

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS (EXPORT) (EU EXIT) REGULATIONS 2019**  
**2019 No. 108**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue & Customs on behalf of HM 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) (the TCTA) to ensure that in the event of the United Kingdom (UK) leaving the European Union (EU) without a negotiated deal, the UK has a Customs regime in place before the date of departure.
- 2.2 In the event of the UK leaving the EU without a deal, legislation will be necessary to ensure the UK's customs regime functions as intended after the UK leaves the EU and so, on a contingency basis, this instrument lays down the main provisions governing the export of goods from the UK, including replacing provision currently set out in EU law.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 We wish to draw several points to the attention of the Committee. The first is that, in accordance with regulation 1 of this instrument, some provisions will come into force on 22 February 2019 for the purposes of authorisations and approvals to allow for applications for authorisation/approval to be determined in advanced of the UK leaving the EU.
- 3.2 The second is that some of the provisions in this instrument apply parts of the TCTA with modifications. See regulation 43 of this instrument (notification of acceptance of export declarations) which applies paragraph 11 of Schedule 1 to the TCTA with modifications. In other cases the regulations replicate provisions in the TCTA. That includes some provisions which grant HM Revenue and Customs (HMRC) the power to set out certain matters in a public notice. For example, regulation 14(1) (export declarations made electronically) which allows HMRC to specify the form on which an electronic declaration must be made, among other things. This provision largely replicates paragraph 4 of Schedule 1 to the TCTA for the purposes of export declarations. In making these and similar provisions, this instrument relies on, with others, vires in section 35(4)(a) of the TCTA, which provides a power to apply or replicate the effect in regulations any provision for export made by or under Schedule 1 to the TCTA in relation to import (with or without modifications). These provisions have been modified for the purposes of the regulations.

- 3.3 The third is that, in addition to provisions that replicate or apply the TCTA, there are other provisions that grant HMRC a power to set out matters in a notice made pursuant to this instrument. See regulation 40 (obligation to make goods available for examination) of this instrument as an example. We note 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 2017–2019). The TCTA does include the express power to sub-delegate and in making this and similar provisions the instrument relies on section 32(8) of the TCTA which provides that any power to make regulations under Part 1 of the 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 instructions specified in a notice published in accordance with the regulations. Most of the notices will be similar to those currently in effect under EU law and paragraph 1(3)(c) of Schedule 7 to the TCTA enables provisions to be made under Part 1 of the TCTA that correspond to those which could have been made by EU law. Additionally, section 35 of the TCTA enables HMRC to replicate sub-delegation in the Act in relation to export declarations.
- 3.4 With regard to the notices that will be made under this instrument, HMRC will publish the majority of notices in draft alongside the instrument so that Parliament can consider how HMRC plans to exercise the powers delegated to it.
- 3.5 Fourthly, the instrument incorporates a document by reference, namely the List of Goods Applicable to Oral and By Conduct Declarations, version 1, dated 27 November 2018<sup>1</sup> which in order to set out certain goods in respect of which an export declaration can be made orally or by conduct. This document sets out technical and administrative detail that it would be disproportionate to include on the face of the instrument.

*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)*

- 3.6 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 territorial application of this instrument is the whole of 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.

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<sup>1</sup> Available electronically from: <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>. A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

## **6. Legislative Context**

- 6.1 This regulation is being laid using the powers contained within the TCTA. The majority of this instrument will be brought into force using the power in section 52(2) of the TCTA which enables 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 in consequence of, or otherwise in connection with, the UK's withdrawal from the EU.
- 6.2 Currently the main provisions governing the export of goods from 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. Sitting under this regulation are the implementing regulation (Commission Implementing Regulation (EU) 2015/2447) and delegated regulation (Commission Delegated 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 delegated regulation supplements certain non-essential elements of the UCC and the implementing regulation is in place to ensure the existence of uniform conditions for the implementation of the UCC and a harmonized application of procedures by all Member States.
- 6.3 When paragraph 1 of Schedule 7 to the TCTA is fully commenced these EU regulations will be replaced by provision made by and under UK regulations under the TCTA (including this instrument). The extent that these EU regulations (which will form part of the law of the UK as a result of section 3 of the European Union (Withdrawal) Act 2018) impose or otherwise apply in relation to any EU customs duty will cease to have effect unless otherwise provided for under Part 11 of this instrument.
- 6.4 In the UK the EU regulations referred to above 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 Section 52A of Customs and Excise Management Act 1979 was inserted into that Act by the TCTA. It creates criminal offences for breach of the applicable export provisions. It states that if any person contravenes or fails to comply with any of the requirements, the person is guilty of an offence and the goods are liable to forfeiture. There are also other penalties which will apply to provisions made under these Regulations set out in The Customs (Contravention of a Relevant Rule) (Amendment) (EU Exit) Regulations 2019 to be laid in January 2019.

