

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS (SPECIAL PROCEDURES AND OUTWARD PROCESSING) (EU**  
**EXIT) REGULATIONS 2018**

**2018 No. 1249**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument forms part of legislation to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) to create a new standalone Customs regime following the United Kingdom's (UK) exit from the European Union (EU). In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure the UK's Customs, VAT and Excise regimes function as intended after the UK leaves the EU and so, on a contingency basis this SI sets out the detailed rules (please see section 7 of this memorandum) which are currently in place under EU law. These procedures provide for the reduction or suspension of import duty in certain cases when goods are imported to the UK.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 Due to the need to provide certainty and clarity to business and the public, and to allow for proper scrutiny, the decision has been taken to set out the new UK customs regime in a series of instruments (from November to the end of January). While all the instruments will be in force for EU exit, this has meant that there are certain regulations in this instrument that are dependent upon provisions that have not yet been made.
- 3.2 As an example of this, see regulation 37(1) of this instrument (authorisation to declare goods for a temporary admission procedure) which deals with approval notifications issued in relation to authorisation to declare goods for a temporary admission procedure. Paragraph (1)(b) of this regulation refers to goods being "exported from the United Kingdom in accordance with the applicable export provisions". Section 35(2) of the TCTA sets out that export in accordance with the applicable export provisions occurs where (1) goods are presented to Customs on export; and (2) the export is made in accordance with a procedure provided for by regulations made by HMRC. The regulations dealing with the export of goods from the UK that will be made under section 35(2) have not yet been made. This means that there are currently no applicable export provisions and so the reference in regulation 37(1)(b) of this instrument will not have an effect until the regulations dealing with export are made and come into force. However, paragraph 15(b) of Schedule 2 to the TCTA provides that the regulations must specify a period for which the goods are to be used before

being exported in accordance with the applicable export provisions in order to give meaning to the term “declaration of goods for a temporary admission procedure”.

- 3.3 Another example appears at regulation 22(3)(c)(i) of this instrument (authorisation to declare goods for an inward processing procedure –conditions and requirements) which refers to the customs tariff in its standard form. The customs tariff will be provided for in regulations made by the Treasury under section 8 TCTA. As the customs tariff will not exist when this instrument is made, regulation 22(3)(c)(i) cannot have effect until regulations setting out the customs tariff come into force.
- 3.4 We note the concerns of the JCSI about references in legislation to things that do not yet exist, for example in SI 2017/1189 (11th report of session 2017-19). This instrument is different to SI 2017/1189 in that all the relevant provisions will be in force by the time the new regime is operative (i.e. on exit from the EU) and there will be a further opportunity to consider the legal effect of the relevant provisions when the instruments that give the provisions meaning are introduced, which will be in advance of the relevant provisions being commenced. In addition, the sequencing of instruments in this way was within the contemplation of Parliament when scrutinising the powers in the TCTA. The powers in the TCTA were intended to ensure an effective regime was in place by exit day and Parliament has been keen to provide certainty about this regime to business and the public as far in advance of exit day as possible and so sequencing the instruments in this way must have been within Parliament’s contemplation when the powers were considered.
- 3.5 The TCTA provides that certain legal requirements can be set out in the form of a public notice made by HMRC pursuant to that Act. For example, paragraph 18(5)(b) of Schedule 2 to the Act allows HMRC to give directions requiring a special Customs procedure to be discharged before a specified date to be given by way of a public notice.
- 3.6 In addition to public notices made under powers in the Act, this instrument makes provision by reference to things to be specified in notices published by HMRC. See, for example, regulation 44 of this instrument (record keeping). We note the need for explicit vires to sub-delegate and the consideration that the JSCI gave to the draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (in the 30th report of session 2017 – 2019). The TCTA does include the express power to sub-delegate and in making this and similar provisions, the instrument relies on section 32(8) of the Act, which provides that any power to make regulations under Part 1 of the Act includes a power conferring a discretion on any specified person to do anything by or under, or for the purposes of, the regulations and a power to make provision by reference to things specified in a notice published in accordance with the regulations.
- 3.7 Regulation 11 (retrospective authorisation) provides for authorisation to declare goods for a relevant procedure to have retrospective effect. Paragraph 1(2)(i) of Schedule 2 to the TCTA provides explicit power to make such provision and defines “retrospective authorisation” as an authorisation granted with effect from a time before the application for it is made. Regulation 11 specifies the circumstances in which retrospective authorisation may be granted and restricts the period for which an authorisation may have retrospective effect.
- 3.8 As set out above, this instrument will be supplemented by public notices and notices made pursuant to regulations. To provide clarity on how the customs regime will

operate after EU exit these are being published in a draft format alongside this instrument. The final versions, which will have legal force, will be published before this instrument comes into force.

***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)***

- 3.9 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 whole of the United Kingdom.  
4.2 The territorial application of this instrument is the whole of 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 This instrument is partially coming into force using the power in section 52(2) of the TCTA which allows subordinate legislation to be brought into force on a day appointed by the Treasury in Regulations. This is on the basis that the Treasury is of the view that it is appropriate in consequence of, or otherwise in connection with the UK's withdrawal from the EU.
- 6.2 This instrument is made using powers conferred by the following provisions of the Taxation (Cross-border Trade) Act 2018:
- sections 19, 21(7), 32(7), (8) and (13), 33(8) and 36(8) and (9)
  - paragraph 1(7) of Schedule 1
  - paragraphs 1 to 3, 9,10, 12 to 18 and 20 to 23 of Schedule 2
  - paragraphs 6 and 8 of Schedule 6
  - paragraphs 1(3)(c) of Schedule 7
- 6.3 The Treasury make this instrument exercising powers of HMRC Commissioners, using the power in section 32(13) of the TCTA, in addition to powers conferred directly on the Treasury.
- 6.4 This instrument is being made at the same time as The Customs (Import Duty) (EU Exit) Regulations 2018 which make further provision under Part 1 of the TCTA relating to import duty. Provisions in those regulations, including those relating to approvals and authorisations and declarations, will apply to the procedures covered by this instrument.
- 6.5 There are no preceding UK legislative provisions with regard to the procedures covered by this instrument because they are currently governed by EU law under the Union Customs Code, Regulation (EU) No 952/2013 (UCC). The UCC is the overarching customs legislative framework adhered to by all EU Member States. Sitting under this regulation are the implementing regulation (Commission Implementing Regulation No 2015/2447) and the delegated regulation (Commission

