

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS TARIFF (SUSPENSION OF IMPORT DUTY RATES) (EU EXIT)**  
**REGULATIONS 2020**

**2020 No. 1435**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade 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 to ensure that the United Kingdom (“UK”) has a customs regime in place at the end of the Implementation Period following the withdrawal of the UK from the European Union (“EU”). This legislation will be necessary to ensure the UK’s Customs, VAT and Excise regimes function as intended.
- 2.2 The purpose of the Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020 (“these Regulations”) is to make provision for a tariff suspensions regime as part of the UK’s independent customs tariff system at the end of the Implementation Period, when Regulations (EU) 2020/874 and 2020/875 cease to apply to the UK. Provision is also made in regulation 12 of, and the Schedule to, the instrument to modify the application of Section 12 of the Act and of these Regulations to take account of the fact that the UK will be in a Customs Union with the Crown Dependencies at the end of the Implementation Period.

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

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

- 3.1 The Treasury regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force (“the 21-day rule”). This instrument needs to enter into force at the end of the Implementation Period to ensure that the UK continues to have a fully functioning customs regime in place from 31 December 2020 at 11:00pm. If this instrument was delayed to comply with the 21-day rule, a crucial part of our customs regime would not be in place, with significant economic, legal and reputational consequences. The Government had hoped to lay the full package once the outcome of negotiations with the EU was clear. However, while efforts to that end continue, the Government has decided that it is now necessary to finalise tariff preparations for 1 January.

*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 to 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 At the end of the Implementation Period, Regulation (EU) 2020/874, which amends Regulation (EU) 1387/2013, enacting the EU's import duty suspensions regime, and Regulation (EU) 2020/875, which amends Regulation (EU) 1388/2013, enacting the autonomous tariff quota regime for the EU, cease to apply to the UK. This instrument implements the UK's new, independent tariff suspensions regime as it will apply in respect of all goods imported into the UK from outside of the UK at the end of the Implementation Period.
- 6.2 Section 12 of the Act gives powers to HM Treasury to make provision by regulations that, for a specified period, the rate of import duty applicable to specified goods is to be lower than the applicable rate in the customs tariff in its standard form. The system known as the Tariff of the United Kingdom is established by regulations made under section 8 of the Act.
- 6.3 Section 31 of the Act applies where arrangements for a customs union are made between Her Majesty's Government in the UK and any country or territory and those arrangements provide for no duty to apply in respect of the movement of goods between the UK and that country or territory. Subsections (6) and (7) allow HMRC Commissioners to make regulations to carry out such arrangements generally including regulations to modify or disapply any provision of the Act or any other Act.
- 6.4 Section 32 of the Act sets out the process for making Regulations under Part 1 of the Act and provides supplementary powers.

#### **7. Policy background**

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

- 7.1 These Regulations introduce a tariff suspensions regime in the UK that is broadly based on the EU's tariff suspensions regime. This new tariff suspensions regime aims to ensure continuity for UK businesses as defined in regulation 2 of these Regulations at the end of the Implementation Period. It has been modified in places to suit the interests of the UK.
- 7.2 Part 1 of these Regulations makes general provision. Regulation 1 makes provision for the citation, commencement, extent and application of the Regulations. Regulation 2 makes provision in respect of defined terms. Regulation 3 sets out what specified goods are for the purposes of Section 12(1) of the Act and of these Regulations. These are goods listed by commodity code in the column headed "Commodity Code" in one of the tables in the Suspensions of Import Duty Rates Document (which is available at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>) that are, by virtue of regulation 4(1), subject to a rate of import duty that is lower than the applicable standard rate under the customs

tariff. Regulation 4 also provides, in paragraphs (2) and (3), that the rate of import duty for specified goods is the standard rate of import duty during any period where that rate is lower than the rate which applies to specified goods by virtue of regulation 4(1). Regulation 5 sets out what the specified period is for the application of duty suspensions in respect of specified goods. Regulation 6 enables the specified period to be extended by notice in writing published by the Secretary of State before the end date specified in the column headed “Expiry Date” in the relevant table in the Suspension of Import Duty Rates Document in relation to the suspension.

