

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT CASH CONTROLS (AMENDMENT)
(EU EXIT) REGULATIONS 2019

DRAFT CUSTOMS (ECONOMIC OPERATORS
REGISTRATION AND IDENTIFICATION)
(AMENDMENT) (EU EXIT) REGULATIONS 2019

Monday 25 March 2019

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Friday 29 March 2019

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The Committee consisted of the following Members:

Chair: STEVE McCABE

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| Bryant, Chris (<i>Rhondda</i>) (Lab) | † Moore, Damien (<i>Southport</i>) (Con) |
| † Daby, Janet (<i>Lewisham East</i>) (Lab) | † Morris, Grahame (<i>Easington</i>) (Lab) |
| † Dodds, Anneliese (<i>Oxford East</i>) (Lab/Co-op) | Perkins, Toby (<i>Chesterfield</i>) (Lab) |
| † Freer, Mike (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| Gethins, Stephen (<i>North East Fife</i>) (SNP) | † Stride, Mel (<i>Financial Secretary to the Treasury</i>) |
| † Grant, Mrs Helen (<i>Maidstone and The Weald</i>) (Con) | † Vickers, Martin (<i>Cleethorpes</i>) (Con) |
| † Hands, Greg (<i>Chelsea and Fulham</i>) (Con) | † Walker, Thelma (<i>Colne Valley</i>) (Lab) |
| † Hughes, Eddie (<i>Walsall North</i>) (Con) | † Wragg, Mr William (<i>Hazel Grove</i>) (Con) |
| † Merriman, Huw (<i>Bexhill and Battle</i>) (Con) | Adam Mellows-Facer, <i>Committee Clerk</i> |
| | † attended the Committee |

Sixth Delegated Legislation Committee

Monday 25 March 2019

[STEVE McCABE *in the Chair*]

Draft Cash Controls (Amendment) (EU Exit) Regulations 2019

6.5 pm

The Financial Secretary to the Treasury (Mel Stride): I beg to move,

That the Committee has considered the draft Cash Controls (Amendment) (EU Exit) Regulations 2019.

The Chair: With this it will be convenient to consider the draft Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019.

Mel Stride: It is a pleasure to serve under your chairmanship, Mr McCabe, and I reassure the Committee that we are now in safe hands—it is business as usual. I welcome our Clerk. When the Clerks are here, they are of course so seamlessly efficient that we do not notice them, but when they are not here, apparently we do notice that they are not. There was a slight delay, but I have none the less moved the first of the draft statutory instruments and I will speak to both the SIs before us.

The Government's priority is to leave the European Union with a deal that works for citizens and businesses, as is set out in the withdrawal agreement and political declaration. That would avoid a no-deal outcome. As a responsible Government, however, we have a duty to plan for all scenarios to minimise disruption for businesses and individuals. We are in Committee to consider two statutory instruments that are part of the Government's package to prepare for the possibility of the UK leaving the EU without a deal.

The first set of draft regulations relates to cash controls. The European Union monitors the international movement of cash by requiring individuals who enter or leave the EU carrying more than €10,000 in cash to make a declaration. That cash control declaration must be made to the customs authority of the member state into which they are arriving or from which they are departing. The UK is committed to continuing that practice. The declaration is one measure that assists the fight against money laundering, organised crime and the funding of terrorism.

If the UK leaves the EU without a deal, the draft instrument will require cash control declarations at the UK border, including the borders between the UK and the EU. That does not apply to the border between Northern Ireland and Ireland. The current practice, which requires those declarations between the UK and non-EU countries, will continue. The draft regulations extend those requirements to movements between the UK and the EU. The instrument makes a small change in so far as we will require declarations on amounts of £10,000 or more, rather than €10,000.

The second draft statutory instrument under consideration relates to economic operator registration and identification, or EORI. An EORI is a unique registration number given to businesses that are involved in matters covered by customs legislation, so that Her Majesty's Revenue and Customs can identify them effectively. Registering for an EORI is a requirement under EU law. As those registration numbers allow HMRC to identify traders effectively, it is necessary for traders to use them when applying for customs simplifications or facilitations, making declarations or exchanging information with the customs authority.

The Union customs code, as it exists immediately before exit day, will form part of domestic law on exit day and continue to apply to the UK as retained EU law, by virtue of the provisions of the European Union (Withdrawal) Act 2018. The code was drafted to apply to EU member states and will therefore not work as effective legislation for the UK without amendment. The second set of draft regulations amends those retained provisions to ensure that they are suitable for an independent UK customs regime. The instrument mirrors current EU provisions to ensure that traders and systems are faced with as little change as possible.

