

EXPLANATORY MEMORANDUM TO
THE WHARVES AND TEMPORARY STORAGE FACILITIES (APPROVAL
CONDITION AND TRANSITIONAL PROVISION) (EU EXIT) REGULATIONS 2018

2018 No. 1264

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.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments

2. Purpose of the instrument

- 2.1 This instrument is made alongside 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, this instrument will be necessary to provide that, in any particular case, HMRC may require a wharf or temporary storage facility to meet certain conditions related to basic import and export customs rules before being granted the necessary approval to operate as such a place. It is made because HMRC considers it necessary to require particular locations handling such goods to meet a minimum standard to ensure goods are secure and revenue is protected.
- 2.2 It is also made so that after the UK exits the EU those existing approvals depending on EU customs regulations are preserved for two years until the instrument enters into force.

3. Matters of special interest to the House of Commons

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The committee may wish to know that this instrument will come into force using the power in section 52(2) of the 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.

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 United Kingdom.
- 4.2 The territorial application of this instrument is 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 made using powers given to HMRC under sections 20(1A)(a), and 25(1A)(a) of the Customs and Excise Management Act 1979 (c. 2) to legislate for approval conditions for wharves, and temporary storage facilities. These powers are inserted by paragraphs 9(3) and 16(3) of Schedule 7 to the TCTA respectively. It will be the first use of the powers contained in sections 20(1A)(a) and 25(1A)(a) of the Customs and Excise Management Act 1979 (c. 2).
- 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, and is supplemented by many other regulations.
- 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 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.

7. Policy background

What is being done and why?

- 7.1 As the UK has been part of the EU customs union, declarations have not been required for goods moving between other EU countries and the UK.
- 7.2 If no deal is agreed between the UK and the EU, such goods will be subject to customs checks and declarations.
- 7.3 HMRC considers it necessary to require import and export locations handling goods moving between the UK and the EU to meet conditions related to basic import and export customs rules before being granted the necessary approval to operate as such a place (as set out in a separate notice).
- 7.4 This will support HMRC to deliver a functioning border as it will support the collection of import duty and monitoring of goods entering and leaving the UK (as is currently the case for goods from outside the EU).
- 7.5 Approvals granted under existing legislation will remain valid for two years after the instrument enters into force (on a day to be appointed by Treasury regulations). It is expected that businesses use the time available to prepare to meet the new approval condition if it is likely to apply to them. A Public Notice will set out at that time who the instrument will apply to.

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 United Kingdom from the European Union 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 No formal consultation was carried out because these are discretionary powers which will not be used unless HMRC chooses to place a new obligation on ports. Informal engagement is planned with stakeholders on any new conditions before they go ahead.

11. Guidance

11.1 Guidance will be provided at the appropriate time, when a public notice is made available which will set out how the powers will be used.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 The instrument gives effect to discretionary powers for HMRC to place a new obligation on wharves and temporary storage facilities. The instrument itself has no direct impact on business. Any new obligations will be set out in future in a public notice. HMRC will update its estimate of impacts when the next set of regulations for customs are made.

12.4 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 No specific action is proposed to minimise regulatory burdens on small businesses.

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 Julie Campbell at HM Revenue & Customs can be contacted with any queries regarding the instrument at julie.campbell1@hmrc.gsi.gov.uk
- 15.2 Pamela Mulholland, Deputy Director for Customs EU Exit Policy, 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.