

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS (IMPORT DUTY, TRANSIT AND MISCELLANEOUS**  
**AMENDMENTS (EU EXIT)) REGULATIONS 2019**

**2019 No. 326**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's 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 (the TCTA) to ensure that in the event of the United Kingdom (UK) leaving the European Union (EU) without a negotiated deal, the UK has a customs regime in place from the date of departure.
- 2.2 Legislation will be necessary to ensure the UK's customs regime functions as intended after the UK leaves the EU and so this instrument lays down provisions for the import of goods to the UK should the UK exit without a deal. This will include replacing provisions currently set out in EU law.
- 2.3 This instrument includes a range of temporary measures to enable trade to continue to flow while maintaining essential customs procedures. This instrument provides for a simpler process for gaining authorisation to use simplified customs procedures, and includes easements for notifying HMRC when goods have arrived in the UK. It simplifies and relaxes the requirements for delaying the time of payment, and for financial guarantees. It relaxes the liability rules where an intermediary uses their own Customs Freight Simplified Procedure authorisation on behalf of traders. It will provide for an interim process for arrival of goods under the Common Transit Convention for a small number of entry ports. These measures together will facilitate trade between the EU and the UK in the event of the UK leaving the EU without a deal where the UK will be no longer in the Customs Union.

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

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

- 3.1 The majority of this instrument will be brought into force using the power in section 52(2) of 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.
- 3.2 This instrument makes provision by reference to things to be specified in notices published by HMRC. 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). TCTA includes the express power to sub-delegate and in making this provision this instrument relies on section 32(8) of TCTA, which provides that any power to make regulations under Part 1 of TCTA 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. The majority of the notices that will be made under this instrument will be published in draft alongside the instrument so that Parliament can consider how HMRC plans to exercise the powers delegated to it. The notices that will be published in draft at a later date are:

- the notice described in regulation 15(2)(a) and 15(3)(a) giving details of the person to whom certain information relating to goods being moved under the Common Transit Procedure must be provided, and the form and manner which that information should be given; and
- the notice described in regulation 8(b) giving details of the goods that are not covered by a facilitation allowing traders additional time to notify HMRC of the arrival of goods in the UK.

This is because the detail of these notices is still being finalised.

- 3.3 A notice giving detail of the locations at which the Transitional Simplified Procedures (TSP) process will apply may be published at a later date, if deemed necessary by HMRC.

*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)*

- 3.4 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 being made using the powers contained within TCTA. The majority of this instrument will be brought into force using powers in TCTA including those in section 52(2), which enables 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 Currently the main provisions governing the import of goods from 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 EU Member States. Sitting under this regulation are the implementing regulation

(Regulation (EU) 2015/2447) and delegated regulation (Regulation (EU) 2015/2446), which are supplemented by many other regulations (for example Council Regulation (EEC) No. 2658/87, setting out the nomenclature and the tariff). 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.

- 6.3 When paragraph 1 of Schedule 7 to TCTA is commenced these EU regulations will be replaced by provision made by and under UK regulations under TCTA (including this instrument).
- 6.4 In the UK, the EU regulations referred to above are supplemented by the Customs and Excise Management Act 1979, sections 13A to 16 of, and Schedule 5 to, the Finance Act 1994 (reviews and appeals) and Part 3 of the Finance Act 2003 (penalties), which, subject to amendments made by TCTA, will remain in force after EU exit. There are also other penalties which will apply to the provisions made under the regulations set out in The Customs (Contravention of a Relevant Rule) (Amendment) (EU Exit) Regulations 2019 (SI 2019/148) laid on 31 January 2019.
- 6.5 The Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) that were laid on 30 November 2018 require that Customs declarations or temporary storage declarations at Roll on-Roll off (RoRo) listed locations are made by the time vehicles have boarded or are imported into the UK. RoRo listed locations are places in the UK specified in a notice published by HMRC, which can be found on Gov.uk at [www.gov.uk/guidance/list-of-roll-on-roll-off-ports](http://www.gov.uk/guidance/list-of-roll-on-roll-off-ports). Temporary storage is where goods are imported into the UK but temporarily stored under UK customs supervision. A declaration is required for this which is called a temporary storage declaration.
- 6.6 The Customs (Import Duty) (EU Exit) Regulations 2018 and the Customs (Special Procedure and Outward Processing) Regulations 2018 (SI 2018/1249) (Special Procedures) were also laid on 30 November 2018. These require that where a customs agent or intermediary holds a Customs Freight Simplified Procedure (CFSP) authorisation they must act in their own name when representing a party that is not authorised under this procedure. The Customs (Import Duty) (EU Exit) Regulations 2018 also set out at Part 10 the guarantee requirements that must be met in respect of a liability or potential liability to import duty.
- 6.7 The Customs Transit Procedures (EU Exit) Regulations 2018 (SI 2018/1258) were laid on 30 November 2018 to implement the requirements of the Common Transit Convention (CTC) into UK law.