All existing EORIs issued by the UK, known as UK EORIs, will continue to remain valid for use in UK customs processes in the event of a no-deal EU exit. Following the UK's departure from the EU, UK individuals and businesses that want to trade with the EU and do not already have a UK EORI will need to obtain one. In addition, persons who are not established in the UK but are entitled to lodge a UK declaration will first require a UK EORI.

I will now comment on the effect of the two draft SIs at the border between Northern Ireland and Ireland. The UK Government have committed to avoiding a hard border and will do everything in their power to ensure that no new physical infrastructure or related checks and controls are introduced at the border in the event of no deal. As such, the two SIs will not apply to movements between Northern Ireland and Ireland, but they will apply for movements between Northern Ireland and other territories. Cash control declarations will not be required for movements of cash between Northern Ireland and Ireland, but will be required for movements of cash between Northern Ireland and other territories.

Likewise, traders whose only international trade is between Northern Ireland and Ireland will not be required to register for a UK EORI, but a UK EORI will be required by Northern Ireland traders trading with other territories. Finally, an EORI is not needed by UK traders with only domestic trade. The instruments are important in helping to ensure that our trade and cash controls continue to function in a day one no-deal scenario. I commend the first set of regulations to the House.

6.10 pm

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to serve with you in the Chair, Mr McCabe, and to hear the explanatory remarks from the Minister. A huge volume of such legislation has obviously been passing through Parliament. When my shadow Treasury colleagues and I have been considering it, we have been determined to spell out our objections to the Government's

approach to EU exit secondary legislation, the volume of which has been deeply concerning in respect of accountability and proper scrutiny.

The Government have assured the Opposition that no policy decisions are being taken, but establishing a regulatory framework inevitably involves matters of judgment and raises questions about resourcing and capacity. Intrinsic decisions are being made about supervisory arrangements, and we are worried that mission creep is happening, which goes beyond what was outlined in the European Union (Withdrawal) Act 2018.

Secondary legislation should be used only for technical, non-partisan and non-controversial changes, because of the limited accountability it allows. Instead, the Government continue to push through far-reaching legislation via these vehicles. As legislators, we have to get them right. They could represent real and substantive changes to the statute book, so they need proper in-depth scrutiny.

We are only four days away from our original EU exit date. The legislation still stands, at least in the UK's case, but it is unclear whether much of it will be used. Obviously, we are considering two instruments that amend our customs regulations to account for our exit from the EU, but there is a lack of clarity about whether they are no-deal SIs.

The impact assessment that relates to both instruments is entitled "HMRC impact assessment for the movement of goods if the UK leaves the EU without a deal", but some of the associated explanatory notes suggest that they are not no-deal instruments, but pertain to all kinds of exit. In my opinion, the second set of regulations would be needed only if we shifted away from the EU's customs code, as the Minister mentioned, which is not a condition of leaving the EU per se. It is therefore peculiar that we have information not about the impact that the instruments would have in all possible scenarios, but only about a no-deal scenario.

On the cash controls regulations, I want to probe why the Treasury has decided to make the threshold £10,000. That is higher than the previous €10,000 threshold, which converts to about £8,500. I hope that the Minister can explain why it is set at £10,000, apart from the fact that that is a nice round number—that may well be the reason, but surely we need more information if that is the case. I find it peculiar given that, as I understand it, the cash controls system currently applies to €10,000-worth of other currencies brought in or out of the country, rather than a different value being set—it does not refer to 10,000 rupees or \$10,000 or whatever. Perhaps the Minister can enlighten us about that and whether I have the wrong end of the stick.

On the issues relating to the Irish border in the cash controls regulations, I hope the Minister can give us more information than is provided in the papers we have been given. The Irish border is mentioned only fleetingly in the instrument. The citation, commencement and effect section states:

"The amendments made by these Regulations do not have effect in relation to any person entering Northern Ireland from the Republic of Ireland or exiting Northern Ireland to the Republic of Ireland."

