

EXPLANATORY MEMORANDUM TO

THE WHARVES, EXAMINATION STATIONS AND TEMPORARY STORAGE FACILITIES (APPROVAL CONDITIONS) (EU EXIT) REGULATIONS 2018

2018 No. 1265

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument is made alongside legislation to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) to create a new standalone Customs regime following the United Kingdom's (UK) exit from the European Union (EU). It introduces legal requirements for applicants for approvals to operate (wharves), airports (examination stations) or temporary storage facilities (formerly, transit sheds) to be able to provide amenities and facilities enabling customs authorities to carry out their duties. These must be supplied free of charge.
- 2.2 It is made in response to a review of the port approvals process that was carried out to prepare for the United Kingdom's exit from the EU.

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 United Kingdom.
- 4.2 The territorial application of this instrument 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 This instrument is made using for the first time powers given to HM Revenue and Customs (HMRC) under sections 20(1A)(a), 22(1A)(a) and 25(1A)(a) of the Customs and Excise Management Act 1979 (c. 2) to legislate for approval conditions for wharves, airport examination stations and temporary storage facilities. These powers

are inserted by paragraphs 9(3), 12(3) and 16(3) of Schedule 7 to the TCTA respectively.

- 6.2 Currently, the main provisions governing the importation of goods to the UK are set out in directly applicable EU regulations. The Union Customs Code, Regulation (EU) No 952/2013 (UCC) is the overarching legislative framework for customs adhered to by all Member States, and is supplemented by many other regulations.
- 6.3 When paragraph 1 of Schedule 7 to TCTA is commenced these EU regulations will be replaced by provision made by and under TCTA (including this instrument) and to the extent that these EU regulations (which will form part of the law of the United Kingdom as a result of section 3 of the European Union (Withdrawal) Act 2018)) impose or otherwise apply in relation to any EU customs duty/import duty they will cease to have effect.
- 6.4 In the UK, the EU regulations 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), which, subject to amendments made by the TCTA, will remain in force after EU exit.
- 6.5 This instrument replaces guidance that was negotiated with businesses and agreed as an informal arrangement as part of published guidance in 2007.

7. Policy background

What is being done and why?

- 7.1 Current requirements for amenities and facilities (such as parking for official cars, office space and toilet facilities) that ports, airports, etc. are expected to provide, free of charge, are contained in guidance that was agreed in 2007. These have formed the basis of negotiations for the relevant approvals since that time.
- 7.2 The aim of placing the requirements in legislation is to make the process clearer and more effective. Not only does this approach give higher visibility and greater clarity to the types of requirements (as well as providing an opportunity to update some areas such as internet access); it will also shorten the application process by removing an element of doubt from negotiations (ideally saving both sides valuable resources). It also means that a refusal to give an approval (or a withdrawal of that approval) for a failure to provide such facilities becomes a matter that an applicant can take to appeal before an independent tribunal so and gives businesses a more solid course for complaint.
- 7.3 Formalising arrangements at this time will enable HMRC and Border Force to support trade more effectively by ensuring that they have access to the necessary amenities and facilities.
- 7.4 The instrument sets out the full set of requirements, but enables HMRC and the applicant to agree which of them are actually required, and at what scale, on a case by case basis to avoid unnecessary burdens on business.
- 7.5 Failure to agree to such requirements or to subsequently fail to provide them will lead to the approval being withheld or withdrawn.

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 but relates to the withdrawal of the UK from the EU as it, and other legislation made under the Taxation (Cross Border Trade) Act 2018, will ensure that the UK's customs regime operates as required after EU exit.

9. Consolidation

9.1 This is new legislation and therefore no consolidation is required.

10. Consultation outcome

10.1 No formal consultation was carried out as it was determined that the changes would have very little impact on the operation of the sector. Existing, agreed practice will simply be placed on an explicit legislative footing.

11. Guidance

11.1 The existing guidance which is available from both HMRC and Border Force will be revised and updated in due course. It will continue to form the basis for discussions and negotiations.

12. Impact

12.1 The impact on business, charities and voluntary bodies is positive as it formalises the existing approval process for those seeking to operate a point of entry for goods, providing regulatory certainty to ports, airports and temporary storage providers.

12.2 There is no, or no significant, impact on the public sector.

12.3 This instrument is one of a group of instruments covered by a single overarching HMRC impact assessment which will be published on 4 December 2018 and will be available on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.

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 Small businesses should not be specifically disadvantaged by this regulation. All applications for approval would and will require an agreement to provide some facilities regardless of the size of the business. However, those requirements will be proportionate to the size of the business.

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 of this Explanatory Memorandum, and to ensure burdens on business are carefully monitored.

14.2 A statutory review clause is not included within these regulations by virtue of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015, which sets out that there is an exemption where provisions are about or in connection with a tax or duty.

15. Contact

- 15.1 Anthony Allgood at HM Revenue and Customs Telephone: 03000 586 892 or email: Anthony.allgood@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Pamela Mulholland, Deputy Director at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Mel Stride, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.