

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (IMPORT DUTY) (EU EXIT) (AMENDMENT) REGULATIONS
2023

2023 No. 811

1. Introduction

- 1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument updates the rules for guarantees given in respect of customs duty amounts that are payable for imported goods (customs guarantees). It makes changes in consequence of provisions in Finance (No. 2) Act 2023 relating to customs guarantees and provides limited exceptions to rules setting out when such guarantees are not required, and how guarantee amounts should be calculated. The changes will ensure that HMRC can require a guarantee amount to be given in any case where the correct amount of duty for imported goods has not been established when those goods are released to the United Kingdom market.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

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 UK.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the UK.

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 legal provisions in relation to customs duty chargeable when goods are brought into the United Kingdom are the Taxation (Cross-border Trade) Act 2018 (TCTA) and regulations made under that Act.
- 6.2 TCTA includes provisions at paragraph 17(5A) and (5B) of Schedule 1 (introduced by Finance (No. 2) Act 2023) enabling HMRC to make the discharge of imported goods from the free-circulation procedure (and therefore release of goods to the United Kingdom market) subject to an approved guarantee being given in respect of any liability to import duty in respect of those goods. This is intended to apply in cases where – at the time that the imported goods are declared for customs purposes – it is

impracticable to immediately ascertain the amount of duty payable in respect of these goods. These new provisions in TCTA replace provisions previously set out at section 119 of the Customs and Excise Management Act 1979 (CEMA).

- 6.3** The effect of this update to TCTA is that the guarantees provided for in paragraph 17(5A) and (5B) of Schedule 1 will be subject to rules which apply for other approved guarantees provided for under TCTA legislation. This includes rules at Part 10 of the Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248) ('import duty regulations'), setting out the 'specified amount' of duty that is to be guaranteed and identifying cases in which no guarantee is required. These rules in Part 10 of the import duty regulations are modified by this instrument.
- 6.4** Section 32(8) of TCTA provides that any power to make regulations under Part 1 of TCTA includes a power to make provision by reference to things specified in a notice published in accordance with the regulations. Regulation 41(3) of the import duty regulations provide that the forms of payment that will be accepted to discharge a liability to pay import duty will be specified in a notice published by HMRC. Similarly, regulation 95(1)(b) and (3) of the import duty regulations provide that the forms of guarantee that may be approved are those specified in a notice published by HMRC. Alongside this instrument, consequential updates will be made to rules set out in these notices. The updated versions of these notices will be published on GOV.UK at: Customs, VAT and Excise UK transition legislation from January 2021 (<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 instrument comes into force.

7. Policy background

What is being done and why?

- 7.1** This instrument provides limited exceptions to the general rules for customs guarantees set out in Part 10 of the import duty regulations, for guarantees described in paragraph 17(5A) and (5B) of Schedule 1 to TCTA. It also makes changes to ensure that such guarantees can be required by HMRC in all cases where the importer is approved to defer import duty. The intention of both these changes is to ensure that HMRC can continue to require such guarantees to cover duty that may be payable, in any case where – at the time that goods are released to the United Kingdom market – it is not possible to establish the correct amount of duty payable.

Explanations

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

- 7.2** Part 10 of the import duty regulations makes provision for the 'specified amount' covered by a guarantee to be reduced in certain circumstances where a person is approved to defer payment of a liability to import duty. It also sets out cases in which a person is not required to give a guarantee, such as where the importer is a public authority or where goods are imported into the United Kingdom via a pipe-line. These rules have effect in relation to guarantees provided under TCTA legislation only, and not to any guarantees provided under CEMA.

Why is it being changed?

- 7.3 Finance (No. 2) Act 2023 replaced the guarantee provisions in CEMA. It updated TCTA to allow HMRC to make the release of goods to the United Kingdom market subject to a guarantee. These TCTA guarantees will be subject to the general rules that apply to customs guarantees under Part 10 of the import duty regulations – including those described above concerning the calculation of the ‘specified amount’ and cases in which a guarantee is not required.
- 7.4 The government believes that where it is not possible to ascertain the correct amount of duty due, HMRC should be able to require a guarantee from the importer - even in those limited cases, specified in the import duty regulations, where guarantees are not usually required. In addition, any such guarantee should be calculated with reference to the amount of duty that may be due in respect of the imported goods, following verification of the customs declaration by HMRC. It is not therefore appropriate for the ‘specified amount’ covered by a guarantee to be reduced in cases where an importer has been approved to defer payment of a liability to duty.

What will it now do?

- 7.5 The instrument updates Part 10 of the import duty regulations to exclude guarantees given under paragraph 17(5A) and (5B) of Schedule 1 to TCTA from the provisions described above concerning the calculation of the ‘specified amount’ to be covered by the guarantee, and cases in which a guarantee is not required.
- 7.6 This will retain the position which applied in respect of these guarantees when they were provided to HMRC under a requirement imposed under CEMA.

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 No separate consultation exercise was conducted as this instrument makes simple technical changes to general rules and processes.

11. Guidance

- 11.1 These guarantees are sometimes required as a condition of releasing goods following HMRC preclearance examinations. The guidance on these checks can be found on GOV.UK (<https://www.gov.uk/guidance/when-we-select-your-goods-for-inland-pre-clearance-checks>).

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 was published on 15 March 2023 alongside draft Finance Bill clauses and is available on the website at <https://www.gov.uk/government/publications/reviews-and-appeals-against-discretionary-customs-guarantees/customs-reviews-and-appeals-against-discretionary-guarantees>. It remains an accurate summary of the impacts that apply to this instrument.

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.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that no action to minimise regulatory burdens is required, because the changes in the instrument are not expected to affect the regulatory burdens on any business.

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 Stuart Holtum at the HMRC email: customspolicyguarantees@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sally Beggs, Deputy Director for Customs Policy and Strategy Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.