The instrument omits articles 6 and 7 of regulation (EC) No. 1889/2005, which relate to information sharing. Some might say that that is understandable, given that the obligations will not stand after exit day, but surely

we as parliamentarians need to know a lot more about what controls will be maintained than we are provided with. What discussions, for example, have the UK Government had with the Irish Government to ensure that there will be proper scrutiny of individuals who might try to exploit this situation to launder or otherwise hide cash?

I appreciate that the Government might respond by saying that we have the Proceeds of Crime Act 2002, which means that police or border officials are able to seize cash if they have reasonable grounds for suspecting that it is either itself stolen or laundered, or is intended to be used in illegal ways in unlawful conduct, and that that applies from £1,000 upwards. However, I find it a bit strange that the Government suggest that we have to have a separate approach to cash controls as a condition of leaving the EU, yet that seems to be no issue at all when it applies between Northern Ireland and Ireland. Maybe they are just saying that security considerations trump that, which they may well do, but surely we need more meat on the bones here.

That is particularly true given that the impact assessment states:

"Compliance with the SI...gives HMRC information on the movement of cash, which feeds into the risk profiles of individuals and their associates where they are acting on behalf of others."

That suggests that it is pretty important information, so we need more detail on why the Government are saying that we will not seek it here. It may well be justified in the overall cost-benefit analysis, but we really do not have that information.

Moving on to the economic operators registration and identification SI, again we are informed:

"The amendments to the retained EU law contained in this instrument will not have effect in relation to economic operators whose only customs activities consist of the trade of goods between Northern Ireland and Ireland."

That seems a reasonable measure to prevent a hard border while maintaining existing regulations, but it would be interesting to hear from the Minister whether the Treasury has calculated how many operators of this type only trade in goods across the Irish border. That would be useful to know.

Generally, the context of this SI is a worrying lack of certainty for Northern Irish companies provided by the current situation. We did not have any indication until 13 March that the Government would take a temporary approach to avoid new checks and controls on goods at the Northern Ireland land border if the UK leaves the EU without a deal, and we do not yet have those arrangements set out in detail—we have the aspiration, but we do not have the detail. The Government's own "EU Exit" paper from last year said that,

"WTO terms would not meet the Government's commitments to ensure no hard border between Northern Ireland and Ireland."

This surely needs much more work.

Finally, the EORI SI sets up the requirements, as the Minister mentioned, for a UK-run economic operator and registration identification system. I am grateful to the Minister for being willing to confer with me about the extent of use of that system before this Committee sitting. I wrote to him about this matter in February, because as at the end of that month, HMRC itself admitted that less than one fifth of the businesses that were estimated to need an EORI number had one,

[Anneliese Dodds]

meaning that four fifths did not. HMRC said at that stage that it takes up to three days for an EORI number to be sent out, and longer than three days if there are “high volumes” of applications.

HMRC maintained that it had the capacity to process 11,000 EORI applications a day. Perhaps it is a strange coincidence that when we multiply that by the number of working days that were left when HMRC’s press release was issued, it sums perfectly to 29 March—it is quite amazing that its systems mapped on so precisely. However—and I am sure the Minister will talk about this—it appears that in practice perhaps only about a quarter of the companies that will need an EORI number have one. If companies do not have one, what are they going to do? Will they literally not be able to trade if they are not provided with one of these numbers? That is surely quite concerning for them.

I asked at the time for the Treasury to provide more information on what it was doing to promote the need for people to get an EORI number. I also highlighted the fact that there are con merchants—perhaps I need to be careful legally what I say here, and I would not describe them as doing anything illegal, but there are certain companies that advertise themselves as enabling other companies to get such numbers and apply a charge for doing so, when it is actually free to get one. They seem to be trying to profit from this situation. As I said, there is potentially nothing illegal about that, but surely it is unfortunate, at the very least, if companies believe as a result that they have to pay to get an EORI number. It would be helpful to have an update on that.

Finally, what proportion of eligible businesses have signed up for the new transitional simplified procedures? HMRC acknowledges that there has been an underspend on training funds for that scheme. It would be helpful to have an update on that too, because it is meant to speed up some of the processes related to the EORI SI.

6.20 pm

Mel Stride: I thank the hon. Lady for her questions, which, as usual, were very thorough and detailed. I will do my best to answer them all. The first related to the whole issue of why we are using secondary legislation. In general terms, I hope the hon. Lady recognises that, given the kind of detail involved in some of this secondary legislation, the sheer practicalities of setting all that out in advance in primary legislation would have been prohibitive, not least because the relevant Bill went through some time ago and we are now considering these matters nearer to the event of our potential departure from the EU without a deal—although that is certainly not our desired departure. She will also have noticed that both instruments were considered by the European Statutory Instruments Committee and, on its recommendation, turned from negative instruments into affirmative instruments.

