

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (MANAGED TRANSITION PROCEDURE) (EU EXIT)
REGULATIONS 2019

2019 No. 487

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue & 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 from the date of departure.
- 2.2 In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure the UK's customs regime can be administered by HMRC in a way that enables trade to continue to flow after exit. This instrument will give HMRC a temporary power for twelve months to issue a public notice to relax the requirement to make a declaration by a certain time for certain traders importing or exporting certain goods from or to the EU. These are additional temporary changes to support trade immediately, and will not form part of the longer-term customs model. They will only be invoked if the Commissioners for HMRC believe it is necessary to do so in order to maintain the smooth operation of the border.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument will be brought into force using the power in section 52 of TCTA. This enables subordinate legislation to be brought into force on a day appointed by the Treasury in regulations. This is on the basis that it is the Treasury's view that it is appropriate to bring the instrument into force following the UK's withdrawal from the EU. HMRC will only use the powers in this instrument if it is considered necessary to do so to allow trade to continue to flow. As set out in section 14.2 below, the instrument will cease to have effect after twelve months from the date on which it comes into force, or such earlier date specified by the Treasury in regulations.
- 3.2 The instrument is made under section 51 of TCTA. Section 51(3)(a) provides that regulations made under section 51 may include any such provision as might be made by Act of Parliament. Regulation 2(1) of the Regulations provides for Parts 2 and 3 of the Regulations to be treated as part of Part 1 of TCTA.
- 3.3 The instrument makes provision by reference to matters to be specified in a public notice published by the Commissioners for HMRC. For example, regulation 3(1)(c)

provides that Part 2 of the Regulations applies in cases where the importation occurs at a place and in circumstances specified in a public notice.

- 3.4 The meaning of “public notice” is given in section 37(5) of TCTA. The references in the Regulations to matters to be specified in a public notice mirror provision made in TCTA, for example in paragraph 7 of Schedule 1 to that Act. If the Treasury consider that it is appropriate to bring the instrument into force, relevant public notices will then be published.
- 3.5 The instrument makes provision for regulation-making powers to end the effect of the instrument and provide transitional, transitory or saving provisions (regulation 1(4) and (5)). The power in section 51(3)(a) of TCTA to make any provision that might be made by an Act of Parliament includes the power of legislative sub-delegation. Regulations made under regulation 1(4) and (5) are not subject to any parliamentary procedure. This is because the power in these particular regulations is limited to providing for this easement to cease to have effect and provision directly linked to that easement coming to an end.

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 These regulations are being laid using the powers contained within TCTA. As stated in 3.1 above, 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 to bring the instrument into force as a result of circumstances arising from the UK’s withdrawal from the EU.
- 6.2 Currently the main provisions governing the import and export of goods to and from the UK are set out in directly applicable EU regulations. These include the Union Customs Code (Regulation (EU) No. 952/2013) (UCC), which is the overarching legislative framework for customs adhered to by all Member States. Sitting under this regulation are the implementing regulation (Regulation (EU) 2015/2447) and delegated regulation (Regulation (EU) 2015/2446), which are themselves supplemented by many other regulations (for example Council Regulation (EEC) 2658/87, setting out the nomenclature and the tariff). 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 delegated regulation covers certain non-essential elements of the UCC

- 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 sections 13 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.
- 6.5 Legislation relating to customs declarations and export notifications in a no deal scenario is set out in TCTA. The Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) laid on 30 November 2018 place a new obligation on importers and operators of ferries and the operator of the Channel Tunnel train freight service where goods are to be imported by ferry or train at Roll on Roll off (RoRo) locations (a list of such locations can be found at: <https://www.gov.uk/guidance/list-of-roll-on-roll-off-ports>). This new obligation requires the appropriate person to make a declaration by the time the goods have boarded a train or a ferry.
- 6.6 The Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108) laid on 31 January 2019 make provision for an export procedure under TCTA that will allow HMRC to, among other things, introduce export declarations for goods leaving the UK.
- 6.7 The Customs (Contravention of a Relevant Rule) Regulations 2003 (SI 2003/3113) prescribe the customs rules, contravention of which gives rise to a liability to a customs civil penalty, the persons who may be penalised and the maximum penalty that may be imposed in particular cases.