## **7. Policy background**

- 7.1 In the event of a “No deal” scenario, businesses that import and export goods, and other organisations that facilitate trade (such as ferry operators, hauliers, intermediaries, ports, Eurotunnel etc.), will need time to comply with customs procedures, as set out in other instruments that broadly replicate the UCC. The Government aims to support businesses to continue to trade in this scenario and is putting in place a number of transitional easements to help businesses in the short term.
- 7.2 There are five areas where the current customs rules are being modified to support the flow of trade. These are:

- Customs Freight Simplified Procedure;
- Transitional Simplified Procedure for locations listed in a public notice;
- Guarantee;
- Arrival messages at RoRo listed locations;
- Common Transit Convention.

The facilitations described below will provide importers and intermediaries with options to meet their obligations while relaxing the timing or extent of some of the administrative aspects of those obligations.

#### Customs Freight Simplified Procedure

- 7.3 To encourage intermediaries to support new clients this instrument allows customs intermediaries to act in the name of the importer and offer their own CFSP authorisation to importers that are not authorised in their own right. This facilitation allows traders moving goods through any port or Eurotunnel to benefit from using an intermediaries' simplified customs declaration authorisation and also benefit from the deferment of customs duty, excise duty or Value Added Tax (VAT) for a specified time period. Without this change an intermediary would have to act in their own name in such circumstance, which places joint liability for any duties or VAT on the intermediary should any be due. Acting in the name of the importer places liability solely on the importer should it be due. This instrument provides that an intermediary would only be liable should they fall within the circumstances set out in section 21(6) of TCTA.
- 7.4 For this easement to apply, the importer is required to be approved to defer duties and taxes on imported goods. The importer must be registered in the UK and hold an Economic Operator Registration and Identification (EORI) number. This EORI number will be required for an importer to import goods into the UK. Intermediaries wanting to benefit from this easement would need to declare to HMRC, as is currently the case, whether they are acting in their own name, or that of a client. The Government will review this easement in line with all other easements and will give businesses and intermediaries a 12 month notice period should any changes be made to this policy. There are no additional changes to the CFSP rules or eligibility criteria. Current CFSP exemptions, which are published online in Public Notice 760 (<https://www.gov.uk/government/publications/vat-notice-760-customs-freight-simplified-procedures>), still apply.

#### Transitional Simplified Procedure

- 7.5 This instrument will also provide for transitional authorisations for importers who are making customs declarations. This allows access to a simpler process known as Transitional Simplified Procedures (TSP) to make simplified customs declarations. TSP will ease the requirement for a trader to make a full declaration, which must be pre-lodged before goods cross the border. Once HMRC has approved traders to use TSP, traders can provide a simplified declaration in advance of importing their goods. Depending on the type of goods an importer is bringing into the UK, this declaration is either submitted to HMRC, or lodged in the importer's own records. The importer is then required to make a further declaration of the full import details to HMRC at a later date. The goods for which a declaration needs to be submitted to HMRC in advance will be listed in a public notice. HMRC may also subsequently publish a

notice listing the locations at which TSP can be used. The access to TSP is temporary to allow importers who are currently unused to customs procedures to develop knowledge of requirements. This time will also allow intermediaries to scale up existing operations to take account of EU trade. HMRC will review TSP within three to six months, and traders will be given at least 12 months' notice prior to its withdrawal.

- 7.6 Traders who register for TSP will need to apply to HMRC to defer duty where they will have duties or taxes to pay.

