

EXPLANATORY MEMORANDUM TO

THE CUSTOMS TRANSIT PROCEDURES (EU EXIT) REGULATIONS 2018

2018 No. 1258

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue & Customs, partly 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 the 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). This instrument will be necessary to implement the UK's obligations and benefits as a contracting party to the Common Transit Convention (CTC), which currently remains subject to negotiations and accession processes, and the Transports Internationaux Routiers (TIR) Convention. It is currently a party to both, by virtue of its membership of the EU for the CTC, and these conventions facilitate international transit by suspending the duty and tax payable on goods through internationally-agreed rules and procedures, and they enable simple cross-border trade between the UK and other countries (for example the TIR Convention covers 74 countries, including all those in the EU, EFTA and the EEA), and the instrument provides similar arrangements for transit in the UK and long-standing arrangements for North Atlantic Treaty Organisation (NATO) forces.

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 February). 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 paragraph 14(2) of Schedule 1 to this instrument which refers to presentation of goods to customs under TCTA, Schedule 1, and paragraph 1(1) which is not yet in force. This means that the reference in paragraph 14(2) to this Act will not have an effect until TCTA, Schedule 1 paragraph 1(1) comes into force.
- 3.3 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.

- 3.4 The third point we wish to draw to the attention of the Committee is that this instrument makes provision by reference to things to be specified in notices published by HMRC See, for example, paragraph 63 of Schedule 1 to this instrument (business continuity procedure for the common transit procedure). 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.
- 3.5 As set out above, this instrument will be supplemented by 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)

- 3.6 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 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 regulation is made using, for the first time, powers contained within the Taxation (Cross-border Trade) Act 2018 (c. 22) in order to maintain after EU exit the UK's existing positions with regard to the Conventions. The UK's becoming an independent contracting party to the CTC will need to be ratified through the process set out in sections 20 to 25 of the Constitutional Reform and Governance Act 2010. This instrument is made using powers conferred by the following provisions of the TCTA:
- Sections 31(6) and (7) 32(7), (8) and (10), 51(1) and (3) and 52(2);
 - Paragraph 7 of Schedule 1;
 - Paragraphs 5, 7, 19(2) and 21 of Schedule 2.
- 6.3 Currently the main provisions governing the importation of goods to the UK are set out in directly applicable EU regulations. The Union Customs Code, Regulation (EU) No 952/2013 (UCC) is the overarching legislative framework for customs adhered to by all Member States. Sitting under this regulation are the implementing regulation (Commission Implementing Regulation No 2015/2447) and 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 harmonized application of procedures by all Member States. The legal basis implementing the UK's membership of the Conventions, and the similar rules for NATO forces, is contained within the UCC and its delegated and implementing regulations.
- 6.4 When paragraph 1 of Schedule 7 to TCTA is commenced these EU 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 United Kingdom 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 In the White Paper 'The Future Partnership between the UK and EU' (July 2018), the UK stated its aim to reduce trade frictions with the rest of the world in order to promote global trade opportunities and economic growth. The UK wishes to accede to the CTC in its own right after EU exit in support of this strategic policy objective. This instrument, together with the TCTA, is designed to broadly replicate the effect of the EU legislation referred to above to deliver the required legal framework.
- 7.2 The instrument sets out the various rules that will apply when goods are moving in the UK under a transit procedure, including the CTC or the TIR Convention. This includes:
- a requirement to present goods to HMRC at the start and end of the transit journey in the UK;
 - rules about declaring goods to the procedure;
 - the obligations on a person who has declared goods to the procedure or a person who is carrying these goods, and rules concerning the discharge of the procedure;

- requirements on HMRC in relation to the exchange of information and the provision of assistance to other customs authorities in relation to goods moved under the procedure;
- providing for the existing simplifications under the procedures.

7.3 At the time of laying the UK may not have fully completed its accession process to the CTC and a result further amendments or additional provisions may be needed in due course. These may be in the form of an amending or additional SI made under powers in the TCTA or guidance.

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 This instrument has not been subject to formal consultation as the UK is already a member of the Conventions. The UK has always intended to implement the Conventions in its own right once it leaves the EU, so there is continuity for business. There has however been engagement on this policy with key stakeholders (local authorities, ports and roads organisations) through regular meetings, and they welcome the UK's intention to continue to implement the Conventions and maintain other customs transit rules.

10.2 This is a reserved matter under the UK's devolution settlements. No devolved administration interests arise. Further details on the arrangements for trade between Northern Ireland and Ireland at the land border will be published in due course.

11. Guidance

11.1 HMRC already provides guidance on GOV.UK for businesses on operating the Conventions and customs transit procedures via a Transit Manual and Notices, and this guidance will be updated and available when this instrument enters force.

12. Impact

12.1 The impact on business, charities and voluntary bodies is positive as it continues to provide for an optional facilitation for UK businesses that allows goods to be moved across customs territories with the tax and duties suspended until the goods reach their final destination. Once the UK accedes to the CTC as a contracting party, rather than as an EU Member State, traders moving goods under the transit procedure will need to present goods to an office of transit when they are entering the UK from another CTC territory, or when they are entering another CTC territory from the UK. There will be costs for new traders of using the procedure but the benefits are likely to outweigh these through the deferment of customs declarations and providing the suspension of import duty.

- 12.2 The impact on the public sector is that additional resource may be required at customs offices to administer the procedure and for when goods in transit are presented upon entering the UK.
- 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 businesses since this instrument does not change existing rules with which they must comply if they elect to use a transit procedure. Guidance on transit procedures is already available and will continue to be updated.

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 of this EM, and to ensure burdens on business are carefully monitored.
- 14.2 A statutory review clause is not included within this instrument by virtue of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015. This section sets out that there is an exemption where provisions are in connection with a tax or duty.

15. Contact

- 15.1 Mike Rimmer at HM Revenue and Customs Telephone: 03000 575064 or email: mike.rimmer@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Pamela Mulholland 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.