7. Policy background

What is being done and why?

- 7.1 While the UK is a member of the EU, declarations are not required for most goods moving between EU Member States and the UK. Declarations are only required for imports or exports from the rest of the world. In the event of a no deal, businesses and individuals who move goods between EU Member States and the UK will be subject to customs import and export procedures from exit day as trade with the EU will be on the same terms as with most non-EU countries. Many businesses and individuals who only trade with the EU may be unfamiliar with these customs import and export requirements.
- 7.2 Importers and exporters who move goods should complete the customs documentation at the correct time, or engage a customs agent to do this on their behalf. Under the legislation in a no deal scenario, when importing goods into the UK, traders (or their agents) have to make a customs declaration when the goods arrive at the UK border (for RoRo locations the declaration should be made before boarding in the case of ferries and before entering the control zone in the case of the Channel Tunnel) and the declaration has to be accepted by HMRC before the goods can leave the port or Channel Tunnel terminal. In relation to exports, traders (or their agents) must make an export declaration for goods leaving the UK.
- 7.3 The Government has designed its model for customs in the event of no deal to be as facilitative as possible for traders. For example, as part of the Customs (Import Duty,

Transit and Miscellaneous Amendment (EU Exit) Regulations 2019 (SI 2019/326) traders authorised to use Transitional Simplified Procedures will be able to make simplified customs declarations, while importers using RoRo locations will be able to use a facilitation relating to the arrangements for notifying HMRC of the arrival of their goods in the UK. However, given the limited time to prepare, limited capacity of customs agents, complex information, and specialist knowledge and information technology required to make declarations, many traders may not be able to comply with the documentation requirements initially, if the UK leaves the EU without a deal.

- 7.4 Where a declaration has not been made, Border Force has the power to detain or seize goods and not allow their release until a declaration has been submitted and cleared. The practical implication of this is that goods that have not been declared cannot be moved out of the port environment. In a no deal scenario, given the concerns over the ability of many traders initially to comply with the documentation requirements and limited space available for additional infrastructure at ports, there is a risk that preventing goods leaving the ports may lead to congestion at ports.

Managed Transition for Imports and Exports

- 7.5 This instrument provides HMRC with a temporary power to specify the circumstances in which certain traders importing or exporting goods at designated locations, who have not been able to make a declaration within the required time, will be allowed to make a declaration. In relation to imports, by following the conduct for declaring goods (that will be set out in a public notice removing HMRC's control over the goods), the trader will be able to take the goods away from the port area and make them available in the UK market. However, for the declaration to be completed, the trader will need to provide further information to HMRC about the importation of those goods within a set period of time after the import, as will be specified in a public notice. This period of time will commence on the day the goods are declared. A trader will be able to export the goods from the UK by following the conduct set out in a public notice for declaring the goods for export. They will then need to provide further information within a period of time specified in a public notice after the export of the goods in order to complete the export declaration.
- 7.6 For both imports and exports, details of the traders that will be able to use this easement, the locations at which the easement will apply, the manner in which they will be able to declare the goods so that the goods can move freely, and the further information required to enable the full declaration process to be completed will be set out in a public notice. HMRC will also specify goods that will not be covered by this instrument in a public notice.
- 7.7 To deal with any eligible traders who may consider using the easement inappropriately, by (for example) trying to avoid the payment of duty, the instrument provides the power for an HMRC officer to give a notice removing the trader's eligibility to use the easement. An HMRC officer can withdraw such a notice, and the trader affected may also request a review and/or appeal against any such notice to an independent tribunal.
- 7.8 If a customs or export declaration is not completed when it is required to be under this instrument, then it is to be regarded as containing an inaccuracy for the purposes of Schedule 1 to TCTA, in the case of a customs declaration, and the Customs (Export) (EU Exit) Regulations 2019, in the case of an export declaration. These set out the arrangements for handling an inaccuracy in a declaration. The instrument also makes

an amendment to the Customs (Contravention of a Relevant Rule) Regulations 2003 so that penalties will be incurred by traders covered by the regulations in this instrument who fail to provide the further information required to enable the full declaration process to be completed.

