

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS (IMPORT DUTY) (EU EXIT) REGULATIONS 2018**  
**2018 No. 1248**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue & Customs 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 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 and so, on a contingency basis this SI lays down the main provisions governing the importation of goods to the UK, which are currently set out in EU law.

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

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

- 3.1 We wish to draw several points to the attention of the Committee. The first is that in accordance with regulation 1(3) of this instrument, a relatively small number of the provisions in this instrument will come into force on 2 January 2019 to allow for applications for authorisation/approval to be determined in advance of the UK leaving the EU.
- 3.2 The second is that, due to the need to provide certainty and clarity to business and the public, and to allow for proper scrutiny, the decision has been taken to set out the new UK customs regime in a series of instruments (from November to the end of February). While all the instruments will be in force for EU exit, this has meant that there are certain provisions in this instrument that are dependent upon provisions that have not yet been made.
- 3.3 As an example of this, see regulation 19 of this instrument (free-circulation procedure: miscellaneous goods) which deals with the circumstances where an oral declaration can be made to the free circulation procedure, but only in respect of goods which are subject to a relief. As the instrument dealing with reliefs has not yet been made, this means that there are currently no goods subject to a relief therefore no oral declaration can be made under this regulation until the provisions on reliefs are made and come into force.
- 3.4 Another example appears at regulation 102 of this instrument (retention of domestic status) which refers to applicable export provisions. The applicable export provisions will be contained in an instrument made and laid in the New Year.

- 3.5 We note the concerns of the JCSI about references in legislation to things that do not yet exist, for example in SI 2017/1189 (11<sup>th</sup> report of session 2017-19). This instrument is different to SI 2017/1189 in that all the relevant provisions will be in force by the time the new regime is operative (i.e. on leaving the EU) and there will be a further opportunity to consider the legal effect of the relevant provisions when the instruments are made, which will be well in advance of the relevant provisions being commenced. In addition, the powers in the TCTA were intended to ensure an effective regime was in place by exit day and it is important to provide certainty about this regime to business and the public as far in advance of exit day as possible.
- 3.6 The TCTA provides that certain legal requirements can be set out in the form of a public notice made by HMRC. For example, paragraph 4 of Schedule 1 to the Act requires HMRC to specify the form by which an electronic declaration must be made.
- 3.7 Thirdly, in addition to public notices made under powers in the Act, this instrument makes provision by reference to things to be specified in notices published by HMRC. See, for example, regulation 85 of this instrument (application for approval). 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 30<sup>th</sup> report of session 2017 – 2019). The TCTA does include the express power to sub-delegate and in making this and similar provisions the instrument relies on section 32(8) of the Act, which provides that any power to make regulations under Part 1 of the Act 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. Most of the notices will be similar to those currently in effect under EU law and paragraph 1(3)(c) of Schedule 7 to the Act enables provisions to be made under Part 1 of the Act that correspond to those which could have been made by the EU law.
- 3.8 The vast 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 which will be published in draft at a later time are: the notice setting out the wholesale price of fresh fruit and vegetables – to be published in mid-March 19. This is because the unit prices of fresh fruit and vegetables are updated every 14 days; the notice setting out the form and manner of applications for approval – to be published in mid-December 18 to allow for detailed policy and processes to be finalised to ensure different (simplified) processes are reflected in the notice; a notice specifying professional standards of competence for authorisations – we do not intend to use this power at this time but will undertake a consultation exercise to ensure proposals reflect the needs of trade; and the notice setting out the fees charged for services carried out by Border Force and HMRC – we do not currently charge fees but HMRC intends to work with colleagues in Border Force to consult with trade, to agree set rates and payment processes for fees later in 2019. We will share plans with senior HMRC stakeholders and Ministers, including the draft text for the relevant notices, as appropriate before introducing any charging policy.
- 3.9 Fourthly, the instrument incorporates a number of documents by reference. For example: Air Transport Costs to be included in the customs value, version 1, dated 27 November 2018, which will be used to specify the percentage of the total air transport costs to be included in the transaction value of a consignment. These documents set

out technical and administrative detail that it would be disproportionate to include on the face of the instrument.

