

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (TARIFF ETC.) (AMENDMENT) REGULATIONS 2021
2021 No. 380

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes a series of technical amendments to legislation made under the Taxation (Cross-border Trade) Act 2018 (“TCTA”), which provided for the United Kingdom’s Customs, Value Added Tax (VAT) and Excise regimes to be in place after the end of the Implementation Period following the withdrawal of the United Kingdom (UK) from the European Union (EU).
- 2.2 Specifically, this instrument updates the reference documents which have been given legal effect by the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430), the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1431), the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (S.I. 2018/1249) and the Customs Tariff (Suspension of Import Duty) (EU Exit) Regulations 2020 (S.I. 2020/1435).
- 2.3 The purpose of this instrument is to make technical updates to reference documents in order to change some of the information on the classification of imported goods (“commodity codes”) through which tariff rates are delivered, while maintaining the same tariff rates on the relevant goods, as under previous legislation and reference documents. The Government is making these changes to ensure it can meet its obligations under the Protocol on Ireland/Northern Ireland and to avoid any unnecessary complications for businesses. In some cases, changes may be required to meet new commitments, such as agreements with FTA partners, or to deliver wider UK trade policy, or for other technical reasons.
- 2.4 This instrument also makes additional technical and limited policy updates to reference documents in the aforementioned regulations and detailed in Paragraph 7.5 below.

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 this 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 in exercise of the powers conferred by the TCTA.
- 6.2 In considering the rate of import duty that ought to apply to goods in a standard case as defined under section 8(8) of the TCTA, HM Treasury has had regard to the matters set out in section 8(5) of the Act and the recommendation about the rate made to them by the Secretary of State under section 8(6).
- 6.3 At the end of the Implementation Period, paragraph 1 of Schedule 7 to the Act was commenced, whereby direct EU legislation imposing or otherwise applying in relation to any EU customs duty - which formed part of the law of the UK as a result of section 3 of the European Union (Withdrawal) Act 2018 - ceased to have effect. This instrument makes a series of amendments to legislation made under the TCTA which ensured that the UK's Customs, VAT and Excise regimes were in place since the end of the Implementation Period. This package of legislation set out the associated rules of, and exceptions to, the UK's Most-Favoured Nation tariffs (also known as the "UK Global Tariff") that have applied since the end of the Implementation Period.
- 6.4 Previous amendments to legislation in this package have been introduced via:
- The Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1605) which amended the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020, and was made on 18th December 2020;
 - The Customs Tariff (Preferential Trade Arrangements and Tariff Quotas) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1657), which amended the Customs (Tariff Quotas) (EU Exit) Regulations 2020 and the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020, and was made on 30th December 2020;
 - The Customs Tariff (Establishment and Suspension of Import Duty) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/63), which amended the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and the Customs Tariff (Suspension of Import Duty Rates) (EU Exit) Regulations 2020, and was made on 21st January 2021;
 - The Customs Tariff (Preferential Trade Arrangements) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/241), which amended the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2020, and was made on 3rd March 2021.

7. Policy background

What is being done and why?

- 7.1 A package of tariff legislation was laid under the TCTA on 16th December 2020 – and updated on 31st December 2020 - which ensured that the UK had a properly functioning customs regime in place after the end of the Implementation Period and following the withdrawal of the UK from the EU.
- 7.2 As part of this package, the Customs Tariff (Establishment) (EU Exit) Regulations 2020 brought into effect the customs tariff of the UK by giving effect to “The Tariff of the United Kingdom” reference document. This document sets out the standard rate of import duty (the “UK Global Tariff”) and the general rules of classification that must be applied when determining the correct commodity code to apply to goods. The package of legislation also introduced exceptions to the standard rate of import duty – such as a tariff relief or tariff suspension – which were largely given effect by reference documents contained within that legislation.
- 7.3 The commodity codes through which tariff rates are delivered are subject to ongoing updates. This instrument reflects technical updates that have been made to around 240 commodity codes since the end of the Implementation Period. These updates do not affect the tariff rates applied to the relevant goods, as set out under previous legislation and reference documents. In other words, these technical updates do not result in a change of tariff, but a slight adjustment to the structure that delivers those same rates. The Government is making these changes to ensure it can meet its obligations under the Protocol on Ireland/Northern Ireland and to avoid any unnecessary complications for businesses. In some cases, changes may be required to meet new commitments, such as agreements with FTA partners, or to deliver wider UK trade policy, or for other technical reasons.
- 7.4 This instrument updates existing legislation to ensure that these changes are reflected in the relevant legislation. These updates affect the following reference documents and the instruments that have given legal effect to them:
- “The Tariff of the United Kingdom” is updated to version 1.2, dated 22nd March 2021 in the Customs Tariff (Establishment) (EU Exit) Regulations 2020.
 - “Authorised Use: Eligible goods and rates” is updated to version 1.1, dated 22nd March 2021 in the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020.
 - “Authorised Use: Eligible Goods and authorised uses” is updated to version 2.1, dated 22nd March 2021 in the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018.
 - “The Suspensions of Import Duty Rates Document” is updated to version 1.2, dated 22nd March 2021 in the Customs Tariff (Suspension of Import Duty) (EU Exit) Regulations 2020.
- 7.5 This instrument also makes a series of limited amendments to the following instruments and reference documents:
- The “United Kingdom Customs Tariff: Reliefs from Import Duty” is updated to version 1.2, dated 22nd March 2021 in the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020. This update includes:

- a relief for human organs for transplant used only for non-commercial medical or scientific purposes;
- a six-month extension to the grace period, during which UK goods located in the EU at the end of the Implementation Period can return to Great Britain under the Returned Goods Relief;
- an amendment clarifying the availability of the Returned Goods Relief where goods are exported from the UK as domestic goods having originally been moved to Northern Ireland from Great Britain.
- Both the “Authorised Use: Eligible Goods and authorised uses ” and “Authorised Use: Eligible goods and rates” reference documents contained within the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 and the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 respectively, are updated. This update removes the “Authorised Use” tariff measure on one commodity, correcting a technical error that restricted traders’ ability to import products under this tariff line and enabling traders to continue to import this good using the correct classification code as set out in the Customs Tariff (Establishment) (EU Exit) Regulations 2020, and applying the associated tariff measures.
- The definition of a “classification code” contained in regulation 2 of the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 is amended to reflect that these codes may exceed eight digits.

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. The relevant enabling powers are found in the TCTA. This instrument relates to the UK’s withdrawal in so far as withdrawal required the UK to replace the EU’s customs regime with a UK-specific customs regime, and in so far as this instrument is necessary in order to ensure the Government can meet its obligations under the Protocol on Ireland/Northern Ireland.

9. Consolidation

- 9.1 These regulations do not provide for any consolidation of existing legislation, and none is necessary in the circumstances. Given the recurrent nature of this type of amending legislation, the Government considers it would be inappropriate to consolidate the legislation at this time.

10. Consultation outcome

- 10.1 No consultation in relation to this instrument has been undertaken. Consultation is not required because this instrument makes a series of limited amendments to existing provisions, which broadly either maintain the current position, or retain the position before the end of the Implementation Period.

11. Guidance

- 11.1 Since the end of the Implementation Period, the UK Global Tariff has applied to all goods imported into the UK unless an exception applies, such as a tariff relief or tariff suspension, the goods are imported from countries that have tariff-free granted

unilaterally, or as part of a preferential trading arrangement. Further guidance is available at <https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021>.

12. Impact

- 12.1 There is no, or no significant, impact on 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 as it largely maintains the position of existing legislation, which were covered by an overarching Tax Information and Impact Note published earlier this year:
<https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins#uk-transition>.

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 as the changes do not result in a change of tariff policy, but a slight adjustment to the structure that delivers the same tariff rates that are currently in place. In some instances, the changes introduced minimise regulatory burdens by maintaining the position before the end of the Implementation Period.

14. Monitoring & review

- 14.1 This legislation will be monitored in the context of wider customs tariff legislation.
- 14.2 The Government will keep the instrument under review to ensure that it meets the policy objectives set out above in section 7 of this explanatory memorandum, and ensures burdens on business are carefully monitored.
- 14.3 A statutory review clause is not included in these regulations because this instrument 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 Philippa Evans at HM Revenue and Customs (phone: 03000 593172 and email: Philippa.evans@hmrc.gov.uk) and Jessica Bolton at the Department for International Trade (email: Jessica.bolton@trade.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Tammy Reynolds, Deputy Director for Trade Policy, at HM 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.