

EXPLANATORY MEMORANDUM TO

THE CUSTOMS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 569

1. Introduction

- 1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC), on behalf of His Majesty's Treasury, and is laid before the House of Commons by Command of His Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends certain customs rules that apply for the import or export of goods. It provides for various simplifications and easements to customs declaration requirements and imposes new information requirements and other customs controls in certain circumstances.
- 2.2 These changes will enable HMRC to specify in a notice the deadline for submission of information under the simplified customs declaration process (SCDP), as well as the deadline for payment of import duty. New simpler declaration arrangements will be available for certain businesses moving goods to and from the United Kingdom (UK) Continental Shelf. The instrument also retains a provision that allows goods exported to help relieve the humanitarian crisis in Ukraine to be declared for customs purposes orally or by an individual carrying out specified conduct (a 'by conduct' declaration).
- 2.3 Various changes necessary to ensure the effective control or supervision by HMRC of imported or exported goods are also included in the instrument. These include extending the requirement in relation to the presentation of certain commercial goods imported or exported in baggage or a small vehicle (Merchandise in Baggage, MiB), and a provision enabling HMRC to restrict the locations at which these commercial goods can be imported. The instrument also includes a requirement for HMRC to be notified of arrival of certain imported goods if HMRC has not already been made aware.
- 2.4 The instrument also includes various minor and technical updates to the customs rules, including those concerning authorisations issued by HMRC and the customs transit procedure (under which goods can enter the UK without import duty being chargeable).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The effect of this instrument is that certain matters that are currently set out in regulations will, in future, be set out in a notice published by HMRC.
- 3.2 This change relies on section 32(8) of Taxation (Cross-border Trade) Act 2018 (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. Relevant notices will be published at Customs, VAT and Excise UK transition legislation from January 2021 – GOV.UK (<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.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 The main provisions in relation to import duty chargeable where goods are brought into the UK can be found in the TCTA, and regulations made under that Act. The Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248) (the import duty regulations) include provisions setting out the rules concerning: SCDP for import declarations; notification and presentation to Customs of imported goods; payment and deferment of import duty; declarations for MiB and authorisations and approvals.
- 6.2 Chapter 2, Part 4 of the import duty regulations contains provisions setting out cases in which imported goods can be declared for customs purposes orally to an officer of HMRC, or ‘by conduct’ (where a person carries out certain specified conduct, such as passing through a ‘nothing to declare’ lane at a port). Eligible goods are listed in the document entitled “List of Goods Applicable to Oral and By Conduct Declarations” known as the Oral and By Conduct List by virtue of regulation 14 of the import duty regulations.
- 6.3 TCTA and regulations made under that Act also make provision concerning rules that apply where goods leave the UK. The Customs (Export) (EU Exit) Regulations 2019 (S.I. 2019/108) (the export regulations) set out the rules for the declaration of goods that are being exported from the UK. This includes rules concerning SCDP for goods which are to be exported as well as specific provisions for simpler customs declarations for travellers with MiB.
- 6.4 The export regulations also provide that certain goods that are subject to an authorised use customs procedure (under which customs duty relief is available to imported goods on account of their intended use) which are moved to the UK Continental Shelf, do not need to be exported in accordance with the general ‘applicable export provisions’ set out in Part 2 of the export regulations. The effect of this is that no export declaration is required in respect of these goods.
- 6.5 Chapter 4, Part 4 of the export regulations also provide for cases in which goods can be declared for customs purposes orally to an officer of HMRC, or by ‘by conduct’. As is the case for imports, eligible goods are listed in the document entitled “List of

Goods Applicable to Oral and By Conduct Declarations” known as the Oral and By Conduct List by virtue of Regulation 9 of the export regulations.