## **7. Policy background**

- 7.1 This instrument, together with the TCTA and public notices and notices made under this legislation, is designed to broadly replicate the effect of EU legislation referred to above in relation to the export of goods from the UK.
- 7.2 Non-fiscal Customs matters, for example in relation to EU law dealing with safety and security requirements around the export of goods, will be dealt with under the European Union (Withdrawal) Act 2018.
- 7.3 This instrument is key in ensuring businesses can prepare for the UK leaving the EU, and are able to operate within the customs regime after EU exit. It will be commenced in full if a deal is not agreed following EU/UK negotiations.

- 7.4 This instrument makes provision for an export procedure under the Act, called the common export procedure. It will allow HMRC to, amongst other things:
- introduce export declarations for goods leaving the UK;
  - assess the level of risks of export declarations at the point of declaration;
  - instruct exporters to make goods available for examination.
- 7.5 This instrument includes some matters not currently required under existing EU legislation. The instrument brings in different requirements for exporters and carriers where goods are to be exported by vehicles and trains at Roll on Roll off (RoRo) locations in order to enable the flow of goods. These changes will mean that goods will not need to be presented to customs and a notification that the goods have arrived at the port or left the country will not be necessary unless informed or otherwise stated by HMRC. The ports and Eurotunnel where this will be the case are to be listed in a public notice. These locations are currently listed here: <https://www.gov.uk/guidance/list-of-roll-on-roll-off-ports>. RoRo refers to vehicles, for example a lorry, containing goods that would drive onto a ferry or train and then drive off once it has reached the new destination.
- 7.6 The provisions in this instrument will enable HMRC to deliver a functioning border in a no deal scenario, enabling HMRC to monitor what is entering and leaving the UK as it can for goods being traded between the UK and outside of the EU.
- 7.7 The UK Government is committed to avoiding a hard border between Northern Ireland and Ireland and will do everything in its power to ensure that no new physical infrastructure is introduced at the land border in the event of no deal. Further details on the arrangements for trade between Northern Ireland and Ireland will be published as soon as possible.

## **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 because it, and other legislation made under the TCTA, 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 As the purpose of this instrument is to ensure that customs legislation currently governed by the EU is provided for in UK legislation, no formal consultation was carried out. Where the instrument imposes obligations that do not exist in EU law, e.g. RoRo advance declarations, HMRC has informally consulted ports, hauliers and ferry operators for views and comments. Agreement was reached with ports and Eurotunnel on what locations should be listed as RoRo locations.

## **11. Guidance**

- 11.1 In the event of a “No Deal” outcome, businesses would, broadly, apply the same customs rules to goods moving between the UK and the EU as currently apply in cases where goods move between the UK and a country outside of the EU. There is

already guidance on this on GOV.UK. One such page is:  
<https://www.gov.uk/guidance/declaring-your-goods-at-customs-if-the-uk-leaves-the-eu-with-no-deal>

- 11.2 This guidance is currently being reviewed and where necessary new versions will be published prior to EU exit.

## **12. Impact**

- 12.1 The impact on business, charities and voluntary bodies is that it introduces new customs obligations for businesses that trade with the EU. This is expected to be a significant administrative cost impacting UK businesses of all sectors.
- 12.2 The impact on the public sector is that additional resource will be required at customs offices to administer the new obligations on trade between the UK and the EU.
- 12.3 This instrument will be covered by an overarching HMRC impact assessment (second edition) which will be published and 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 (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 instrument introduces rules and obligations equivalent to those that already apply to goods exported to countries outside the EU.

## **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 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 Samuel Wilson at HM Revenue and Customs Telephone: 07741835050 or email: Samuel.wilson2@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Pamela Mulholland Deputy Director for Customs EU Exit 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.