

**EXPLANATORY MEMORANDUM TO**  
**THE TAXATION (CROSS-BORDER TRADE) (MISCELLANEOUS PROVISIONS)**  
**(EU EXIT) REGULATIONS 2019**

**2019 No. 486**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) 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 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 before the date of departure.
- 2.2 This instrument introduces new arrangements for travellers who bring commercial goods into the UK in accompanied baggage or in small vehicles, it modifies some of the declaration requirements that will be applicable at Roll on Roll off (RoRo) locations and it makes other miscellaneous amendments to existing customs regulations.
- 2.3 This instrument also corrects defects in The Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018 (SI 2018/1247), The Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248), The Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (2018/1249), The Customs Transit Procedures (EU Exit) Regulations 2018 (2018/1258), The Customs (Contravention of a Relevant Rule) (Amendment) (EU Exit) Regulations 2018 (2018/1260), The Customs (Export) (EU Exit) Regulations 2019 (2019/108) and The Customs (Contravention of a Relevant Rule) (Amendment) (EU Exit) Regulations 2019 (2019/148). Consequently, it is being issued free of charge to all known recipients of those regulations.

**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. The relevant parts of this instrument will apply in the event of the UK leaving the EU without a negotiated deal.
- 3.2 TCTA includes the express power to sub-delegate and in making provision for notices 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 or other document published in accordance with the regulations. This instrument uses this provision (notices and other reference documents will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>).

- 3.3 The defects corrected by this instrument that are referenced in paragraph 2.3 above include defects identified by the Select Committee on Statutory Instruments in its [Eleventh Report of Session 2017 - 19](#).

*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 laid using the powers contained within TCTA and the Finance Act 2003. The majority of this instrument will be brought into force using the power in section 52(2) of TCTA 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 into the UK and export 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 Member States. Sitting under this regulation are the implementing regulation (Commission Implementing Regulation (EU) 2015/2447) and delegated regulation (Commission Delegated 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, to the extent that they apply in relation to customs duty, will be replaced by provision made by and under UK regulations under the 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 (CEMA), 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 the 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 2003 as amended in 2018 and 2019.
- 6.5 The customs framework that will apply in the event the UK leaves the EU without a deal is set out in TCTA as supplemented by UK Regulations, some of which are being amended by this instrument. The Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) laid on 30 November 2018 require that customs declarations for goods carried on freight vehicles destined for RoRo listed locations (a list of such locations can be found at: <https://www.gov.uk/guidance/list-of-roll-on-roll-off-ports>) are made before the vehicle boards the vessel or train that is destined for the UK.

## **7. Policy background**

### Merchandise in Baggage

- 7.1 Merchandise in Baggage (MIB) refers to commercial goods contained in a traveller's accompanied baggage. These are typically high value items or small quantities of trade samples.
- 7.2 This instrument introduces a new legislative framework for MIB, which will apply in the event of a 'No Deal' scenario. The objective is to help travellers to make customs declarations for MIB brought into the UK through RoRo listed locations and the Eurostar terminals and to mitigate the risk of queues at all points of entry into the UK.
- 7.3 Currently, travellers who bring MIB into the UK from outside of the EU are required to declare and present the goods in the Red (Goods to Declare) Channel at the airport or port of arrival in the UK. In the event of a 'No Deal' scenario, travellers arriving from the EU will need to present and declare MIB to Customs. However, Red Channels do not exist at most RoRo listed locations or at Eurostar terminals.
- 7.4 The current arrangements allow a traveller to make a simple oral declaration in the Red Channel, rather than having to submit a full paper or electronic customs declaration, if the MIB does not exceed £900, weighs no more than 1000kgs and if certain other conditions are met.
- 7.5 This instrument, together with associated HMRC notices, will offer travellers who import similar low value MIB at certain locations an alternative simple option. Specifically, those travellers will be able to make a simplified online declaration together with payment of duty and tax before arriving in the UK if the goods do not exceed £900 in value, weigh no more than 1000kgs, are not subject to excise duty and are not 'controlled goods' specified in a notice published by HMRC. HMRC will publish, in a notice, a list of locations for the application of this option called the 'List of ports eligible for the MIB import online declaration service', which will include all RoRo listed locations and the Eurostar terminals. This arrangement will mitigate the risk of queues at these locations for travellers from the EU.
- 7.6 In other MIB cases (e.g. for goods that exceed £900 in value), this instrument will (subject to certain exceptions) require the traveller to make a full electronic customs declaration within the period of five working days ending with the day on which the

