

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (TRANSITIONAL) (EU EXIT) REGULATIONS 2020
2020 No. 1449

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 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 (UK) has a customs regime in place at the end of the transition period following the withdrawal of the UK from the European Union (EU).
- 2.2 The measures contained in this instrument concern how and when TCTA is to apply to goods in Great Britain under the separation provisions of the Withdrawal Agreement of the UK from the EU (the Withdrawal Agreement). These measures relate to goods where a customs procedure had commenced, or a movement had begun, before the end of the transition period but is completed after that point.
- 2.3 The instrument also amends EU Exit instruments to take account of the Withdrawal Agreement.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The measures in this instrument will largely be brought into force using the power in section 52(2) of TCTA which allows subordinate legislation to be brought into force on a day appointed by the Treasury in regulations. This is on the basis that the Treasury is of the view that it is appropriate to do so in consequence of, or otherwise in connection with, the UK's withdrawal from the EU. However, certain amendments to other customs legislation will be brought into force on 30 December 2020, prior to the end of the transition period.
- 3.2 This instrument makes provision by reference to things to be specified in notices published by HMRC. The need for explicit vires to sub-delegate and the consideration that the Joint Committee on Statutory Instruments gave to the draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (in the 30th report of session of 2017 – 2019) are noted. 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)

- 3.3 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 provisions of this instrument apply to movements into Great Britain and some movements between Great Britain and 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 Currently the main provisions governing the import of goods into, and export of goods from, the UK are set out in directly applicable EU regulations. The Union Customs Code (UCC) (Regulation (EU) No 952/2013) is the overarching legislative framework for customs adhered to by all EU Member States and by the UK during the transition period. Sitting under the UCC are the implementing regulation (Regulation (EU) 2015/2447) and delegated regulation (Regulation (EU) 2015/2446), which are supplemented by many other regulations (for example Council Regulation (EEC) No 2658/87, setting out the nomenclature and the tariff). The implementing regulation is in place to ensure the existence of uniform conditions for the implementation of the UCC and a harmonised application of procedures by all EU Member States and by the UK during the transition period. The delegated regulation supplements certain non-essential elements of the UCC.
- 6.2 When paragraph 1 of Schedule 7 to TCTA is commenced, these EU regulations, to the extent that they apply in relation to customs duty, will be replaced by provision made by and under UK regulations under TCTA (including this instrument). These will be 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), all of which will remain in force following the end of the transition period.
- 6.3 However, the Withdrawal Agreement sets out an exception to the position mentioned above – in which EU customs legislation will continue to apply in specified circumstances and for certain goods after the end of the transition period. The provisions of the Withdrawal Agreement are given effect through section 7A of the European Union (Withdrawal) Act 2018.

7. Policy background

What is being done and why?

- 7.1 The Withdrawal Agreement provides that EU customs legislation will continue to apply to EU goods (union goods) moving between the UK and the EU, if that movement started before the end of the transition period and ended after that point. This removes the need for import formalities when these goods arrive in the UK or the EU after the end of the transition period.
- 7.2 This instrument provides for the requirements necessary for application of this provision of the Withdrawal Agreement. This includes powers for Border Force officers to require certain evidence to be produced. The instrument specifies that once EU customs legislation ceases to apply to these goods, they will be domestic goods in the UK. This means the goods will not be subject to ongoing customs control or supervision.
- 7.3 The Withdrawal Agreement also provides for the continuation of EU customs legislation for goods that are under an EU customs procedure, or an EU arrangement for the temporary storage of goods, at the end of a transition period. This EU customs legislation will continue to apply until a specified event takes place in relation to the goods (such as the EU procedure ending or the goods being exported), subject to various backstop dates set out in the Withdrawal Agreement.
- 7.4 This instrument makes provision for the treatment of goods under UK customs legislation once these EU provisions cease to apply. It does so by ensuring, for example, that goods in Great Britain that were under an EU customs procedure will be treated as having been declared for the equivalent procedure under UK customs legislation, once the EU provisions cease to apply.
- 7.5 The instrument also makes provision for certain domestic customs legislation to continue to apply in relation to the goods (including in relation to collection and enforcement of duty liabilities, appeal rights and penalties), without the amendments to this legislation that take effect for other purposes at the end of the transition period. This is to ensure that this legislation can continue to apply as it currently does, alongside the EU customs legislation which is retained by the Withdrawal Agreement.
- 7.6 The instrument also includes consequential amendments to legislation that was prepared before the transition period, to take account of the transition period and the separation provisions of the Withdrawal Agreement.

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 sets out how it, and other legislation made under TCTA, will apply to goods under the separation provisions of the Withdrawal Agreement.

9. Consolidation

- 9.1 The provisions relating to ongoing customs arrangements are new legislation and no consolidation for these provisions is required. It is not possible to consolidate the consequential amendments set out in this instrument at this time as they need to be in force by the end of the transition period.

10. Consultation outcome

- 10.1 No formal consultation has been held on this instrument due to time constraints. A virtual reading room on the full draft instrument was conducted on 4 December 2020 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/starting-to-import> and <https://www.gov.uk/starting-to-export>.
- 11.2 All guidance is currently being reviewed and where necessary will be updated prior to the end of the transition period.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 HMRC will provide guidance to help businesses familiarise themselves with the transitional arrangements. There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

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 powers set out in this instrument will provide businesses with certainty over the way in which EU and UK customs legislation will apply to goods under the separation provisions of the Withdrawal Agreement.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out above 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 Stuart Pyle at HMRC Telephone: 03000 541389 or email: stuart.pyle@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sally Beggs, Deputy Director for Customs EU Exit Guidance, Legislation and Stakeholders, 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.