- 6.6 The Customs Transit Procedures (EU Exit) Regulations 2018 (S.I. 2018/1258) set out the procedure to be followed for goods moving under a transit procedure, and implement the requirements of international transit agreements, including the Convention on a Common Transit Procedure and the Transports Internationaux Routiers (TIR) Convention. The Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1431) make provision for reliefs from liability to import duty, including rules on claiming reliefs and conditions applying to reliefs.
- 6.7 The Customs (Contravention of a Relevant Rule) Regulations 2003 (S.I. 2003/3113) are made under section 26 of the Finance Act 2003. These regulations set out civil penalties for breaches of the rules relating to customs duty.
- 6.8 The provisions of this instrument apply to movements into or out of Great Britain (GB) and Northern Ireland to the extent their application is in accordance with the provisions of the Windsor Framework.
(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145699/Joint_Declaration_by_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_European_Union_in_the_Withdrawal_Agreement_Joint_Committee_on_the_Windsor_Framework.pdf).

7. Policy background

What is being done and why?

- 7.1 This instrument introduces a number of targeted changes to customs requirements that apply for imported and exported goods. The changes include those intended to simplify declaration requirements and therefore support businesses importing and exporting goods. Other changes will enable HMRC to exercise more effective control over imported and exported goods. Certain declaration and import duty payment deadlines currently provided for in regulations will, in future, be set out by HMRC in a notice so that these deadlines will be more responsive and flexible. Other provisions in the instrument update the current legislation, including to reflect changes in international agreements or HMRC operational practice.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 A declaration is required for customs purposes where goods are imported or exported including goods moved to and from the UK Continental Shelf. Usually this will be a standard electronic declaration, but customs legislation provides for various simplifications of these requirements, including allowing a person to use SCDP where authorised to do so by HMRC. The import duty regulations and export regulations set out various deadlines for SCDP, including the deadline by which required information (a simplified customs declaration and a supplementary declaration) must be given to HMRC. Additional information, in the form of a ‘final supplementary declaration’ is also required as a condition of authorisation to use SCDP. These conditions of authorisation can only be amended by HMRC after the authorisation has been granted in circumstances specified in the import duty regulations.

- 7.3 To date, HMRC has held back on imposing declarations requirements in full on the oil and gas industry pending introduction of the simplification by this SI.
- 7.4 Elsewhere, declarations can be made orally to an HMRC officer or ‘by conduct’ (rather than by a standard electronic form) but only in those cases specified in the import duty regulations, the export regulations or the ‘Oral and By Conduct List’ published under these regulations. Such cases include a facilitation for humanitarian aid being exported to relieve the humanitarian crisis in Ukraine, although this is scheduled to expire on 19 June 2023.
- 7.5 In other cases, an advance declaration is required before goods arrive in the UK; these cases include some accompanied commercial goods (MiB). Such goods can currently be imported to or exported from the UK at any port.
- 7.6 In most cases, a notification of importation of goods must be provided to HMRC once the imported goods arrive in the UK. In certain cases however, where a declaration is made before the goods arrive in the UK, this notification is treated as having been given, without any action being required by the importer or carrier of the goods. Separate rules apply in cases where goods arrive under a ‘common transit procedure’, where legislation requires a ‘Transit Accompanying Document’ (TAD) to be presented to HMRC.
- 7.7 Goods being moved under transit using TIR must record the customs offices of departure and destination for that movement. These are the places of exit and entry to each customs territory the goods move through. Current rules only allow a movement to go through four customs offices of departure and destination.
- 7.8 The import duty regulations also specify the latest due dates for payment of import duty, including in various cases where a person has been authorised by HMRC to defer payment of that duty.

Why is it being changed?

- 7.9 The import duty regulations which specify the submission deadlines for SCDP declarations and the latest due date for payment of import duty in duty deferment cases are currently unduly onerous. Enabling HMRC Commissioners to adjust these technical details through a notice rather than requiring a Statutory Instrument enables the customs system to be adapted more flexibly, and with less use of parliamentary time. This change also brings SCDP into line with other elements of the customs system.
- 7.10 The government also wishes to ease declaration requirements for movements of goods between GB and the UK Continental Shelf. This easement will support offshore industries. The extension of the advance customs declarations (which require less information than full customs declarations) or by conduct declarations is intended to reduce burdens on small and medium sized businesses moving MiB.
- 7.11 Moreover, the government wishes to retain the current easement whereby humanitarian aid to relieve the crisis in Ukraine can be declared orally or ‘by conduct’ when it is exported from the UK.
- 7.12 Other changes in the instrument will ensure that appropriate controls can be exercised on the arrival of imported or exported goods. This means ensuring that HMRC is notified of the arrival of goods where appropriate, and in certain limited cases, preventing some goods from being imported or exported at certain locations.