goods are expected to be imported (currently, full declarations are required to be made in the Red Channel when MIB of this description is brought into the UK from outside of the EU). This mandatory requirement applies to all locations and does not distinguish between MIB arriving from the EU and MIB arriving from the rest of the world.

- 7.7 These arrangements are not limited to goods in accompanied baggage but also apply where goods are carried in a small motor vehicle. Accordingly, small businesses who import small amounts of commercial goods in their small motor vehicles and employees who do likewise on behalf of their employers will be able to avoid the burden of having to submit full customs declarations where the goods fall within the criteria described in paragraph 7.5 above.

Modification of declaration requirements at RoRo listed locations

- 7.8 In the event of a ‘No Deal’ scenario, regulations that have already been made under TCTA will make it compulsory, when goods are loaded on a freight vehicle carried by a train or vessel destined for a RoRo listed location, for a customs declaration to be made prior to boarding (either a full declaration, simplified frontier declaration or declaration lodged in the importer’s own records depending on any authorisations held by the importer). This instrument introduces two new exceptions to that requirement.
- 7.9 The first exception ensures that the Royal Mail Group can make customs declarations, on behalf of senders of parcels, at its designated office of exchange in the UK. This allows the provisions that currently exist for parcels that arrive from outside of the EU to apply equally to EU parcels arriving at RoRo listed locations after the UK has left the EU. In order to comply with its obligations as the UK’s Universal Postal Service the Royal Mail Group needs to be able to make declarations on behalf of senders and would find it difficult to use RoRo listed locations without this exception.
- 7.10 The second exception applies to traders who use RoRo listed locations to import certain goods (e.g. temporary admission of packaging, broadcasting equipment or disaster relief materials). It ensures that they have the option to make a simple declaration by conduct at the port instead of submitting a full declaration in advance of boarding. Declaration by conduct, when driving or being driven, involves driving through or past a defined point or location while carrying goods.
- 7.11 This instrument also removes the need for an individual passenger who is travelling by vehicle to or from the UK via RoRo listed location to drive through a separate lane and to display a ‘nothing to declare’ sticker, as designated lanes do not exist in such locations.

UK sector of the continental shelf

- 7.12 This instrument also makes changes necessary to ensure that arrangements currently applicable to the oil and gas industry can continue post exit day. These changes relate to a special customs procedure which provides for duty reduction for goods imported to the UK to be put to a qualifying use. For a number of years, the oil and gas industry has been using this procedure to obtain relief from customs duties for goods intended for use on oil platforms on the UK sector of the continental shelf. New EU law introduced in 2016 and subsequent Commission guidance in late 2017 clarified that this practice could no longer continue. HMRC gave affected traders until May 2019 to stop claiming relief or change their business practices. This instrument provides that, after exit day, goods can be declared to this customs procedure at a reduced rate of

duty in the UK, even when they are intended for use on the UK sector of the continental shelf.

*Transitional Simplified Arrangements Procedure (TSP) and supplementary declarations*

- 7.13 This instrument makes amendments to existing customs regulations that allow traders who are authorised to use TSP to make a simplified customs declaration by lodgement in the importer's own records. This instrument will allow such traders who make a simplified declaration within a specified period, to make a supplementary declaration after the end of that period. The specified period begins with the day following the day on which the UK leaves the EU and ends with the day before a date to be specified in a public notice, which will be published before 29 March 2019. Supplementary declarations will need to be made by the fourth working day following the end of the specified period.
- 7.14 It also clarifies the process for submitting supplementary declarations for imports, including the possibility to make supplementary declarations within the same calendar month as import, and introduces greater flexibility for importers.