#### Guarantee

- 7.7 Regulation 43 of the Customs (Import Duty) (EU Exit) Regulations 2018 requires that in order to defer duty a trader must provide a single or comprehensive guarantee and be authorised to do so by HMRC. This instrument will provide that traders applying to defer duty, or needing to increase the amount of duty they wish to defer, will have a period of grace until 30 June 2019 to provide a comprehensive guarantee to cover the monthly duties deferred. In addition, traders will not be required to be authorised by HMRC before they can provide a comprehensive guarantee. Traders will be eligible to defer duty if they are established in the UK.

- 7.8 This instrument will also provide that traders will not usually be required to give a financial guarantee to be authorised to use special procedures (excluding transit because the UK will be a contracting party to the Common Transit Convention which contains its own guarantee requirements for transit) and temporary storage.

#### Arrival messages at RoRo listed locations

- 7.9 The instrument also introduces an additional facilitation for importers using RoRo listed locations. This instrument allows traders until the end of the working day, following the crossing via a RoRo listed location, to notify HMRC of the arrival of the goods in the UK. For importers using the TSP Standard Goods Procedure or an entry in the importer's own records, this instrument establishes that an arrival notification in this form will not be required. This instrument will provide that when the goods are imported into the UK it will be deemed that HMRC has been informed of their arrival in the required manner. HMRC will be treated as having accepted the customs declaration at this time. This sets the point at which importers become liable for customs duties or VAT at the time their goods are imported into the UK. When payment of any duties must be made will depend on the declaration procedure which has been provided for in another instrument. The goods are free to leave the RoRo listed location once the declaration is treated as accepted by HMRC.

#### Common Transit Convention

- 7.10 Moving goods under the Common Transit Convention (CTC) allows for suspension of duty and some import declarations until the goods reach their final destination. For goods arriving under CTC at a small number of high volume ports of entry in the UK, and for a limited period of time an interim arrangement will be put in place to facilitate the flow of traffic through those ports. This arrangement will require the provision of data before the goods arrive in the UK, rather than at the point of entry into the UK. This instrument makes amendments to Schedule 1 paragraphs 2 and 27 to the Customs Transit Procedures (EU Exit) Regulations 2018 to give this effect. It will make it a requirement for hauliers moving goods through Dover, Eurotunnel and Holyhead to i) additionally provide the Vehicle Registration Number (VRN), and ii)

provide their documents required to use CTC and the VRN prior to the arrival of the goods in the UK.

## **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 because 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 HMRC has informally consulted ports, hauliers and ferry operators on the policies included in this instrument. The regulations introduced here have taken into account the views expressed by these external stakeholders in this consultation. Specifically the easements that allow for TSP, the notification of arrivals and the direct representation from intermediaries have resulted from concerns raised in this consultation.

## **11. Guidance**

11.1 There is already guidance on this on GOV.UK. One such page is:  
<https://www.gov.uk/guidance/declaring-your-goods-at-customs-if-the-uk-leaves-the-eu-with-no-deal>.

11.2 This guidance is currently being reviewed and where necessary will be updated prior to EU exit.

## **12. Impact**

12.1 The impact on businesses, charities and voluntary bodies is that in the event of the UK leaving the EU without a deal this will introduce new customs regulations for businesses that trade with the EU. This is expected to be a significant administrative cost impacting UK businesses of all sectors having to prepare to undertake new customs procedures. This instrument does contain a number of easements designed to make certain obligations easier to comply with that will reduce the impact on businesses, charities and voluntary bodies.

12.2 The impact on the public sector is that additional resource will be required at customs offices to administer the new obligations on trade between the UK and the EU.

12.3 This instrument will be covered by an overarching HMRC impact assessment (third edition) which will be published and 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 (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses is they allow access to TSP which reduces the requirement to make a full declaration in advance. Also, the changes to rules for customs agents and intermediaries will give easier access for small businesses to these agents and intermediaries which will assist them in complying with their customs requirements.

#### **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 explanatory memorandum, and to ensure burdens on business are carefully monitored.
- 14.2 A statutory review provision 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 John Sandeman at HMRC Telephone: 03000 589 486 or email: [john.sandeman@hmrc.gov.uk](mailto:john.sandeman@hmrc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Pamela Mulholland, Deputy Director for Customs, EU Exit Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Mel Stride MP, the Financial Secretary to the Treasury and Paymaster General, can confirm that this Explanatory Memorandum meets the required standard.