

EXPLANATORY MEMORANDUM TO

THE CUSTOMS TARIFF (ESTABLISHMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1430

1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 the United Kingdom (“UK”) has a customs regime in place at the end of the Implementation Period following the withdrawal of the UK from the European Union (“EU”). This legislation will be necessary to ensure the UK’s Customs, VAT and Excise regimes function as intended.
- 2.2 The purpose of the Customs Tariff (Establishment) (EU Exit) Regulations 2020 is to establish a system for the classification of goods based on international law and replacing the system currently set out in EU law. The instrument will also set out the rules and standard rates of duty for goods on importation into the UK from countries and territories in a standard case (our Most-Favoured Nation rate), in which a preferential trading arrangement does not apply or the goods are not subject to other tariff measures such as a relief or suspension.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument establishes the UK’s rules and standard rates of duty for goods on import by reference to a document entitled “the Tariff of the United Kingdom, version 1.0, dated 8th December 2020” (“the Tariff of the United Kingdom”), which can be found at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>. The detail of the UK’s tariff schedule is contained in a separate reference document because the amount of technical and administrative detail in the tariff makes it disproportionately complex to include it on the face of the instrument. If this document is updated or amended by a supplemental document, a further statutory instrument will be made giving effect to the document as updated or amended.
- 3.2 The Tariff of the United Kingdom reference document contains text from various international instruments, primarily the World Customs Organization International Convention on the Harmonized Commodity Description and Coding System, which the government is required to accurately reflect in the interpretative rules as a contracting state to that Convention. 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.

- 3.3 The regulations are to be commenced on the day HM Treasury will appoint by regulations made under section 52(2). This is the first time that section 8 of the TCTA has been used. As the first regulations made under section 8, by virtue of section 32(2) and (3)(a) of TCTA, the instrument is subject to the made affirmative procedure. Section 52(3)(b) TCTA has the effect that the instrument must be approved within 60 days of being brought into force in order to continue to have effect.

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)

- 3.4 The territorial application of this instrument includes Scotland, Wales and Northern Ireland.
- 3.5 The powers under which this instrument is made cover the entire United Kingdom (because there is no free-standing extent provision in the TCTA and therefore it is deemed to extend to the entire United Kingdom) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 The Financial Secretary to the Treasury, the Rt Hon Jesse Norman MP, has made the following statement regarding Human Rights:
- “In my view the provisions of the Customs Tariff (Establishment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is being laid using the powers contained within the TCTA. As noted above, this is the first time that section 8 of the TCTA is being used, which gives powers for HM Treasury to set a tariff on the recommendation of the Secretary of State.
- 6.2 In setting the rates of import duty in the tariff that ought to apply to goods in a standard case, HM Treasury has had regard to the matters set out in section 8(5) and the recommendation made to them by the Secretary of State under section 8(6).
- 6.3 Currently the main provisions governing the UK’s tariff rates are set out in directly applicable EU Regulations. This includes the Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended (most recently by Council Regulation (EEC) No. 2020/1577), which forms part of an overarching framework of EU legislation on customs.
- 6.4 At the end of the Implementation Period paragraph 1 of Schedule 7 to TCTA will be commenced 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, they will cease to have effect unless otherwise provided for.
- 6.5 This instrument is part of a package of instruments that establish the customs tariff of the United Kingdom and those variations from the rate of import duty in a standard

case that will apply to imported goods following the end of the Implementation Period. The other statutory instruments all follow the negative procedure.

7. Policy background

What is being done and why?

- 7.1 This instrument, together with the TCTA, other regulations made under the TCTA, and any public notices made under that legislation, is designed to broadly reproduce the effect of EU legislation as it applies in respect of customs matters to the import of goods from third countries into the EU to the import of goods into the UK from the EU and third countries.
- 7.2 This instrument, and others made under TCTA, will ensure that goods which arrive in the UK will be subject to a system that applies a classification code identifying the goods (based on the international Harmonised System for the classification of goods) and so enabling the correct rate of import duty to be charged. Having such a system in place is a requirement of World Trade Organization rules under the General Agreement on Trade and Tariffs.
- 7.3 The Tariff of the United Kingdom reference document sets out the rates of duty and information for importers to enable them to classify goods correctly and to keep up to date with changes to product specific commodity codes. This instrument gives effect to the classification system for imports. It also makes provision in relation to the amount of import duty an importer needs to pay when bringing goods into the country, where those goods are not subject to a preferential or lower rate of duty by virtue of specific tariff measures. These may include where the imported good originated from a country which has a preferential trading arrangement with the UK, or the user of the imported good is eligible for a relief from the standard duty rate.
- 7.4 The rates of duty set out in the reference document were announced by the Government on 19 May 2020 as the “UK Global Tariff”, which will replace the rates that currently apply under the EU’s Common External Tariff (CET) at the end of the Implementation Period.
- 7.5 This instrument, with the associated reference document and other UK customs legislation, ensures that the establishment of a functioning customs regime at the end of the Implementation Period.

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 TCTA, will ensure that the UK’s customs regime operates as required after the end of the Implementation Period.

9. Consolidation

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

10. Consultation outcome

- 10.1 The UK Global Tariff was designed following engagement with individuals and businesses across the UK. This included a public consultation that received more than 1,300 responses. Respondents included businesses, civil society and the general public. The consultation took place from 6 February through to 5 March 2020 and a summary of public responses and the Government's response to the consultation can be found at <https://www.gov.uk/government/consultations/the-uk-global-tariff>.

11. Guidance

- 11.1 After the end of the Implementation Period, the UK Global Tariff will apply to all goods imported into the UK unless an exception applies, such as a relief or tariff suspension, the goods are imported from countries that have tariff-free or reduced tariff access granted unilaterally or as part of a preferential trading arrangement. Further guidance is available at <https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021>.

12. Impact

- 12.1 The impact on business, charities and voluntary bodies will vary, and depends on a variety of factors both contained within this instrument, such as the UKGT rates that will apply to goods compared with the CET, and factors outside of this instrument, such as whether a preferential tariff rate applies to a particular good as a result of an FTA.
- 12.2 The impact on the public sector will vary as set out in the preceding paragraph.
- 12.3 This instrument is one of a group of instruments covered by an overarching Tax Information and Impact Note. The TIIN primarily focusses on this instrument and will be available in due course at: <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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 (those employing less than 50 people) where the instrument introduces equivalent rules and obligations that currently apply to goods imported from countries outside the EU.

14. Monitoring & review

- 14.1 This legislation will be monitored in the context of wider customs tariff legislation.
- 14.2 The Government will keep the instrument under review to ensure that it meets the policy objectives set out above in section 7 of this explanatory memorandum, has regard to Section 8(5) of the TCTA, and ensures burdens on business are carefully monitored.
- 14.3 A statutory review clause is not included in these regulations 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 James King at the Department for International Trade (email: james.king@trade.gov.uk, phone: 0207 215 8316) can be contacted with any queries regarding the instrument.
- 15.2 Tammy Reynolds, Deputy Director for Trade Policy, at HM Treasury 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.