*Other miscellaneous amendments*

- 7.15 This instrument makes other miscellaneous amendments to regulations that have already been made under TCTA and it makes consequential amendments to regulations made under CEMA.
- 7.16 These amendments are minor and predominantly technical in nature. Some address gaps in the existing regulations that, for technical or other reasons, could not be addressed at the time the existing regulations were made (for example, due to the need to cross refer to instruments that had yet to be made at the time); others correct minor errors; others add clarity; and others make modifications that are necessary as a consequence of recent legislative changes.
- 7.17 In particular, this instrument:
- Introduces a legislative framework for the repayment of anti-dumping and countervailing duties (as applies under EU law currently and is a requirement of World Trade Organisation law), these being duties that can be imposed when dumped or subsidised imports cause injury to UK businesses. Repayments are to be made in cases in which the Trade Remedies Authority, the new body responsible for such matters, has determined that they are due;
  - Modifies and clarifies provisions relating to certain special customs procedures that can apply when goods are imported to the UK. The procedures referred to in this instrument are inward and outward processing procedures, which provide for import duty advantages where goods are imported to the UK for processing, or where goods are exported outside the UK for processing and then returned to the UK; and authorised use procedure, which provides for duty reduction for goods imported to the UK to be put to a qualifying use;
  - Modifies and clarifies provisions relating to the export of goods from the UK including providing for a simplified mechanism ('onward export notification') for notifying HM Revenue and Customs of the export of goods that have been imported into temporary storage (so that import duty is suspended) and held there for a short space of time. This is based on similar provisions in EU law.

It also makes other changes to export regulations, including the introduction of provisions for approving places for the examination of goods prior to export;

- Updates provisions concerning the transit procedure (under which import duty can be suspended for goods moving within the UK). These changes include those necessary to reflect the accession of the UK to the Convention on a common transit procedure on behalf of the Bailiwick of Guernsey, the Bailiwick of Jersey and the Sovereign Base Areas of Akrotiri and Dhekelia;
- Clarifies the circumstances in which declarations may be made in the Green (Nothing to Declare) Channels at ports and airports; and
- Modifies a number of penalty provisions as a consequence of recent legislative changes and introduces a penalty regime for failing to inform HMRC that goods have been exported.

## **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 but relates to the withdrawal of the UK from the European Union because it is part of the legislation necessary to ensure that, in the event of the UK leaving the EU without a negotiated deal, the UK has a customs regime in place before the date of departure.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the amendments at this time.

## **10. Consultation outcome**

- 10.1 As the purpose of this instrument is to ensure that customs legislation governed by the EU is provided for in UK legislation, no formal consultation has been carried out.

## **11. Guidance**

- 11.1 The guidance available at <https://www.gov.uk/government/collections/trading-with-the-eu-if-the-uk-leaves-without-a-deal> will be updated to reflect these changes.

## **12. Impact**

- 12.1 The impact on business, charities and voluntary bodies is that it introduces new customs obligations when they trade with the EU. This is expected to be a significant administrative cost impacting UK businesses of all sectors and sizes.
- 12.2 The impact on the public sector is that additional resource will be required at HMRC to administer the new obligations on trade between the EU and the UK.
- 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 the impact of the requirements 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 that no specific action is proposed to minimise impacts where legislation introduces equivalent rules and obligations that currently apply to goods imported from 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.
- 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 Katherine Thompson at HM Revenue and Customs, telephone: 03000 585727 or email: [Katherine.Thompson@hmrc.gov.uk](mailto:Katherine.Thompson@hmrc.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 Pamela Mulholland, Deputy Director for Customs EU Exit Policy HM Revenue and Customs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Mel Stride MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.