

EXPLANATORY MEMORANDUM TO
THE CUSTOMS AND EXCISE BORDER PROCEDURES (MISCELLANEOUS
AMENDMENTS) (EU EXIT) REGULATIONS 2021

2021 No. 830

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and HMRC 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 ensure that the United Kingdom's (UK's) customs regime functions as intended following the withdrawal of the UK from the European Union (EU).
- 2.2 The measures contained in this instrument introduce a number of changes that will provide for full customs controls at all border locations from 1 January 2022 and help facilitate the movement of goods.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument makes provision by reference to things to be specified in notices published by HMRC. TCTA includes the express power to sub-delegate and in making this provision this instrument relies on section 32(8) of TCTA, which 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 published in accordance with the regulations. The notices that will be made under this instrument will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021> no later than the date on which the relevant provisions of the instrument come into force.

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.

- 4.3 The provisions of this instrument apply to movements into and out of Great Britain and Northern Ireland (where their application is in accordance with the Protocol on Ireland/Northern Ireland).

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 transition period, paragraph 1 of Schedule 7 to TCTA was commenced whereby direct EU legislation imposing or otherwise applying in relation to an 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 EU legislation was replaced by provisions made by and under TCTA. Currently the main provisions governing the import of goods into, and export of goods from, the UK are set out in TCTA, the Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108), the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248), the Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018 (SI 2018/1247) and the Wharves and Temporary Storage Facilities (Approval Condition and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1264). These provisions 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).

7. Policy background

What is being done and why?

- 7.1 Recognising the impact of coronavirus on businesses' ability to prepare, the government announced that border controls would be introduced in stages. Following the end of the transition period, staged border controls allowed goods to move without full customs controls through border locations without existing customs control systems (i.e. inventory linked systems). These are also known as specified Roll-on Roll-Off (Ro-Ro) and "other listed" border locations. This instrument concerns changes relating to the removal or permanent replacement of the provisions for these staged border controls, together with the introduction of new arrangements for applying full controls on goods exported from or imported to Great Britain (GB) from 1 January 2022. The instrument also provides for a penalty where obligations arising from the new arrangements are not complied with.
- 7.2 Under Parts 13 and 13C of the Customs (Import Duty) (EU Exit) Regulations 2018, goods that are imported at specified Roll-on Roll-off (Ro-Ro) and "other listed" border locations, must be declared before import. "Other listed locations" are border locations which are not Ro-Ro locations and are listed as such by HMRC where they consider that customs procedures would be significantly impeded if declarations were not made prior to import. Where this is required, this instrument requires carriers to notify HMRC when the vessel, aircraft or train carrying the goods has embarked for GB, at the latest point of no return, and provides for exceptions to the requirement. This instrument enables HMRC to provide details of the notification in a public notice. The person declaring these goods will no longer be required to notify HMRC

that goods have arrived in GB by 23:59 the day after the day on which the goods were imported.

- 7.3 Furthermore, where pre-lodgement of declarations is required at “other listed locations”, this instrument provides that declarations must be made by importers before goods are loaded and after this time declarations cannot be amended or withdrawn without permission. These changes to timings ensure consistency with Ro-Ro locations.
- 7.4 This instrument also makes minor changes to the process by which HMRC Commissioners issue lists of Ro-Ro and other border locations.
- 7.5 Under Regulation 53 of the Customs (Export) (EU Exit) Regulations 2019, goods exported at specified Ro-Ro locations, as listed in a public notice, must be declared before the goods have left the trader’s premises in such a way that the declaration will be instantly processed, and the trader notified of the outcome. This instrument makes provision for listing other locations (“specified export locations”) where HMRC considers that the location does not have sufficient physical space in which to operate the processes for full customs controls used at all other border locations (the standard export procedure). At the specified Ro-Ro and other “specified export locations”, this instrument requires carriers to verify that all goods permitted to be loaded for export onto vessels, aircraft and trains have obtained a Permission to Progress message. Messages will need to be sent to HMRC confirming that goods have left GB for all goods, but this will be done automatically by the Goods Vehicle Movement Service (GVMS) (or an alternative equivalent system) and require no action by exporters. This will also mean that where excise duty suspended goods (such as alcohol or tobacco products) are exported through these locations, traders or the location will no longer need to confirm manually to HMRC that the goods have left GB. Where required, those involved in moving goods through these locations, and exporters, may need to provide evidence that a declaration has been made as under staged border controls.
- 7.6 This instrument also provides HMRC Commissioners with the ability to apply existing modifications at Ro-Ro locations for declarations by conduct (where a person in control of the goods carries goods in a vehicle which passes a customs office before the goods depart the UK) at other export locations.
- 7.7 This instrument also allows goods imported through border locations where pre-lodgement of declarations is required to go into inland temporary storage facilities, without first requiring the consent of an HMRC officer. The changes mean that goods will not be required first to go into temporary storage facilities at the border.
- 7.8 This instrument also makes consequential changes to other legislation, including to the Customs (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1605). The current legislation for Ro-Ro locations applies to the removal of certain goods to Great Britain from Northern Ireland, and this instrument will ensure that the changes to be made will also apply in this case.

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 United Kingdom from the European Union because it relates to changes that were made to the UK’s customs regime following the end of

the transition period on 1 January 2021. Legislation relating to the new import and export regime between the EU and GB has been in force since the end of the transition period.

9. Consolidation

- 9.1 These regulations form part of the significant programme of secondary legislation delivered by HMRC relating to the UK's departure from the EU. In view of the identification of further legislative requirements following the end of the transition period, it is now necessary to again update this legislation. However, it is not possible to consolidate this legislation at this time as the pace of change following the end of the transition period has not sufficiently slowed to make this reasonably practical.

10. Consultation outcome

- 10.1 No formal consultation on this instrument. However, an informal consultation was carried out through calls with border location operators, carriers and representative bodies on the proposed changes to customs controls covered in this instrument.
- 10.2 A virtual reading room on the full draft instrument was conducted on 7 July 2021 with members of the Joint Customs Consultative Committee, who were able to discuss the draft legislation with policy officials. The Joint Customs Consultative Committee is an HMRC-sponsored forum established to exchange views on, and discuss proposed changes to, customs procedures and documentation relating to the entry and clearance of goods.

11. Guidance

- 11.1 There is already guidance on customs matters at: <https://www.gov.uk/import-goods-into-uk> and <https://www.gov.uk/export-goods>.
- 11.2 All guidance is currently being reviewed and where necessary will be updated prior to the changes to be made by this instrument on 1 January 2022.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 This instrument implements new ways for border locations to achieve full customs controls that would otherwise have applied when trading with the EU immediately upon the end of the transition period. The instrument also gives those importing goods through border locations without temporary storage facilities the option to put goods into temporary storage and delay making a customs declaration.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 A Tax Information and Impact Note covering this instrument will be published at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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 (employing up to 50 people).

- 13.3 The basis for the final decision on what action to take to assist small businesses is that the measures in this instrument will not be burdensome.

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 provision is not included within this instrument by virtue of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015. This section sets out that there is an exemption where provisions are in connection with a tax or duty.

15. Contact

- 15.1 Aulia Beg at HMRC Telephone: 0300 054 4235 or email: aulia.beg@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sarah Khan, Deputy Director for Customs, at HMRC 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.