

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS AND EXCISE (MISCELLANEOUS PROVISIONS AND**  
**AMENDMENTS) (EU EXIT) REGULATIONS 2019**

**2019 No. 1215**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HMRC Commissioners and 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) and the Customs and Excise Management Act 1979 (CEMA) 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 before exit day.
- 2.2 This instrument makes small changes to customs legislation that has already been laid before the House of Commons that will apply if the UK leaves the EU without a deal. These changes are made in order to ensure clarity and continuity for business. Matters covered in this instrument include: banana weighing and certification; a requirement to provide a guarantee for import duty and excise duty in certain cases; the making and amendment of declarations by non-business travellers; declaration requirements in relation to pleasure craft and private aircraft and rights of appeal and review in relation to certain non-fiscal decisions made by HMRC, such as in relation to approval as an authorised economic operator for security and safety. The instrument also includes technical updates and corrections to other customs legislation.

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

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

- 3.1 The majority of this instrument will be brought into force using the power in section 52(2) of 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. Certain parts of this instrument will apply for certain purposes relating to the Government's no deal preparations from 3 October 2019, with the remaining parts applying in the event of the UK leaving the EU without a negotiated deal.
- 3.2 TCTA includes the express power to sub-delegate and in making provision for notices this instrument relies on section 32(8) of TCTA. This section provides that any power to make regulations under Part 1 of TCTA 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

or other document published in accordance with the regulations. This instrument uses this provision (the notices and other reference documents will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>).

- 3.3 This instrument also corrects defects in the Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018 (SI 2018/1247), the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248), the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (2018/1249), the Customs (Export) (EU Exit) Regulations 2019 (2019/108), and the Taxation (Cross-border Trade) (Miscellaneous Provisions) (EU Exit) Regulations 2019 (SI 2019/486). Consequently, it is being issued free of charge to all known recipients of those regulations.

*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)*

- 3.4 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 laid using the powers contained within TCTA, EUWA and the Finance Act 2003. The majority of 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 in consequence of, or otherwise in connection with the UK's withdrawal from the EU.
- 6.2 Currently the main provisions governing the import of goods into, and export of goods from, 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 EU Member States. Sitting under this regulation are the implementing regulation (Commission Implementing Regulation (EU) 2015/2447) and delegated regulation (Commission Delegated Regulation (EU) 2015/2446), which are themselves supplemented by many other regulations (for example Council Regulation (EEC) No 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 harmonised application of procedures by all Member States. The delegated regulation supplements certain elements of the UCC.

- 6.3 When paragraph 1 of Schedule 7 to TCTA is commenced, these EU regulations, 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).
- 6.4 In relation to non-duty customs matters, certain EU legislation, so far as operative immediately before exit day, will form part of UK domestic law on and after exit day, under section 3 of the European Union (Withdrawal) Act 2018 (EUWA).
- 6.5 The provisions 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 TCTA, will remain in force after EU exit.
- 6.6 This instrument also makes provision in relation to excise duty. Excise duty is defined in TCTA as any excise duty under the Alcoholic Liquor Duties Act 1979, the Hydrocarbon Oil Duties Act 1979 or the Tobacco Products Duty Act 1979.
- 6.7 The Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (SI 2010/593) (HMDP), which implement EU Council Directive 2008/118/EC, contain the main provisions on the movement of excise goods, including provisions regarding the import and export of excise goods and determining when excise duty is payable. Provisions made under TCTA, CEMA and other UK primary legislation will amend and modify HMDP on EU Exit.

## **7. Policy background**

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

#### Provisions for reviews and appeals

- 7.1 Schedule 5 to the Finance Act 2004 sets out HMRC decisions under EU customs legislation in relation to which a person may request a review, or appeal to a tribunal.
- 7.2 These review and appeal arrangements apply equally to HMRC decisions in relation to customs duty and non-duty customs matters. TCTA will amend the Finance Act 2004 to ensure these arrangements will continue after exit day in relation to customs duty, when such decisions will be taken by HMRC under UK (rather than EU) law. This instrument makes equivalent provision in relation to non-duty customs matters such as a decision as to whether a person is to be authorised as an authorised economic operator for security and safety. After exit day, HMRC decisions on these non-duty customs matters will be made under the EU legislation that continues to apply in the UK as a result of EUWA. The instrument ensures the continuation of appeal and review rights for these non-duty customs decisions. The effect will be to ensure that current appeal and review arrangements will continue to be available after exit day, for both customs duty and non-duty customs matters.

#### Excise Duty and Guarantees

- 7.3 Under the current EU customs rules, where HMRC requires a guarantee, this may be calculated with reference to a person's potential liability to both import duty and excise duty in relation to the goods to be imported. Regulations made under TCTA already set out rules concerning guarantees in relation to potential liability for import duty and other charges. This instrument modifies those provisions, so that where goods on which excise duty may be due are:

- held in temporary storage facilities on importation, before being declared to a customs procedure; or
- declared to certain special customs procedures which relieve or suspend import and excise duty on importation;

any guarantee required by HMRC in relation to the goods should be calculated with reference to both the potential import duty and potential excise duty liabilities for the goods. This will ensure continuation of the current position in relation to guarantees, and help to ensure that both import duty and excise duty liabilities are appropriately protected after exit day.