The hon. Lady asked very specifically whether these instruments relate to a no-deal scenario. Indeed they do. Of course, if we have a deal—the current deal, which has been negotiated with the European Union—we will go into an implementation period until the end of 2020. Under those terms, we would continue to trade with the EU27 on broadly the same basis as we do today.

The hon. Lady asked specifically why £10,000 was used, rather than the sterling equivalent of €10,000, that being—I will take her figure at face value—about £8,500. She suggested that it might be because it is a nice round number, and I guess perhaps it is. It certainly maintains the figure 10,000, albeit there is a relatively marginal change in value at today’s exchange rate; as we know, that may change over time.

The hon. Lady made some very important points about the Northern Ireland border and, with regard to the cash controls instrument, the level of security that may or may not be in place as a result of no deal. In the case of the border between Northern Ireland and Ireland, the instrument really would maintain the status quo. Of course, as a member of the European Union at the moment, we do not have cash controls between ourselves and other member states, including between Northern Ireland and the Republic of Ireland. We have a variety of intelligence-based arrangements in place to track down those who may be moving cash for the wrong reasons across any of our borders with any member state, and we have always had very close co-operation with the Irish Government and the Garda in respect of such matters.

I turn to EORI. The hon. Lady asked how many operators trade only across the Northern Ireland-Republic of Ireland border and, because they do not already trade with a country outside the EU27, have not already been registered for an EORI number. I do not have a precise figure, but we estimate that about 245,000 businesses in the UK as a whole—145,000 that we can identify as being above the £85,000 VAT registration threshold, and an estimated 100,000 further that are below that threshold—trade solely intra-EU, so it will be a fraction of that number.

The hon. Lady touched on whether the arrangements relating to Northern Ireland in both statutory instruments would be compliant under WTO arrangements. Our belief is that they would be, albeit that they would be exceptional arrangements. In the case of both instruments, we would hope to be in constructive discussions with the Irish Government about how to move forward if we end up in a no-deal situation.

The hon. Lady asked some specific questions about EORI registration and referred to her letter. I am grateful to her for having raised that with me before this Committee. The answer to her question is that approximately 60,000 EORI registrations have now been made in the group we are targeting. That is 24.8% of those that we believe are in the scope of requiring an EORI. She asked what happens if a business turns up in the UK without the relevant EORI registration, and I point her to the transitional simplified procedures that we have set out.

The hon. Lady’s final point was about businesses that might provide a service to facilitate EORI registration. Quite rightly, she pointed out that is a free-of-charge service that can be completed very quickly, and it is not that complicated to do it online. If she has any specific examples that she would like to bring to my attention, where she believes that anybody is in any way misrepresenting the complexity of this process simply in order to profit from the interaction with the business concerned, I will look at them very closely.

Anneliese Dodds: I am grateful to the Minister for those clarifications, which are enormously helpful. I mentioned in my letter the name of one outfit that

operates in that direction, but I will have another look and send it on. On his penultimate point about how companies would cope with not having an EORI, it was my understanding that, in order to participate in the new transitional simplified procedures scheme, businesses had to have signed up for that, and we do not know how many have. They could be in a double bind if they are not in either scheme. I know that the Government say they will completely suspend many of the normal reporting requirements, which opens up many concerning questions, but unless I am misunderstanding the transitional simplified procedures scheme, it is not clear that those who do not have an EORI would drop into that other scheme. Perhaps he can explain that further.

Mel Stride: The hon. Lady poses a fair question. Although what happens going the other way will be in the control of the EU27, in the event that a business came into the United Kingdom, arrived without an

EORI number, was not in the TSP arrangements and was not in transit with the various suspensions that go with that, we would take a proportioned, flexible approach at the border under those circumstances. We would make sure, as we have always said, that we prioritise flow over other aspects, while in no way compromising on security.

Question put and agreed to.

**DRAFT CUSTOMS (ECONOMIC OPERATORS
REGISTRATION AND IDENTIFICATION)
(AMENDMENT) (EU EXIT) REGULATIONS 2019**

Resolved,

That the Committee has considered the draft Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019.—(*Mel Stride.*)

6.29 pm

Committee rose.

