EXPLANATORY MEMORANDUM TO

THE CROSS-BORDER TRADE (PUBLIC NOTICES) (EU EXIT) REGULATIONS 2019

2019 No. 1307

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) 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 (TCTA) to ensure that, in the event of the United Kingdom (UK) leaving the European Union (EU) without a withdrawal agreement, the UK has a functioning customs, VAT and excise regime in place for the date of departure.

2.2 This instrument provides the Treasury with a temporary power for six months to issue public notices on the basis of recommendations made by the Commissioners for HMRC, to suspend, relieve, and in some cases, modify obligations and associated sanctions arising under customs, VAT and excise regimes. The public notices may only be in force for periods of up to 60 days and can only be given where it is considered to be in the public interest and appropriate as a consequence of, or otherwise in connection with, the UK's withdrawal from the EU.

2.3 This is a temporary arrangement and is part of the wider set of pragmatic contingency powers designed to give HMRC and the Treasury the flexibility to act quickly in an unpredictable environment after the UK's departure from the EU. It does not form part of HMRC's core customs model after EU exit and it is intended that this power will only be used in circumstances where existing powers were not sufficient to allow HMRC to administer the tax system effectively in the best interests of traders and the exchequer. This power will not form part of the UK's longer-term arrangements for the customs system.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument is made under section 51 of TCTA.

3.2 Section 51(3)(a) provides that regulations made under section 51 may include any such provision as might be made by Act of Parliament; this includes the power of legislative sub-delegation.

3.3 This instrument will come into force on exit day if the UK leaves the EU without a deal.

3.4 The government has designed its 'No Deal' model for customs to make compliance as easy as possible and ensure that trade continues to flow. To enable this HMRC has introduced a number of easements that make it easier for traders to move through customs processes. However, business readiness after exit may mean that unexpected barriers to trade flow arise. It is therefore possible that further changes will need to be made quickly to VAT, customs and excise processes, following the UK's exit, in order to support the flow of trade and to prevent congestion at the ports. To enable that to happen it is vital that this instrument is in force on exit day.

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)

3.5 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.

6. Legislative Context

6.1 Upon leaving the EU, the UK will establish an independent customs regime under TCTA. TCTA also includes provision to amend existing VAT and excise legislation in connection with the withdrawal of the UK from the EU.

6.2 Currently the main provisions governing the import of goods into the UK and 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 harmonised application of procedures by all Member States.

6.3 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 provisions made by and under UK regulations under the TCTA. Changes to VAT legislation in connection with the UK's withdrawal from the EU will take place as provided for under Part 3, and Schedule 8 to TCTA, and for excise under Part 4 and Schedule 9 to TCTA and existing powers. This will apply from the date of the UK's departure from the EU in the event that the UK departs without a withdrawal agreement.

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. There are also other penalties which will apply to the provisions made under the regulations set out in the Customs (Contravention of a Relevant Rule) Regulations 2003 as amended in 2018 and 2019.

6.5 This instrument is made using powers in section 51 of TCTA.

6.6 Section 51(3)(a) provides that regulations made under section 51 may include any such provision as might be made by Act of Parliament; this includes the power of legislative sub-delegation.

7. Policy background

What is being done and why?

7.1 If the UK leaves the EU without a withdrawal agreement, businesses and individuals who move goods between EU Member States and the UK will be subject to customs import and export procedures from exit day as trade with the EU will then be on the same terms as with most non-EU countries. Many businesses and individuals who only trade with the EU will be unfamiliar with these customs import and export requirements.

7.2 The government has designed its 'No Deal' model for customs to make compliance as easy as possible and ensure that trade continues to flow. To enable this HMRC has introduced a number of easements that make it easier for traders to move through customs processes. However, business readiness after exit may mean that unexpected barriers to trade flow arise. It is therefore possible that further changes will need to be made quickly to VAT, customs and excise processes, following the UK's exit, in order to support the flow of trade and to prevent congestion at the ports.

7.3 To support trade flow, and provide businesses with the certainty that they require to continue importing and exporting goods, the Treasury will need to be able to respond swiftly in the short term to any difficulties that materialise. This instrument therefore provides the Treasury with a temporary power to enable it to grant easements where necessary by issuing public notices. Specifically, the power will enable the Treasury to do the following:

- relieve obligations;
- extend the period for complying with obligations;
- extend the period during which a person is authorised to do something;
- suspend any power or duty of HMRC to impose a penalty or other sanction;
- authorise HMRC to give approvals or authorisations subject to being subsequently satisfied that the appropriate requirements are met; and
- confer certain other benefits.

7.4 The instrument also enables the Treasury to modify provisions as a consequence of or otherwise in connection with any of the above easements where the Treasury considers this to be appropriate in order to secure the collection and management of tax. This may include imposition of obligations and associated penalty provisions in limited circumstances.

7.5 The Treasury's use of the power will be subject to the following conditions:

- the power will only be exercisable in the public interest and where it is considered to be appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU;
- the Treasury will only be able to exercise the power where it has received a recommendation from the Commissioners for HMRC;
- all notices will expire after a maximum period of 60 days, but a new public notice may be made containing the same provision at the end of that period;
- the Treasury's power will expire after 6 months; and
- the Treasury will be obliged to lay a monthly report before the House of Commons, detailing whether and how the power had been used in the previous calendar month.

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 UK from the European Union because it is part of the legislation necessary to ensure that, in the event of the UK leaving the EU without a withdrawal agreement, the UK has a functioning customs, VAT and excise regime in place for the date of departure.

9. Consolidation

9.1 This is new legislation therefore no consolidation is required.

10. Consultation outcome

10.1 As this instrument does not relate to a known set of circumstances but will enable the Treasury to respond to any difficulties that materialise in the future, no formal consultation has been carried out.

11. Guidance

11.1 The guidance available at https://www.gov.uk/government/collections/trading-with-the-eu-if-the-uk-leaves-without-a-deal will be updated to reflect these changes.

12. Impact

12.1 There is no, or no significant, impact on businesses, charities and voluntary bodies.

12.2 The impact on the public sector is that additional resource will be required at HMRC to administer and monitor the use of the discretionary power.

12.3 This instrument will be covered by an overarching HMRC impact assessment 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.

12.4 This instrument will enable the Treasury to reduce burdens on businesses, charities and voluntary bodies.

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 the impact of the requirements 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 the fact that there is not expected to be any, or any significant, impact on businesses.

14. Monitoring & review

14.1 HMRC and the Treasury will keep the instrument under review to ensure that it meets the policy objectives set out in section 7.

14.2 The Treasury will lay a monthly report before the House of Commons, detailing whether and how the power has been used in the previous month.

14.3 This instrument has effect for six months from exit day.

14.4 A statutory review clause is not included within these regulations because the instrument 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 Minaz Rahman at HM Revenue and Customs, telephone: 03000 553 301 or email: minajur.rahman1@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Charlotte Axson, Deputy Director for Customs EU Exit Policy HM Revenue and Customs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.