- 7.9 The instrument allows traders covered by these regulations to move imported goods subject to these easements out of the ports. It removes HMRC's control over the goods before HMRC receives further information about the goods in question, any relevant duty has been paid or an alternative payment arrangement for paying such duty has been put in place. In the case of exports, it will allow goods to be exported if they arrive at the port without the relevant notification having been completed and for the information to be provided at a later date.
- 7.10 In a no deal scenario there is a risk that lack of trader readiness could adversely affect or prevent trade across the border. Therefore, through this instrument, HMRC is taking powers that will allow it to manage this risk should it arise. These are additional temporary changes to support trade immediately after Day 1 if there is no deal. The powers do not form part of HMRC's longer-term customs model for a no deal scenario, and would only be invoked if the Commissioners for HMRC believed it was necessary to do so in order to maintain smooth operation of the border.

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 While no formal consultation was carried out, discussions with traders, carriers, agents and other intermediaries using RoRo ports showed that a significant number of them would not be ready to fulfil the requirements for completing customs documentation by 29 March 2019. Two concerns emerged from these discussions. First, if large numbers of organisations are not ready, there is a risk that ports will quickly run out of space and gridlock would result. Second, feedback from businesses has indicated that failing to comply with customs legal requirements could put them in breach of their contractual obligations to their boards and/or insurers and they may consider stopping importing as a result (despite HMRC's existing ability to use discretion in applying penalties, on a case by case basis). If businesses decide to stop importing goods, this could have a significant economic impact. This instrument will give HMRC a temporary power if the UK leaves the EU without a deal to allow certain traders a longer period to complete their customs declarations which will help to address both of these concerns.

11. Guidance

- 11.1 Guidance on existing customs legislation is already available on the Gov.uk website (<https://www.gov.uk/business-and-industry/trade-and->

investment#guidance_and_regulation) and this will be updated as necessary to reflect the impact of the UK leaving the EU, including the easements being made under this instrument.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that in the event of the UK leaving the EU without a deal this will introduce new customs obligations for businesses that trade with the EU. Such obligations are expected to be a significant administrative cost impacting UK businesses of all sectors. However, this instrument contains an easement for certain traders which is designed to make aspects of customs declarations easier to comply with. This is expected to have a beneficial impact on those traders who are eligible to use this easement.
- 12.2 The impact on the public sector is that additional resource will be required at customs offices to ensure that traders using this easement comply with the requirement to provide further information within the specified period.
- 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 following discussions with the stakeholders listed in 10.1 above, it is expected that many small businesses will be among those that may not be able initially to comply with the customs documentation requirements. This measure does not create any additional regulatory burden for small businesses, but where invoked will provide an easement that is likely to cover many such businesses.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under review for the twelve month period in which it is in force to ensure that it meets the policy objectives set out in section 7.
- 14.2 The instrument will cease to apply after twelve months following the day appointed by the Treasury for the instrument to come into force. The Treasury may also decide to withdraw or amend these regulations as necessary at an earlier date for the protection of revenue.

15. Contact

- 15.1 Michelle Stokell at HM Revenue & Customs Telephone: 03000 585127 or email: michelle.stokell@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Aidan Reilly, Deputy Director for Customs Policy, at HM Revenue & Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Mel Stride MP, Financial Secretary to the Treasury and Paymaster General, can confirm that this Explanatory Memorandum meets the required standard.