- 7.13 Changes in the instrument relating to the transit procedure reflect developments in internationally agreed arrangements. Changes in relation to amendment of authorisations issued by HMRC will ensure that conditions to which an authorisation is subject can be updated where necessary. This will help to ensure that standard conditions can be imposed for all authorisations of the same type, regardless of when these authorisations were first granted by HMRC.

What will it now do?

- 7.14 Deadlines for declarations and the date of payment of import duty for the SCDP will be set out in notices published by HMRC, as will the value threshold at which traders can submit a simpler ‘advance’ declaration for MiB. More businesses will also be able to use ‘by conduct’ declarations for goods moving to and from the UK Continental Shelf relieving administrative burden.
- 7.15 The customs easement allowing humanitarian aid exports in support of victims of the Ukraine war was due to end on 19 June 2023. This end date has been removed. HM Government will continue to keep the easement under review.
- 7.16 Where HMRC has not been automatically notified of the physical arrival of goods through border IT systems, traders will need to notify HMRC that the goods have arrived using customs declaration software. Certain MiB movements will be restricted to specified ports.
- 7.17 For certain transit movements electronic submission of documents will replace the requirement to present a printed TAD to customs authorities and HMRC will set out for transit users the formats in which documents may be submitted. For transit movements under TIR arrangements, the number of customs offices of departure and destination that can be involved will be eight.
- 7.18 Where a person has been granted an authorisation by HMRC under the import duty regulations, HMRC will have further powers to amend that authorisation where this is necessary to ensure that authorised persons can be subject to ‘standard’ conditions of authorisation.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No consolidation of existing legislation is considered appropriate at this time, but this will be kept under review.

10. Consultation outcome

- 10.1 HMT and HMRC engaged external stakeholders on the SCDP through the Call for Evidence: An Independent Customs Regime in February 2022. A summary of responses was published on 25 July 2022 at Call for evidence: An Independent Customs Regime – summary of responses – GOV.UK (<https://www.gov.uk/government/consultations/call-for-evidence-an-independent-customs-regime/outcome/call-for-evidence-an-independent-customs-regime-summary-of-responses>).

- 10.2 HMRC has informally discussed the other changes with businesses and other stakeholders as part of ongoing discussions concerning the development of the UK customs rules.
- 10.3 A virtual reading room on the full draft instrument was conducted on 19 May 2023 with members of the Joint Customs Consultative Committee (JCCC), who were able to discuss the draft legislation with policy officials. The JCCC 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 Guidance has been or will be published on all of the matters covered in this instrument and will, where necessary, be updated before the changes take effect. Guidance can be found at (www.gov.uk/guidance/using-simplified-declarations-for-imports); (www.gov.uk/guidance/bringing-commercial-goods-into-great-britain-in-your-baggage); (www.gov.uk/guidance/taking-commercial-goods-out-of-great-britain-in-your-baggage) and (www.gov.uk/guidance/taking-humanitarian-aid-out-of-great-britain-to-support-ukraine).
- 11.2 For transit changes guidance can be found at (www.gov.uk/government/publications/community-common-transit-and-tir-newsletters). Changes to TIR guidance will be made to the existing guidance at (www.gov.uk/guidance/carry-out-international-road-haulage#customs-and-document-checks-away-from-ports).

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 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

- 13.1 Some of the legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is necessary to minimise regulatory burdens on small businesses because many of the changes in this instrument include simplifications that could benefit businesses of all sizes. The instrument will only impose new requirements on business in limited circumstances and where necessary for the purposes of customs controls and supervision of goods, which are essential to control our borders.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the changes introduced by this instrument will extend customs simplifications and easements available to any businesses, regardless of size.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to keep customs rules under review through ongoing stakeholder engagement, to ensure that this instrument meets the policy objectives set out in section 7 of this Explanatory Memorandum.

14.2 A statutory review clause is not included in the instrument 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 Iram Akhtar/Angela Miles at HMRC email: (jobshareiramangela@hmrc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Phil Bower, Deputy Director for Customs Control, Infrastructure and Declarations, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.