Imports and exports at Roll-on Roll-off (RoRo) locations

- 7.4 RoRo locations are the Channel Tunnel, or ports like Dover, where traders use vehicles to drive onto ferries or trains to transport goods into or out of the UK. Regulations under TCTA set out rules that apply in relation to goods loaded on a freight vehicle carried by a train or vessel and destined for, or leaving from, a RoRo location in the UK. This includes a requirement that certain declarations must be made to HMRC prior to boarding. TCTA makes provision that allows declarations to be amended, but also provides that in certain cases such an amendment requires the consent of HMRC. This instrument sets out cases in which a declaration for goods imported or exported from RoRo locations can be amended without any requirement to obtain HMRC consent. This measure is expected to facilitate the movement of goods through RoRo locations.

Merchandise in Baggage (MIB) matters

- 7.5 Merchandise in Baggage (MIB) refers to commercial goods contained in a traveller's accompanied baggage or in a small motor vehicle. These are typically high value items or small quantities of trade samples. Regulations made under TCTA already set out a legislative framework for MIB on import to or export from the UK. This instrument makes the following changes and clarifications to the regulations relating to MIB:
- clarifying the deadline for submission of a customs declaration for MIB (goods above £900, weighing more than 1,000 kilograms or classed as restricted or excise goods), which must be given before the goods are imported into the UK;
  - restricting the circumstances in which a simplified customs declaration may be made for MIB, so that this cannot be used where a relief is to be claimed;
  - making changes to the existing small vehicle condition so that it does not include a vehicle used to carry goods under a transport contract;
  - allowing travellers exporting certain MIB (goods with a value below £900 and weighing less than 1000 kilograms) the opportunity to make a simplified online export declaration for those goods, if they choose to do so. This would be in preference to making an export declaration orally in the Red (goods to declare) Channel or by conduct whereby the traveller walks across the border without any written declaration (for example by going through a defined customs point);
  - making the customer journey easier for the export of goods over £900 or that weigh more than 1,000 kilograms or goods subject to export restriction that

when the export declaration is made there is no need to also provide notification of the export of goods.

- removing the condition that goods below £900 and 1,000 kilograms have to be imported into the UK at a specified location before a voluntary advance electronic declaration can be made.

#### Transitional Simplified Procedures (TSP)

7.6 Regulations made under the TCTA provide for the use of TSP, which allow authorised traders to use simplified customs declaration processes. These allow TSP authorised importers of most EU goods to clear customs border controls by making a simplified declaration in their own records and for importers of certain “controlled” EU goods (specified in a public notice) by submitting a simplified declaration to HMRC. In both cases, a supplementary customs declaration must be submitted to HMRC at a later, specified, time. The regulations made previously allowed TSP to operate effectively at RoRo locations. This instrument updates the TSP rules to enable TSP to operate effectively at other points of entry, as well as RoRo locations, by:

- preventing declarations in the importer’s records being made after the goods have been imported;
- deeming that certain goods are presented to HMRC when they are imported into the UK, and that HMRC has notified the person declaring the goods that their declaration has been accepted. This will apply only to goods and locations which are determined by public notice;
- requiring a person who has possession or control of the goods at some point during their importation, and is specified in a public notice, to provide evidence they took reasonable steps to identify whether the criteria for the goods to be deemed to be presented will be or have been met;
- providing flexibility to require declarations to be made before import for a wider set of goods (beyond those for which declarations are made in the importer’s records) at specified (non-RoRo) locations, as determined by a public notice. Consequently, providing for a) these goods to be deemed to be presented to HMRC when they are imported, b) the deeming of a notification that the declaration has been accepted, and c) the requirement to notify the arrival of these goods;
- providing flexibility for the deadline for the notification of the arrival of the goods, by providing for a public notice power.

7.7 This instrument also makes consequential amendments to provisions made under TCTA in relation to excise duty to take account of the extension of the RoRo provisions on presenting goods to HMRC and acceptance of declarations.

#### Traveller Relief

7.8 Regulations made under the TCTA allow an employee to make a declaration orally or by conduct (that is by going through a defined customs point) for goods imported or exported by their employer. In order to ensure the appropriate operation of reliefs, this instrument will restrict this arrangement so that it will not be available in relation to non-commercial goods for which import duty relief is available.

Extension of grace period and amending rules for duty deferment

7.9 This instrument sets out amendments to the customs regulations that will apply in the event the UK leaves the EU without a deal to provide:

- that a person may defer the payment of import duty for 15 days from HMRC notifying the person of their liability to pay without providing a comprehensive guarantee if they were approved to defer payment of import duty before the end of a period of 6 months from exit day;
- that persons who have a comprehensive guarantee prior to exit day should notify HMRC if they need to increase the specified amounts (the maximum amount of import duty and excise duty that is likely to be payable by a person in any calendar month). However HMRC cannot issue a notice requiring a person to increase their specified amount, unless that amount includes an estimated anti-dumping or countervailing amount (an amount charged on the import of goods that have been subsidised in the exporting country), before the end of 6 months from exit day. These charges may be applied to prevent artificially cheap imports from damaging the UK market, pending the completion of a Trade Remedies investigation.