- 7.3 Regulation 7 sets out a procedure which enables stakeholders to request the Secretary of State for International Trade to recommend to the Treasury that regulations are made to apply additional tariff suspensions in respect of goods that are the subject matter of the request. Regulation 7 makes provision for stakeholders to object to any such requests. There will be time limited periods (application windows) during which stakeholders can request additional tariff suspensions. Regulation 7 also sets out the process for making and acknowledging such requests, for publishing notices about requests received and for inviting objections to such requests. Requests must be acknowledged within two weeks of receipt of the application which is to be made on a form approved by the Secretary of State. The Secretary of State must, within four weeks after the closure of the application window, publish a notice providing information about all requests received during that window and invite objections to such requests.
- 7.4 Regulation 8 requires the Secretary of State to promptly consider requests for suspensions received except in the limited circumstances specified in paragraph (2). The new tariff suspensions regime introduced by these Regulations will continue to support domestic manufacturers where they rely on raw materials, component parts and semi-finished products that cannot be supplied, or supplied in sufficient quantities, from within the UK. Tariff suspensions may also be applied in respect of finished products, provided that no similar products can be supplied, or supplied in sufficient quantities, from within the UK and that the product is not exclusively traded between related parties, meaning that other UK businesses (as defined in regulation 2) are not able to benefit from the measure.
- 7.5 Regulation 8 also establishes a duty savings threshold which must be met for a suspension application to be considered. The duty savings threshold, is the demonstrable value of duty saving that the suspension request would enable the business applying for the suspension to make in one year, is £10,000. Analysis suggests that a reduced figure would balance the ability of small and medium sized enterprises and businesses to submit suspensions requests, with the need to reduce administrative burdens and ensure suspension requests are deemed exceptional rather than usual, and do not amount to a backdoor mechanism to request tariff changes. This represents a reduction from the EU’s duty savings threshold, which is €15,000.
- 7.6 Regulation 9 makes provision for the Secretary of State to make recommendations to the Treasury in connection with any requests received under regulation 7(1) which the Secretary of State is obliged to consider. The Secretary of State will have four months to make recommendations, beginning with either the date that the Secretary of State published the notice providing information about all requests received or, whichever is the earlier of the dates between when the Secretary of State received the further information and evidence requested in relation to any request, or the date on which

the Secretary of State is no longer satisfied that an objection made under regulation 7 to the goods being specified goods is valid.

- 7.7 Part 3 of these Regulations makes provision in respect of exceptional duty rate suspensions. Regulation 10 makes provision for the circumstances in which exceptional duty rate suspensions may be applied where no request has been received by the Secretary of State under regulation 7 in Part 1 of these Regulations. Exceptional duty rate suspensions may be applied under this provision where considered necessary to ensure the continued supply of goods, to mitigate price increases for domestic consumers and UK businesses or where other exceptional circumstances exist in which the Secretary of State is satisfied that the application of an exceptional duty suspension rate is necessary.
- 7.8 Part 4 of these Regulations and the Schedule make modifications in respect of the Crown Dependencies to take account of the existence of the United Kingdom – Crown Dependencies Customs Union. Regulation 12 and the Schedule modify the application of Section 12 of the Act and of these Regulations so as to ensure that, for the purposes of these Regulations, references to goods imported into the United Kingdom are to be read as including goods imported into the combined territory of the Customs Union.

## **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. This is because Regulation (EU) 2020/874, which amends Regulation (EU) 1387/2013, enacting the EU's import duty suspensions regime, and Regulation (EU) 2020/875, which amends Regulation (EU) 1388/2013, enacting the EU's autonomous tariff quotas regime, ceases to apply in the UK at the end of the Implementation Period on 31 December 2020. This instrument makes provision in domestic legislation for the UK's independent tariff suspensions regime. However, Regulations (EU) 2020/874, 1387/2013, 2020/875 and 1388/2013 will directly apply in Northern Ireland pursuant the application of section 7A of the European Union (Withdrawal) Act 2018 and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement.

## **9. Consolidation**

- 9.1 This is new legislation and therefore no consolidation is required.

## **10. Consultation outcome**

- 10.1 No consultation in relation to this instrument has been undertaken. Consultation is not required because this instrument broadly corresponds to, and replicates insofar as is possible, existing EU provisions with appropriate modifications for the UK.

## **11. Guidance**

- 11.1 Guidance is not required.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the effect of the Statutory Instrument is to maintain, as far as possible, the position prevailing currently.

12.4 This instrument is one of a group of instruments covered by an overarching Tax Information and Impact Note. The TIIN primarily focusses on the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and will be available in due course at: <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

### **13. Regulating small business**

13.1 This legislation applies to activities that are undertaken by small businesses.

13.2 However, this legislation maintains the existing position as far as possible, imposing no significant additional burdens on small businesses. Therefore, no specific action is proposed to minimise the impact on small businesses, and no review clause is required.

### **14. Monitoring & review**

14.1 This legislation will be monitored in the context of wider customs tariff legislation.

14.2 The Government will keep this instrument under review to ensure that it meets the policy objectives set out in section 7 of this explanatory memorandum, and to ensure burdens on business are carefully monitored.

14.3 A statutory review clause is not included in these Regulations as the content relates to a tax or duty and therefore meets the requirements of the exception set out in section 28(3)(c) of the Small Business, Enterprise and Employment Act 2015.

### **15. Contact**

15.1 Scott Partridge at the Department for International Trade, (email: [Scott.Partridge@trade.gov.uk](mailto:Scott.Partridge@trade.gov.uk), phone: 0300 068 6093) can be contacted with any queries regarding the instrument.

15.2 Ayesha Ali and Ada Igboemeka, Deputy Directors for Multilateral Tariff Policy and Operations at the Department for International Trade (email: [Ayesha-Ada@trade.gov.uk](mailto:Ayesha-Ada@trade.gov.uk)), and Tammy Reynolds, Deputy Director for Trade Policy at Her Majesty's Treasury, 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.