Delegated Regulation No 2015/2446). The delegated regulation supplements certain non-essential elements of the UCC and the implementing regulation is in place to ensure the existence of uniform conditions for the implementation of the UCC and a harmonised application of procedures by all Member States.

- 6.6 When paragraph 1 of Schedule 7 to TCTA is commenced, these regulations will be replaced by provision made by and under TCTA (including this instrument) and to the extent that these EU regulations (which will form part of the law of the UK as a result of section 3 of the European Union (Withdrawal) Act 2018) impose or otherwise apply in relation to any EU customs duty/import duty they will cease to have effect.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument, together with the TCTA and various documents and notices issued under this legislation, is designed to broadly replicate the effect of UCC legislation in relation to the outward processing and special Customs procedures. These procedures are facilitative and allow, in certain cases, for the suspension or reduction of import duty that would otherwise be due when goods are brought into the UK. In addition, what EU legislation refers to as ‘end-use procedure’, under which goods may be released to free circulation with a duty exemption or reduced rate of duty on account of their specific use, is being replaced with an ‘authorised use procedure’.
- 7.2 This instrument sets out eligibility requirements, and rules governing the operation of, the following procedures:
- a storage procedure, under which imported goods can be kept in a premises approved by HMRC (customs warehouse) without import duty being due;
  - inward and outward processing procedures, which provide for import duty advantages in cases where goods are imported to the UK for processing and then exported, or where domestic goods are exported outside the UK for processing and then returned to UK;
  - an authorised use procedure, under which goods imported to the UK for a qualifying use will be subject to a lower rate of duty than would otherwise apply if the goods were imported for a non-qualifying purpose;
  - a temporary admission procedure, under which certain goods can be imported to the UK with full or partial relief from import duty.
- 7.3 It also sets out, or otherwise provides for, detailed rules and requirements in relation to:
- authorisation to declare goods for the procedures or approval to operate a customs warehouse, including the eligibility criteria;
  - the conditions and period of approval for the procedures;
  - requirements in relation to declaration of goods to the procedures;
  - obligations on those declaring goods to the procedures and other persons;
  - calculation of import duty in certain cases;
  - discharge of procedures; the goods that are eligible or ineligible for certain procedures;

- rules concerning the uses to which goods declared to a procedure may be put; arrangements for the transfer of rights and obligations of a procedure; record keeping and the requirements governing the use of equivalent goods under the procedures.
- 7.4 In the event of a “No Deal” outcome, any ‘multi-state’ authorisations (those authorisations that cover the UK and one or more EU member state) will become invalid in the UK, to the extent that they are not covered by transitional arrangements set out elsewhere. This means businesses with such authorisations will need to apply for authorisation in accordance with this instrument in order to continue to carry out the activities specified, as current authorisations will no longer cover activity in member states.
- 7.5 Further details on the arrangements for trade between Northern Ireland and Ireland at the land border will be published in due course.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the UK from the EU as it, and other legislation made under TCTA, will ensure that the UK’s customs regime operates as required after EU exit.

## **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 broadly replace existing EU legislation into domestic legislation, it is considered that no consultation is required.

## **11. Guidance**

- 11.1 HM Revenue and Customs already publish guidance on GOV.UK in relation to the procedures covered by this instrument although, as mentioned above, what is currently referred to as ‘end-use procedure’ will be replaced by ‘authorised use procedure’. This guidance is currently being reviewed and if necessary new versions would be published prior to the commencement of this instrument.

## **12. Impact**

- 12.1 The impact on business, charities and voluntary bodies is that it introduces a number of optional procedures for businesses. While these procedures introduce an administrative burden they also offer a cash flow benefit by deferring, reducing or suspending import duties. Businesses will only incur these set up/ongoing costs if the long term cash flow benefits will help reduce the overall administrative burden of paying import duty and VAT.
- 12.2 The impact on the public sector is that additional resource may be required at customs offices to administer the new facilitations on trade between the UK and the EU.
- 12.3 This instrument is one of a group of instruments covered by a single overarching HMRC impact assessment which will be published on 4 December 2018 and will be

available on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.

### **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 business.
- 13.3 Small businesses should not be specifically disadvantaged by this regulation. The instrument introduces equivalent rules and obligations that currently apply to goods imported from countries outside the EU.

### **14. Monitoring & review**

- 14.1 HM Revenue and Customs will keep the instrument under review to ensure that it meets the policy objectives set out in section 7, and to ensure burdens on business are carefully monitored.
- 14.2 A statutory review clause is not included within these regulations because the SI relates to a tax or duty, and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

### **15. Contact**

- 15.1 Jim Holburn at HM Revenue and Customs Telephone: 03000 585778 or email: [james.holburn@hmrc.gov.uk](mailto:james.holburn@hmrc.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.