*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)*

- 3.10 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 regulation is being laid using the powers contained within the TCTA. The majority of the instrument will be brought into force using the power in section 52(2) of the 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. This is the first time that the following powers are being used:
- Sections 16, 21, 22, 23(3), (6) and (7), 27(1), 32(1), (7), (8), (10) and (13), 33(5) and (8), 34(5) 51, 52 and 56(1) and (3)
  - Paragraphs 1(7), 2(2), 3(1) and (5), 5(1), 6(2), 9(1) and 19(2) of Schedule 1
  - Paragraphs 3(1)(b), 5, 6, 10 and 11 of Schedule 6
  - Paragraph 1(3)(c) of Schedule 7
- 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 (for example Council Regulation (EEC) No 2658/87, which sets 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 harmonized application of procedures by all Member States.
- 6.3 When paragraph 1 of Schedule 7 to TCTA is commenced 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 unless otherwise provided for under Part 15 of 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 the TCTA, will remain in force after EU exit.
- 6.5 Further instruments will be made under TCTA to cover other parts of the customs regime, including instruments setting out the rules applicable to special procedures, penalties for non-compliance and export.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument, together with the TCTA and public notices and notices made under this legislation, is designed to broadly reproduce the effect of EU legislation as it applies to the import of goods from third countries into the EU to the import of goods into the UK from the EU and third countries.
- 7.2 Non-fiscal customs matters, for example in relation to EU law dealing with safety and security requirements around the importation of goods, will be dealt with under EU Withdrawal Act.
- 7.3 Further details on the arrangements for trade between Northern Ireland and the Republic of Ireland at the land border will be published in the New Year.
- 7.4 This instrument, and others to be made under TCTA, will ensure that goods which arrive into the UK will be subject to a customs procedure on arrival at UK entry points (e.g. ports), before being made available to the UK market. It also makes provision for the valuation of goods subject to import duty (chargeable goods), payment of import duty, various facilitations that will simplify the operation of the customs rules, and so that HMRC can collect fees in certain circumstances.
- 7.5 This instrument is key in ensuring businesses can prepare for the UK leaving the EU, and are able to operate within the customs regime after EU exit. Other than provisions which are being commenced on 2<sup>nd</sup> January 2019 under regulation 3 it will be commenced if a deal is not agreed following EU/UK negotiations.
- 7.6 In particular this instrument will make provision in relation to:
- the arrival of goods in the UK;
  - the presentation of goods to UK customs;
  - the making of declarations to customs procedures and temporary storage declarations;
  - existing approvals and authorisations – for example ensuring that those UK-established operators who currently benefit from certain simplified import procedures and facilitations (such as authorised economic operators) can continue to do so where the approval corresponds to one which may be granted under this instrument;
  - new approvals and authorisations – for example enabling UK-established operators who do not currently have access to simplified import procedures and facilitations to apply for these facilitations by reference to the relevant eligibility criteria;
  - customs agents;

- the valuation of goods;
- guarantees, and other forms of payment and in doing so ensure that those that can be used currently can, in most cases, continue to be used under UK legislation;
- how liability to import duty will be notified by HMRC and discharged;
- repayment of duty and remission of liability by HMRC (where appropriate);
- the importation of parcels;
- the importation of goods in personal baggage;
- the imposition of fees by HMRC when asked to fulfil its duties outside normal working hours.

7.7 This instrument also makes provision in relation to additional matters that are not currently required under existing legislation. The instrument brings in a new obligation for importers and operators of ferries and the operator of the Channel Tunnel train freight service where goods are to be imported by ferry or trains through Roll on Roll off (RoRo) locations e.g. specific locations that will be listed in a notice to be made under this instrument that will be published before exit day. RoRo vehicles are commercial freight, for example a lorry containing goods that would drive onto a cargo ship or train and then drive off once it has reached the new destination. There is a new obligation that requires a declarant to make a declaration by the time goods are boarding a train or ferry. This advanced declaration will help to ensure trade fluidity at RoRo listed locations as importers will not need to spend time at the specific locations making the declaration.

7.8 The instrument makes provision for instances where goods are imported into the UK before the UK leaves the EU but will still be subject to customs control at the time of exit; as well as goods dispatched from the EU before the UK's exit but arriving after this time. This means that the movement of goods, or procedures in relation to goods, that are underway prior to exit will continue to be subject to EU rules until the goods are declared to the UK customs authorities or another circumstance specified in the regulations occurs, for example, the goods enter the UK's domestic market.

## **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 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. Where the instrument imposes obligations that do not exist in EU law, e.g. RoRo advance declarations, HMRC has informally consulted for views and comments and subsequently made changes to the draft instrument where appropriate.

## **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. There is already guidance on this on GOV.UK. This guidance is currently being reviewed and where necessary new versions will be published prior to EU exit.

## **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.

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 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 This instrument will apply to activities that are undertaken by small businesses. No specific action is proposed to minimise regulatory burdens on small businesses where the instrument introduces equivalent rules and obligations that currently apply 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 above in section 7 of this EM, and to ensure burdens on business are carefully monitored.

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 Oliver Mathers at HM Revenue & Customs: can be contacted by email at [oliver.mathers@hmrc.gsi.gov.uk](mailto:oliver.mathers@hmrc.gsi.gov.uk) with any queries regarding the instrument.

15.2 Pamela Mulholland, Deputy Director for Customs EU Exit, at HM Revenue & 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.