

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (RELIEFS FROM A LIABILITY TO IMPORT DUTY AND
MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2020

2020 No. 1431

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 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, Value Added Tax (VAT) and excise regimes function as intended.
- 2.2 The purpose of this instrument is to allow goods to be imported with full or partial relief of duties in certain circumstances, which are set out in the instrument and its accompanying reference documents. It will broadly replicate the reliefs currently available in the UK under EU legislation. It will also introduce four new reliefs needed as a consequence of the UK leaving the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The Treasury regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force (“the 21-day rule”). This instrument needs to enter into force at the end of the Implementation Period to ensure that the UK continues to have a fully functioning customs regime in place from 31 December 2020 at 11:00pm. If this instrument was delayed to comply with the 21-day rule, a crucial part of our customs regime would not be in place, with significant economic, legal and reputational consequences. The Government had hoped to lay the full package once the outcome of negotiations with the EU was clear. However, while efforts to that end continue, the Government has decided that it is now necessary to finalise tariff preparations for 1 January.
- 3.2 The instrument will be brought into force using the power in section 52 of 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.
- 3.3 The instrument incorporates two documents by reference. The first document (the “Reliefs Reference Document”) sets out in detail the conditions that must be met to

qualify for various reliefs from import duty and the second (the “Authorised Use Eligible Goods and Rates Document”) sets out the rate of import duty that applies to goods declared under an authorised use procedures. Both documents contain information that would be disproportionate to include on the face of the instrument.

- 3.4 The instrument also makes provision by reference to things to be specified in notices published by HMRC, for example the form and manner for a claim for a relief. TCTA includes the express power to sub-delegate. The instrument relies on section 32(8) of the Act, which provides that regulation-making powers under Part 1 of the Act include: power conferring discretion on any specified person to do anything by or under the regulations; and power to make provision by reference to things specified in a notice published in accordance with the regulations. Most of the notices will be similar to provision currently in effect under EU law. The notices will be available on gov.uk: <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>.

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 United Kingdom.
- 4.2 The provisions of this instrument apply to movements into Great Britain and Northern Ireland (where in accordance with the Protocol on Ireland/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 There are no preceding UK legislative provisions for most reliefs covered by this instrument because they are currently governed by EU law under the Union Customs Code (UCC), Regulation (EU) No 952/2013. The exceptions to this are Reliefs 35, 36 and 42, as set out in the Reliefs Reference Document accompanying this instrument., which have preceding UK legislation. The four new reliefs, as set out in section 7.6 of this explanatory memorandum, have no preceding legislative provisions. The UCC is the overarching legislative framework for customs adhered to by all EU Member States (and by the UK during the Implementation Period). Sitting under the UCC 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, which sets out the nomenclature and the tariff and the Community System of Duty Reliefs, Council Regulation (EC) No 1186/2009). 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.

- 6.2 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 UK as a result of section 3 of the European Union (Withdrawal) Act 2018) impose or otherwise apply in relation to any EU import duty, they will cease to have effect unless otherwise provided for.
- 6.3 This instrument is part of a package of statutory instruments to be laid in 2020 that form part of the UK's customs legislation. The package sets out associated rules and exceptions to the tariff that will apply after the end of the Implementation Period, and this instrument sets out provisions to provide relief from import duty for certain goods, and the conditions to be met for these to be applicable.

7. Policy Background

What is being done and why?

- 7.1 This instrument, together other regulations made under 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 and export of goods between third countries and the EU and to the import and export of goods between the UK and both the EU and third countries.
- 7.2 At the end of the Implementation Period the system that classifies imports and exports and the rates of duty payable (the EU's Common External Tariff) will no longer apply to goods imported into the UK.
- 7.3 A tariff is the amount of import duty an importer needs to pay when bringing goods into the country. The customs tariff as a whole sets out the rates of duty and also sets out the commodity codes which must be used to ensure that goods are classified correctly.
- 7.4 In cases where the conditions for a relief to be applicable are met, this instrument allows for goods arriving in the UK not to be subject to import duty determined by the Most-Favoured-Nation (MFN) tariff. The MFN is the tariff countries promise to impose on imports from other members of the World Trade Organization, unless the country is part of a preferential trade agreement. Importers of goods that meet the conditions for a relief to be applicable will be fully or partially relieved of liability for payment of import duty.
- 7.5 Goods arriving in the UK are subject to import duty in the tariff. Reliefs enable the government to mitigate unintended consequences of the tariff in a targeted way. The conditions for a relief are often things like the type of goods, the use to which they will be put, or who is importing them. Some reliefs have more detailed conditions or require prior authorisation. The UK will have a wide range of reliefs ensuring, for example, that UK traders who sell to customers outside the UK are not charged UK import duty if those customers return unwanted goods.
- 7.6 In addition to the existing reliefs replicated in the new regime, provision is made for four new reliefs within the Reliefs Reference Document:
- an extension of the relief for fuel in the tanks of road transport to include fuel in the tanks of rail locomotives. Diesel trains are used for emergencies in the Channel Tunnel if the power fails. This extension ensures that relief from import duty is available for fuel used in these trains.

