

EXPLANATORY MEMORANDUM TO

THE CUSTOMS (SAFETY AND SECURITY PROCEDURES) REGULATIONS 2022

2022 No. 633

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.

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to reduce burdens on traders arising from Safety and Security (S&S) declaration requirements, and, for the technical amendments, to ensure the law reflects longstanding policy and practice in the United Kingdom (UK). S&S declarations are required for most imports and exports. This instrument contains three elements: three technical amendments to S&S declaration legislation, the removal of the time limit on the S&S declaration waiver for imports from the European Union (EU) ("the waiver extension"), and three facilitations removing S&S declaration requirements for certain low-risk movements.
- 2.2 The three technical amendments do not represent a change to current processes. The first amendment measure provides that, for goods with no requirement for S&S information on export, there is also no need for presentation to customs for non-fiscal purposes when they are taken out of the customs territory. Two further amendments are also covered later in this instrument which are set out in more detail at paragraph 2.5.
- 2.3 The second measure contained in this instrument is the waiver extension. The instrument removes the end date of a waiver from the obligation to submit pre-arrival S&S entry summary (ENS) declarations for imports from territories where such a declaration was not required before the UK's exit from the European Union (EU). This includes, for example, the EU, Norway and Switzerland. Without this instrument, the waiver would expire on 30 June 2022, and traders would have needed to meet new S&S requirements from 1 July.
- 2.4 The instrument then contains three facilitations that remove the requirement to submit S&S declarations for certain low-risk categories of goods movement. The first facilitation removes the obligation to submit ENS or pre-departure declarations for movements of commercial goods carried in travellers' own small vehicles. The second facilitation removes the obligation to submit pre-departure declarations for exported empty units, and the third removes the obligation to submit pre-departure declarations for outbound transshipment movements (when certain conditions are met). These facilitations all reduce existing burdens on trade and apply to trade with all countries.
- 2.5 Within this last section of the instrument are the two further technical amendments mentioned in paragraph 2.2. These amendments also reflect existing policy and practice. They remove the requirement to submit S&S pre-departure declarations for goods where the customs declaration can be made orally, and remove the requirement to submit a standalone ENS declaration for goods where the customs declaration can be made by conduct.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The requirements to provide S&S information on the entry and exit of goods by lodging an entry summary (ENS) declaration or a pre-departure declaration are set out in Article 127 and 263 of Regulation (EU) No 952/2013 of the European Parliament and of the Council (Union Customs Code). Waivers from these requirements to lodge declarations in specified cases are provided in Articles 104 and 245 of the Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (UCC).

6.2 These provisions continue to have effect in the UK as retained EU law under section 3 of the European Union (Withdrawal) Act 2018, subject to modifications made in the Customs Safety and Security Procedures (EU Exit) Regulations 2019 (SI 2019/715), the Customs Safety, Security and Economic Operators Registration and Identification (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1379), the Customs (Declaration Modification) Regulations 2021 (SI 2021/695) and the Customs Safety and Security Procedures (EU Exit) Regulations 2021 (SI 2021/778). The effect of section 3(2) of the European Union (Withdrawal) Act 2018 is that EU legislation only applies as retained EU law in the UK to the extent that it does not have effect by virtue of section 7A of that Act. Section 7A concerns implementation of the UK's withdrawal agreement with the EU, and gives EU legislation concerning entry summary declaration and pre-departure declarations effect in respect of Northern Ireland (NI). EU legislation, as it applies in NI as a result of the UK's withdrawal agreement, is not therefore retained EU law and this instrument will not therefore modify the entry summary declaration and pre-departure declaration rules that apply in NI.

The three technical amendments

6.3 The requirement to present goods being taken out of the UK is set out in Article 267 of the UCC.

6.4 Under current retained EU law, Article 267 of the UCC requires goods removed from the UK to be presented to customs for S&S purposes before they are taken out of the UK.

- 6.5 Section 2, Chapter 4, Part 4 of the Customs (Export) (EU Exit) Regulations 2019 sets out the criteria under which an export declaration may be made orally or by conduct.
- 6.6 For the second amendment, later in the instrument, Paragraph (1)(g) of Article 245 of the Delegated Regulation waives the requirement for a pre-departure declaration for goods declared by conduct. There is no equivalent waiver for goods declared orally.
- 6.7 For the third amendment, also later in the instrument, Paragraph (1)(f) of Article 104 of the Delegated Regulation waives the requirement for an ENS declaration for goods “which are” declared by conduct, but the effect of this wording is that the waiver applies only once the declaration by conduct is made, rather than for goods where a declaration by conduct is permitted.

The waiver extension

- 6.8 The existing waiver from the requirement to submit ENS declarations for goods movements where they were not required before the UK’s departure from the EU is in Article 104(5) of the Delegated Regulation. This was inserted by the Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2021 and had an end date of 30 June 2022. The end date is being removed by this instrument.

The three facilitations

- 6.9 Paragraphs 1(g) of Article 104 and (1)(f) of Article 245 of the Delegated Regulation waive the requirement for, respectively, an ENS declaration and a pre-departure declaration for goods contained in travellers' personal baggage other than goods which have a value in excess of £1500 and are carried in a goods vehicle (such as a van).
- 6.10 Paragraph (1)(g) of Article 245 of the Delegated Regulation waives the requirement for a pre-departure declaration for goods declared by conduct with the exception of pallets, containers and means of transport, and associated spare parts, accessories and equipment, that are carried under a transport contract.
- 6.11 This instrument is being made under section 166A of the Customs and Excise Management Act 1979 (CEMA), as inserted by the European Union (Future Relationship) Act 2020 and will amend retained EU law (as described above) which continues to apply in Great Britain. Section 166C(6) of CEMA, which was also introduced by the European Union (Future Relationship) Act 2020, provides that a power to make regulations under section 166A of CEMA may be exercised by modifying any enactment (which includes retained EU law).

