

EXPLANATORY MEMORANDUM TO
THE TAXATION CROSS-BORDER TRADE (SPECIAL PROCEDURES
SUPPLEMENTARY AND GENERAL PROVISION ETC.) (EU EXIT)
REGULATIONS 2020

2020 No. 1439

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 The purpose of this instrument is to ensure the United Kingdom (UK) has a comprehensive customs regime in place at the end of the transition period. The instrument introduces new simplified customs arrangements that will apply to certain goods imported into the UK and used under the temporary admission or inward processing procedures.
- 2.2 The instrument also includes a provision that allows for the application of Free Trade Agreements (FTA) duties which may in some cases be higher than the UK Global Tariff (UKGT).
- 2.3 The instrument also includes minor changes concerning the ability to amend or withdraw a customs declaration, updates requirements in relation to the keeping of records for customs purposes and ensures that excise duty relief is available for goods that arrive in the UK but remain on board a train, on the same basis as this relief is available for goods on a ship or aircraft.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 Provisions in this instrument will come into force at the end of the transition period pursuant to regulations made under section 52 of the Taxation (Cross-border Trade) Act 2018 (TCTA). Regulations 1, 5 and 6 will come into force on the day after the day on which the instrument is made in order for provisions to be made under the amended or modified provisions before the end of the transition period. Regulation 7 will come into force on 31 December 2020.
- 3.2 The instrument also makes provision to amend TCTA so that regulations made by HMRC can limit the entitlement to amend or withdraw a customs declaration without the consent of an HMRC officer, where necessary to accommodate circumstances where declarations are made in advance of the goods being imported. The power used for this provision is section 51(1)(c) and (3). Section 51(3)(a) provides the power for regulations made under section 51 to make any such provision as might be made by an Act of Parliament including provision amending TCTA.

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)

- 3.3 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.4 The powers under which this instrument is made (TCTA) cover the entire United Kingdom and the territorial application of this instrument is not limited either by the Act, the instrument or the Northern Ireland Protocol.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The provisions of this instrument apply to movements into Great Britain and Northern Ireland (in accordance with the Northern Ireland Protocol).

5. European Convention on Human Rights

- 5.1 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights for this instrument:

“In my view the provisions of the Taxation Cross-border Trade (Special Procedures Supplementary and General Provision etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The procedures covered by this instrument 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 Member States (and by the United Kingdom during the transition period). Sitting under this regulation are the implementing regulation (Commission Implementing Regulation (EU) 2015/2447) and the delegated regulation (Commission Delegated Regulation (EU) 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.
- 6.2 This instrument includes measures concerning special customs procedures and will apply in addition to provisions set out in the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (S.I. 2018/1249) and in Schedule 2 to TCTA. Special customs procedures are identified in section 3(4) of TCTA. These procedures have in common that they allow for the suspension or reduction of import duty when goods are imported to the UK.
- 6.3 When paragraph 1 of Schedule 7 to TCTA is commenced the EU regulations set out in section 6.1, to the extent that they apply in relation to customs duty, will be replaced by provision made by and under UK regulations under TCTA (including this instrument). These will be supplemented by 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), all of which will remain in force following the end of the transition period.
- 6.4 The provisions of the Northern Ireland Protocol for customs are given effect through section 7A of the European Union (Withdrawal) Act 2018. The government’s position on various issues, including those relating to customs, was set out in the policy paper “The UK’s approach to the Northern Ireland Protocol” of 20 May 2020. Further

legislation relating to the implementation and application of the Northern Ireland Protocol will be made and laid later this month.

- 6.5 This instrument also includes amendments to Schedule 1 and Schedule 7 to TCTA, a modification of section 9 of TCTA and amendments of the Customs (Records) (EU Exit) Regulations 2019 (S.I. 2019/113). The relevant part of Schedule 1 places restrictions on the amendment or withdrawal of customs declarations. The relevant part of Schedule 7, Part 2, amends the Customs and Excise Management Act 1979 in consequence of provisions made by the TCTA. Section 9 of TCTA allows provisions to be made for a lower rate of duty (a ‘preferential rate’) to be applied to goods originating from specific territories in order to give effect to arrangements between the UK and the governments of those territories. The Customs (Records) (EU Exit) Regulations 2019 is made under section 30 of TCTA and provides for requirements relating to customs record keeping currently in the UCC that cannot be made under section 21 of the Finance Act 1994.
- 6.6 The amendments made by this instrument include references to the EU Customs Code as it has effect in Great Britain. The EU Customs Code is the EU customs legislation referred to in paragraph 6.1. References in TCTA legislation to the EU Customs Code ‘except the EUCL’ are to those parts of the EU Customs Code that will not be replaced by provision made by and under TCTA, as described in paragraph 6.3. This therefore concerns EU customs legislation relating to non-customs duty matters. References in TCTA legislation to the EU Customs Code as it has effect as a result of the EU withdrawal agreement, are to those parts of the EU Customs Code given continuing effect for a temporary period by the EU withdrawal agreement, for example in relation to goods subject to an EU customs procedure at the end of the transition period. This concerns EU customs legislation in relation to customs duty matters and non-customs duty matters.