- a full or partial relief on defective domestic goods (personal property) being re-imported to the UK after repair.
 - a full or partial relief for goods sent to a Member State of the EU for repair or processing before the end of the Implementation Period but returning within 6 months of the end of the Implementation Period.
 - a relief to allow travellers carrying commercial goods in accompanied baggage to use a single flat rate of import duty.
- 7.7 The Reliefs Reference Document also introduces the following changes to Relief 37 relating to Returned Goods Relief (RGR):
- a transitional provision has been included to allow goods to be eligible for RGR irrespective of the date when they left the UK, for a grace period of twelve months after the end of the Implementation Period, providing that all the other conditions for claiming RGR are met.
 - the scope of the relief has been extended to allow goods within an authorised use procedure for oil and gas production on the UK Continental Shelf (UKCS) to claim RGR on re-importation to the UK.
- 7.8 Provision has also been made to permit retrospective applications for a relief after the date of importation, as a continuation of the current UK practice.
- 7.9 Two new penalties are introduced by this instrument. If a relief is granted subject to certain conditions being met, and one or more of those conditions is subsequently breached, penalties may be imposed for both a failure to notify HMRC of the breach, and for the breach itself.
- 7.10 This instrument also makes consequential changes to the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248). These changes ensure that when certain forms of customs declaration are made, such as oral declarations in the “red channel” at a port or airport, any relief claims made when making that declaration are restricted to the cases laid out in the Reliefs Reference Document mentioned above.
- 7.11 The instrument also contains provisions that will allow a person established in the Isle of Man to benefit from certain reliefs from UK import duty on the same basis as persons established in the UK.
- 7.12 In addition the instrument amends the Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations 2020 (SI 2020/967) to insert a reference to the UK Reliefs document, and restrict cases where a bulk customs declaration can be made to specific cases where full relief from import duty is available.
- 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. This is because the legislation is a necessary part in maintaining a system of reliefs in respect of customs duties after the end of the Implementation Period.

9. Consolidation

- 9.1 These regulations form part of the significant programme of secondary legislation to be delivered by HMRC by the end of the year relating to the UK's departure from the EU. The original legislation was drafted to deal with the event that there would not be a deal with the EU by the 29 March 2019. This legislation has been required to be amended in light of issues arising following extensions which took place in order for an agreement to be reached with the EU. Following the ratification of the EU Withdrawal Agreement it is now necessary to again update this legislation prior to 31 December 2020. Further changes will need to be made to The Customs (Import Duty) (EU Exit) Regulations 2018 before 31 December 2020. Consequently, it is not possible to deliver this legislation by consolidation at this time.

10. Consultation outcome

- 10.1 No consultation in relation to this instrument has been undertaken. Consultation is not required because this instrument broadly corresponds to, and replicates insofar as is possible, existing EU legislation.

11. Guidance

- 11.1 At the end of the Implementation Period, individuals and businesses will be able to get relief in respect of goods from the EU in broadly the same way as they currently get relief respect of goods imported from outside the EU. There is already guidance on gov.uk. This guidance is currently being reviewed and where necessary will be updated: <https://www.gov.uk/guidance/hmrcs-national-import-reliefs-unit-niru>.

12. Impact

- 12.1 There is no, or no significant impact, on businesses, charities or voluntary bodies.
- 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 an overarching Tax Information and Impact Note. The TIIN primarily focusses on the Customs Tariff (Establishment) (EU Exit) Regulations 2020 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.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument gives all businesses the opportunity to relieve import duty for various items. The instrument introduces broadly equivalent rules and obligations that currently apply to goods imported from or exported to 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 this instrument under review to ensure that it meets the policy objectives set out in section 7 of this explanatory memorandum, and to ensure that burdens on businesses are carefully monitored.

14.3 These regulations do not include a statutory review clause as the content relates to a tax or duty, and therefore meets the requirements of the exception set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Marie Campbell at HMRC (email: marie.campbell@hmrc.gov.uk or telephone: 03000 593383) can be contacted with any queries regarding the instrument.

15.2 Tessa Robins, Deputy Director for Customs, Authorisations and Facilitations at HMRC, and Faith Quigley, Deputy Director for Customs Policy at the 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.