7. Policy background

What is being done and why?

- 7.1 This instrument is being made under section 166A of CEMA, as inserted by the European Union (Future Relationship) Act 2020 and will amend retained EU law (as described above) which continues to apply in Great Britain. Section 166C(6) of CEMA, which was also introduced by the European Union (Future Relationship) Act 2020, provides that a power to make regulations under section 166A of CEMA may be exercised by modifying any enactment (which includes retained EU law).

The three technical amendments

- 7.2 Three amendments in this instrument are being made to ensure that legislation on the requirements of S&S procedures aligns with policy and operational practice. They do not represent any change for traders.

- 7.3 The first amendment provides that goods for which there is no requirement to provide S&S information do not need to be presented to customs for non-fiscal purposes when they are taken out of the customs territory. Where goods do not need S&S declarations and have no other requirement for presentation (e.g. in relation to fiscal declarations), there should be no need to present these low-risk goods.
- 7.4 The second amendment waives the requirement to submit a pre-departure declaration for goods that are permitted to be declared orally. Where goods are permitted to be declared orally, they are low-risk, and requiring a separate S&S declaration to be provided several hours before goods reach the border would negate the facilitation of an oral declaration. There is no need for S&S declarations on these goods.
- 7.5 Similarly, the third amendment waives the requirement to submit an ENS declaration for goods that are permitted to be declared by conduct. Where goods are permitted to be declared by conduct, requiring a separate ENS declaration to be provided several hours before goods reach the border would negate the facilitation of by conduct declaration, and, again, is not needed because goods which are permitted to be declared by conduct are low-risk.

The waiver extension

- 7.6 The instrument includes a measure that indefinitely extends an existing waiver, ensuring traders do not need to meet new S&S requirements this year. This measure removes requirements for S&S declarations on imports from the EU (and from other territories where such a declaration was not required before the UK's exit from the EU), which were due to come into force from 1 July 2022. The government is introducing this legislation so that no new customs requirements come into force for businesses this year, to support them in a challenging economic environment.
- 7.7 British businesses and people are being hit by rising costs. The government does not want to impose new administrative burdens and to risk disruption at ports and to supply chains at this point. S&S declaration requirements on imports of EU goods (and goods from other territories where such a declaration was not required before the UK's exit from the EU) will no longer be introduced this year, whilst the government reviews how to implement these controls in an improved way.
- 7.8 ENS declarations are made before goods arrive into a customs territory. Information from the declarations is used to form part of a risk assessment of goods before they arrive at the border by air, sea, rail and road. Introducing these declarations for EU imports will provide extra information for our security processes, but the waiver will not compromise security. Existing intelligence sources will continue to be used to secure our borders in the same way as they are now.

The three facilitations

- 7.9 This instrument also includes three new S&S facilitations, to reduce existing trader burdens in the challenging economic environment, and remove unnecessary S&S requirements where risks are low. The facilitations permanently waive S&S requirements on three categories of low-risk goods movement:
- exported empty pallets, containers, vehicles (and associated spare parts, accessories and equipment), when moved under a transport contract (including empty reusable packaging such as stillages or roll-cages);

- Merchandise in Baggage, on both import and export. These requirements only apply to goods over a certain value threshold in small goods vehicles but will now be waived in all cases;
- outbound transhipments. These requirements apply, for example, where flight cargo brought into Great Britain is transferred to a vehicle to be taken directly out of Great Britain via a different port, as part of a single journey. They are being waived when certain conditions are met – for example, when these goods are moved under a single transport contract.

8. European Union Withdrawal and Future Relationship

- 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 extends an existing facilitation for traders moving goods into the UK from the EU and introduces facilitations for business that could not have been introduced before EU withdrawal.

9. Consolidation

- 9.1 No consolidation is currently planned, but this will be kept under review.

10. Consultation outcome

- 10.1 Whilst no formal consultation has taken place, the full draft instrument was reviewed at a virtual meeting on 27 May 2022 with members of the Joint Customs Consultative Committee (JCCC), who were able to discuss the draft legislation with policy officials. The JCCC members were content with the draft instrument.
- 10.2 The JCCC is an HMRC-sponsored forum established to exchange views on and discuss proposed changes to customs procedures and documentation relating to the movement and clearance of goods.

11. Guidance

- 11.1 Guidance on S&S entry summary declarations can be found at: <https://www.gov.uk/guidance/check-if-you-need-to-make-an-entry-summary-declaration>.
- 11.2 Guidance on S&S pre-departure declarations can be found at: <https://www.gov.uk/guidance/find-out-when-to-make-an-exit-summary-declaration>.
- 11.3 Changes will be made to clarify requirements prior to commencement of this instrument.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies will be a saving for businesses who would previously have been required to submit safety and security declarations, for example for the export of empty containers and for outbound inter-port transhipments.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A provisional draft impact assessment (IA) has been published at www.gov.uk/government/publications/hmrc-draft-impact-assessment-for-the-customs-safety-and-security-procedures-regulations-2022. Due to shortened

timescales for the implementation of this SI to enable it to come into force by 1 July 2022 it has not been possible to validate a full IA. The government will finalise an IA for validation by the time the measure comes into force on 1 July 2022. Once validated, the final IA will be published alongside the legislation, replacing the draft IA.

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

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.
- 14.2 As this instrument is not made by a Minister of the Crown, no review clause is required.

15. Contact

- 15.1 Danya Sarayreh at HMRC, telephone: 03000 575 385 or email: danya.sarayreh1@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 Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.