7. Policy background

What is being done and why?

- 7.1 The government is introducing customs legislation to ensure that the UK has a working customs regime at the end of the transition period.
- 7.2 The majority of this instrument concerns procedures under customs legislation which allow, in certain circumstances, for import duty to be suspended or relieved when goods are imported into the UK. The procedures referred to in the instrument are:
- an inward procedure which allows raw materials or semi-manufactured goods to be imported then processed for re-export or placed on the home market
 - a temporary admission procedure which allows for the temporary importation of goods (such as items for exhibition) into the UK with full or partial relief from import duty.
- 7.3 In relation to these special customs procedures, this instrument is designed to broadly replicate the effect of EU legislation as it currently applies in the UK. It is therefore intended to provide continuity with customs rules that are currently in place between the EU and non-EU countries and to extend these rules to trade between the UK and EU Member States. The instrument would provide simplified arrangements under which imported goods that have been entered into an inward processing or temporary admission procedure and used for certain purposes can be released from customs

control and to the home market without requiring a customs declaration or payment of import duties.

Tariff rates

- 7.4 Following the introduction of the UKGT, there are now some instances where it will not be possible to determine whether the tariff rate in a FTA is lower or higher than the UKGT. For example, where the UKGT is “10% of the customs value” but the FTA rate is “£10 per 100kg”, it is not possible to say which is the “true” preference without specific knowledge of each import. Importers will always be able to import goods under the UKGT rate. However, the instrument contains a non-textual modification which will ensure the Treasury can apply such “indeterminate” rates through regulations made under section 9 of TCTA.

Other changes

- 7.5 This instrument also includes a number of smaller changes:
- TCTA defines circumstances in which a person must have permission from HMRC to amend or withdraw a customs declaration. The instrument would allow HMRC to modify these rules by regulations, where necessary to accommodate circumstances where declarations are made in advance of the goods being imported.
 - a minor amendment is made (under TCTA) to the Customs and Excise Management Act 1979 to ensure that the relief from excise duty that applies to goods which move into and out of the UK in ships or aircraft while they remain on board for use in those ships and aircraft also applies to goods for use on trains.
 - the instrument also updates the Customs (Records) (EU Exit) Regulations 2019 which provides for the information and documents that must be kept in relation to customs matters by a person importing or exporting goods. It clarifies when a person is required to keep records in relation to customs matters and how these record-keeping requirements apply in relation to records created before the end of the transition period.

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 United Kingdom from the European Union because it, and other legislation made under TCTA, will ensure that the United Kingdom’s customs regime operates as required once European Union customs legislation ceases to apply at the end of the transition period.

9. Consolidation

- 9.1 The majority of this instrument is new legislation and therefore no consolidation is required. The amendments made by the instrument are minor and therefore it is not considered to be appropriate to consolidate at this time.

10. Consultation outcome

- 10.1 As the purpose of this instrument is broadly to retain rules that currently apply in the UK, no formal consultation was carried out.

11. Guidance

- 11.1 HMRC already publish guidance on [GOV.UK](https://www.gov.uk) which will be updated before the end of the transition period.

12. Impact

- 12.1 The impact on business, charities and voluntary bodies is expected to be negligible. The changes include those that broadly replicate simplifications that currently apply, clarify requirements or make provision for future changes.
- 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 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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 they should not be specifically disadvantaged by these regulations because the instrument introduces equivalent legislation to that which currently applies to goods imported from countries outside the EU.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out in section 7, and to ensure burdens on businesses are carefully monitored.
- 14.2 A statutory review clause is not included within these regulations because the instrument 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 James Holburn at HMRC, james.holburn@hmrc.gov.uk, can be contacted by email with any queries regarding the instrument.
- 15.2 Tessa Robins, Deputy Director Customs Policy, Customs & Border Design at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.