

EXPLANATORY MEMORANDUM TO

THE CUSTOMS (SAFETY AND SECURITY PROCEDURES) REGULATIONS 2023

2023 No. 1011

1. Introduction

- 1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The first section of this instrument removes the requirement to submit Safety and Security (S&S) declarations for goods exported in a number of specific circumstances. HMRC is introducing these waivers to fulfil our commitments in the Border Target Operating Model (BTOM). The second section amends relevant articles of Commission Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing certain provisions of the Union Customs Code to remove outdated references to EU information systems, as well as language relating to EU member states.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

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 declaration or a pre-departure declaration are set out in Articles 127 and 263 of Regulation (EU) No 952/2013 of the European Parliament and of the Council (the 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. This instrument amends Article 245 to provide for waivers from the requirement to submit a pre-departure declaration in Great Britain for three new categories of movements.

- 6.2 The requirements relating to the electronic system for the submission, processing and storage of information contained within an S&S declaration and for the exchange of information regarding the analysis of risk, are set out in Article 182 of Commission Implementing Regulation (EU) 2015/2447, which this instrument amends.
- 6.3 The Articles in European Union (EU) legislation referred to in paragraphs 6.1 and 6.2 continue to have effect in the United Kingdom as retained EU law by virtue of section 3(1) and (2) of the European Union (Withdrawal) Act 2018 (EUWA), and have been amended by 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), the Customs Safety and Security Procedures (EU Exit) Regulations 2021 (SI 2021/778) and the Customs (Safety and Security Procedures) Regulations 2022 (SI 2022/633).
- 6.4 The effect of section 3(2)(a) of EUWA however is that this legislation only applies in the United Kingdom to the extent that the equivalent EU law does not have effect by virtue of section 7A of EUWA which gives effect to the Windsor Framework.
- 6.5 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?

New waivers from the requirement to submit a pre-departure declaration in Great Britain

- 7.1 This instrument amends Article 245 of Commission Delegated Regulation (EU) 2015/2446 to introduce waivers from the requirement to submit a pre-departure declaration in three categories of movements, namely:
- Goods that have been exported within 14 days of being imported, placed under the free zone procedure, and received in the free zone, where the S&S information provided on the entry summary declaration corresponds to the goods and is available to customs officers.
 - Goods which entered Great Britain under the common transit procedure and are exported under the same procedure and on the same means of transport within 14 days of entry, where the S&S information provided on the entry summary declaration corresponds to the goods and is available to customs officers.
 - Products of sea-fishing and other products obtained and directly exported from UK territorial waters.
- 7.2 These waivers are being introduced as part of the BTOM, which was published in draft form in April 2023 and sets out a new model for importing goods into the UK from countries inside and outside the EU. The aim is to remove the administrative

burden of submitting a pre-departure declaration in these cases, estimated at £10 to £41 per declaration.

Amendments to Article 182 and 189 of Commission Implementing Regulation (EU) 2015/2447.

- 7.3 This instrument amends Article 182 and 189 of Commission Implementing Regulation (EU) 2015/2447 to remove references to the electronic system used in the EU for the submission, processing and storage of information contained within an S&S declaration and for the exchange of information regarding the analysis of risk. It provides for the electronic systems that may now be used to be specified in a public notice, which will avoid the need for amendment of the Regulation itself whenever traders are to be permitted to use a new system. Any future changes to the permitted systems will be addressed by updating the public notice.
- 7.4 There will be no changes of operational practices because of this SI, it will merely bring legislation in line with existing practices as they evolve.

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 amends retained EU law to introduce facilitations for business that could not have been introduced before EU withdrawal.

9. Consolidation

- 9.1 No consolidation is currently planned.

10. Consultation outcome

- 10.1 The contents of this SI in relation to the three waivers have undergone extensive consultation with stakeholders and other government departments as part of the Border Target Operating Model. Amendments to articles of Commission Implementing Regulation (EU) 2015/2447 to address obsolete references relating to the EU have not required consultation. No formal consultation has taken place on the full draft instrument.

11. Guidance

- 11.1 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> . This guidance sets out the process and requirements for submitting the types of declarations that the waivers will apply to. 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 which would previously have been required to submit pre-departure declarations for the export of these three types of goods. It is not expected that charities or voluntary bodies would be affected as these amendments relate to trade.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 No impact assessment has been published alongside this measure as it does not meet the financial threshold of £5M necessary for an impact assessment.

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 Zoe Hambridge at HMRC, telephone: 03000 530244 or email: zoe.hambridge@hmrc.gov.uk, can be contacted with any queries regarding the instrument

15.2 Rawfiah Choudry, Deputy Director for Customs Declarations Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

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