

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS (TEMPORARY STORAGE FACILITIES APPROVAL**  
**CONDITIONS AND MISCELLANEOUS AMENDMENTS) (EU EXIT)**  
**REGULATIONS 2018**

**2018 No. 1247**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

**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 create a new standalone customs regime following the United Kingdom's (UK) exit from the European Union (EU). In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure the UK's Customs, VAT and Excise regimes function as intended after the UK leaves the EU. Unless traders complete a customs declaration immediately when the goods enter the UK, a temporary storage declaration must be made and the goods must be stored at approved facilities (temporary storage facilities). The purpose of this instrument is to explain the conditions to be met before approval can be granted; and make amendments to existing UK regulations dealing with the control and movement of goods before a formal decision is made regarding the customs treatment of the goods, which are required to ensure those regulations are consistent with other legislation forming part of the new UK customs regime.

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

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

- 3.1 None.

*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)*

- 3.2 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 powers contained in section 25(1A) of CEMA, and sections 51 and 52 of the Taxation (Cross-border Trade) Act 2018 (TCTA). It will be the first time the powers contained in section 25(1A) of the Customs and Excise Management Act 1979 (“CEMA”) are used.
- 6.2 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), which are supplemented by many other regulations. 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.
- 6.3 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.
- 6.4 In the UK the EU regulations referred to above are supplemented by 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.
- 6.5 The power in section 25(1A) CEMA was inserted by paragraph 16(3) of Schedule 7 to the TCTA. It is exercised so as to set some conditions that must or may be required to be met before HMRC grants approval to places for the deposit of imported goods which are subject to customs control. The new conditions are drafted so as to approximate those conditions currently contained in article 148 of the UCC and related articles in the implementing regulation and delegated regulation.
- 6.6 Section 51 TCTA allows regulations to make provision relating to customs duty considered to be appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU. This instrument amends the following regulations in order to remove redundant wording and introduce new wording to take into account changes to wording or legislation made for the new UK customs regime under the TCTA:
- Aircraft (Customs and Excise) Regulations 1981 (SI 1981/1259);
  - Ship’s Report, Importation and Exportation by Sea Regulations 1981 (SI 1981/1260);
  - Control of Movement of Goods Regulations 1984 (SI 1984/1176);
  - Channel Tunnel (Customs and Excise) Order 1990 (1990/2167).
- 6.7 In addition the Customs Controls on Importation of Goods Regulations 1991 (1991/2724) which were made under section 2(2) of the European Union Act 1972 are

revoked. These regulations are no longer needed as they are replaced by other secondary legislation.

## **7. Policy background**

- 7.1 This instrument, together with the TCTA and various public notice and notices issued under this legislation, is designed to broadly replicate the effect of the EU legislation referred to above in relation to the importation of goods to the UK.
- 7.2 This instrument will ensure that temporary storage facilities are only approved where the facilities are provided that enable customs authorities to carry out their functions effectively. Operators of those facilities need to be able to satisfy HMRC that the facilities are appropriate (for example; they are sufficiently secure and goods can be readily identified). It sets out these conditions and clarifies requirements for approval to be granted. The conditions introduced by this instrument broadly reflect the conditions for approval currently required under the UCC.
- 7.3 For goods to be imported legally, they must be presented to customs authorities upon their arrival and must remain under customs control until they are released either to free circulation or a special procedure (such as temporary admission). The mechanisms for such presentation vary between modes of transport (road, rail, air etc). The various mechanisms are covered by specific CEMA based regulations and this instrument is required to update those regulations to ensure that they are consistent with current requirements.

## **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 Regulations 1 and 2 contain new legislation and therefore no consolidation is required.
- 9.2 For regulations 3 to 9 there are currently no plans to consolidate the instruments being amended by these Regulations.

## **10. Consultation outcome**

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

## **11. Guidance**

- 11.1 In the event of a “No Deal” outcome, businesses would, broadly, apply the same customs rules to goods moving between the UK and the EU as currently apply in cases where goods move between the UK and a country outside of the EU. HMRC already has guidance on this area of customs procedures published on GOV.UK. This guidance is currently being reviewed and if necessary new versions would be published prior to the commencement of these regulations.

## **12. Impact**

- 12.1 The impact on business, charities and voluntary bodies is positive as it formalises the existing approval process for those seeking to operate a point of entry for goods, providing regulatory certainty to ports, airports and temporary storage providers.
- 12.2 There is no, or no significant impact on the public sector.
- 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 The size of the business (and the relative impact of the requirement) will be one of the factors taken into consideration by HM Revenue and Customs when looking at the discretionary conditions in Schedule 2 of the instrument.

## **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, and to ensure burdens on business are carefully monitored and reviewed.
- 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 Anthony Allgood at HM Revenue and Customs. Telephone: 03000 586892 or email: [Anthony.allgood@hmrc.gsi.gov.uk](mailto:Anthony.allgood@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.