The main purpose of this change is to take into account the new exit date and to align with the TSP, where supplementary declarations and payment of import duty for goods will not be required for 6 months in the event the UK leaves the EU without a deal for goods that are declared for availability in the UK market on or before 30 April 2020.

Import and Export Declarations by conduct for goods under temporary admission

7.10 Current legislation allows for certain goods to be declared to customs on export ‘by conduct’. Declaration by conduct means a declaration that happens automatically when, for example, an exporter drives the goods in a vehicle past a defined point in a designated lane past a customs office. For certain goods, such as means of transport, this export treatment is linked to the temporary import of those goods when they arrived in the UK originally. This instrument aligns the treatment of the export of temporarily imported goods with the treatment of other exported goods in various ways, in order to make the process simpler.

Pleasure craft and private aircraft

7.11 This instrument provides for certain customs declarations and export declarations in respect of goods that are pleasure craft or private aircraft to be made by the conduct of, respectively, entering the limits of a port or landing at an airport. It also provides that other formalities, such as the notification of importation or exportation, acceptance of the declaration, are treated as having been given or occurring.

Penalties

7.12 This instrument provides for amendments to the civil penalty regulations for customs, to cover the new and amended provision for TSP (as described above in section 7.6). A new penalty provision is made for cases in which a person does not meet obligations related to the presentation of goods on import. Further penalty provisions are made for cases where there is a requirement for advance declarations at specified non-RoRo locations and these requirements are not met. These include penalties relating to persons making declarations and carriers.

### Banana Weight Certificates

- 7.13 The UK currently applies EU customs rules in relation to the importation of bananas. These include requirements concerning the weighing and certification of fresh bananas by a person authorised by HMRC for these purposes (a banana weigher). The instrument provides for the retention of these arrangements after exit day, including certain modifications that apply where a banana weigher is using simplified arrangements for customs declarations. Retaining these arrangements will allow HMRC to continue tackling possible fraudulent activities in this area and will ensure continuity on exit day.

### Other miscellaneous amendments

- 7.14 This instrument makes other miscellaneous amendments to regulations that have already been made under TCTA and other customs legislation.
- 7.15 These amendments are minor and predominantly technical in nature. Some address gaps in the existing regulations that, for technical or other reasons, could not be addressed at the time the existing regulations were made. Others correct minor errors or are designed to add clarity. In particular, this instrument:
- modifies transitional provisions which allow EU legislation to continue to apply to certain goods that have been declared to a customs procedure under EU rules before exit day;
  - makes minor modifications, clarifications and corrections to legislation concerning goods declared for special customs procedures or outward processing. The procedures referred to in this instrument are:
    - storage procedure, under which imported goods can be kept in a premises approved by HMRC (customs warehouse) without import duty being due;
    - inward and outward processing procedures, which provide for import duty advantages in cases where goods are imported to the UK for processing and then exported, or where domestic goods are exported outside the UK for processing and then returned to UK;
    - authorised use procedure, under which goods imported to the UK for a qualifying use will be subject to a lower rate of duty than would otherwise apply;
    - temporary admission procedure, under which certain goods can be imported to the UK temporarily with full or partial relief from import duty.
  - updates the rules concerning the operation of the transit procedure (under which import duty can be suspended for goods moving within the UK). The effect of this change will be that a guarantee will be required by HMRC for goods carried by rail.

## **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 UK from the EU because it is part of the legislation necessary to ensure that, in the event of the UK leaving the EU without a deal, the UK has a customs regime in place before the date of departure.

## **9. Consolidation**

9.1 There are no plans to consolidate the amendments at this time.

## **10. Consultation outcome**

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

## **11. Guidance**

11.1 The guidance available at <https://www.gov.uk/government/collections/trading-with-the-eu-if-the-uk-leaves-without-a-deal> will be updated to reflect these changes.

## **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 and sizes.

12.2 The impact on the public sector is that additional resource will be required at HMRC to administer the new obligations on trade between the EU and the UK.

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 no specific action is proposed to minimise impacts where legislation introduces equivalent rules and obligations that currently apply to goods imported from 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.

14.2 A statutory review clause is not included within this instrument because to the extent that it makes or amends regulatory provision in relation to any qualifying activity it does so in connection with a duty. It 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 Stephanie Canonier at HMRC, telephone: 03000 558586 or email: [stephanie.canonier@hmrc.gov.uk](mailto:stephanie.canonier@hmrc.gov.uk) can be contacted with any queries regarding the instrument.



- 15.2 Charlotte Axson, Deputy Director for Customs EU Exit Policy HMRC, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.