Commissioners for HMRC introduced a waiver for the categories listed in 2.2 which runs until 30 June 2021. This instrument will provide a similar waiver from 1 July 2021 to 30 September 2021.

7. Policy background

What is being done and why?

- 7.1 The government is extending the suspension of entry summary declaration requirements for imports where there were no requirements for those movements prior to the UK's departure from the EU, as part of the wider extension to the staging in of customs controls announced in March 2021. This is to support businesses who have provided feedback that meeting these obligations is proving challenging due to disruption caused by COVID-19. For example, a survey of hauliers carried out by the Road Haulage Association in 2020 found that: 73% suffered a significant reduction in cash flow, with 13% having no cash flow. Hauliers also reported that 25% of their drivers were furloughed.
- 7.2 HMRC introduced a waiver of the requirement for an exit summary declaration for the two categories of goods in paragraph 2.2 which was introduced by public notice and runs until 30 June 2021. This instrument will provide a waiver which runs from 1 July 2021 to and including 30 September 2021. This is to support businesses following feedback that meeting these obligations is proving challenging due to disruption caused by COVID-19.

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

- 8.1 This instrument is being made using the powers in section 8(1) of the European Union (Withdrawal) Act 2018 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
- 8.2 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 No consolidation is planned, as the waivers are time-limited.

10. Consultation outcome

- 10.1 The waivers from entry summary and exit summary requirements are part of the wider extension to the staging in of customs controls, which is being introduced in response to feedback from industry that the pressures arising from the COVID-19 pandemic have affected their readiness for the introduction of full customs controls on the previously proposed date of 1 July 2021.

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.
- 12.2 The provisions further delay the introduction of safety and security declaration requirements for businesses affected by COVID-19, giving them more time to prepare.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 An Impact Assessment has not been prepared for this instrument because the provisions are in force for less than 12 months.

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 businesses by temporarily removing administrative requirements, and as such there is no need for specific action to minimise the impact.

14. Monitoring & review

- 14.1 While monitoring the safety and security waivers included in this instrument, the government will continue to engage with businesses affected by COVID-19 to understand the impact of the safety and security waivers, and to monitor their readiness to meet new obligations when the waivers do end on 30 September 2021 and 31 December 2021.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 James Travers at HMRC, Telephone: 03000 558 379 or email: james.travers1@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.

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 14, 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 15, 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. Appropriateness statement

- 1.1 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, 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 2021 do no more than is appropriate”.

- 1.2 This is the case because it corrects deficiencies in UK law arising from the UK’s withdrawal from the EU.

2. Good reasons

- 2.1 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, 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”.

- 2.2 These reasons are supporting businesses affected by COVID-19.

3. Equalities

- 3.1 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement:

“The draft 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.”

- 3.2 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, the Rt Hon Jesse Norman MP 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”.

4. Explanations

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