

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (TARIFF QUOTAS) (EU EXIT) REGULATIONS 2020
2020 No. 1432

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs 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 Act”) 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 Rate Quota) (EU Exit) Regulations 2020 (“these Regulations”) is to establish Tariff Rate Quotas (TRQs) for certain goods imported into the United Kingdom (UK) at a lower rate of duty and to establish a regime for managing most of these TRQs using a First-Come First-Served allocation system.
- 2.3 A TRQ allows a fixed volume of goods to be imported into the UK at zero duty or at a lower rate of duty than would be applied under the standard tariff rate of import duty. A TRQ allows the UK to manage the volume of the goods that are imported into the country.
- 2.4 This instrument also establishes a licence-based management system for certain agricultural import TRQs in UK legislation. A licence-based management system requires importers to apply for a licence that permits them to make use of a particular quota during a certain time period.

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.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English case Votes for English Laws)

- 3.2 As the instrument is subject to the 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 Section 1 of the European Union (Withdrawal) Act 2018 will, at the end of the Implementation Period, repeal the European Communities Act 1972, with the result that EU law will cease to have effect in the UK. Sections 2 to 4 provide for the retention of most EU law as it stands at the point of exit in domestic law as ‘retained EU law’. Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (“the Act”) carves out direct EU legislation relating to EU customs duty from the EU law that will be retained in domestic law after the end of the Implementation Period. The Act provides the legislative framework for a standalone customs regime under which the UK will charge duty on imports of goods after exit.
- 6.2 This instrument is being made under Section 11 of the Act to establish TRQs to manage domestic imports into the UK and meet the UK’s legal obligations at the World Trade Organization (WTO). This Statutory 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.
- 6.3 Section 11(1) of the Act states that regulations may make provision for determining the amount of import duty applicable to any goods that are subject to a quota.
- 6.4 Section 11(2)(a) states that goods are subject to a quota if arrangements between the UK and a third country provide for goods to be subject to a quota. This allows TRQs to be established to fulfil the UK’s obligations to other members of the WTO. Section 11(2)(b) states that goods are subject to a quota if the Treasury otherwise considers that it is appropriate for the goods concerned to be subject to a quota, allowing the UK to establish TRQs outside the UK’s WTO commitments and broadly replicating the effect of the EU regime of TRQs outside the WTO framework (also known as ‘autonomous TRQs’).
- 6.5 Section 11(3) of the Act enables the Government to create a licensing regime for TRQs, where operators who satisfy the relevant conditions for the quotas concerned are allocated a share of quota.
- 6.6 Without this instrument there would not be any legislation in place to establish WTO and autonomous TRQs. The EU legislation establishing TRQs on imports of goods into the EU under the framework of the Union Customs Code (‘the UCC’),

Regulation 952/2013 will cease to have effect at the end of the Implementation Period. There would also be no provisions for a TRQ licence-based management system as the licensing system in EU regulations will cease to have effect when the Implementation Period has ended.

- 6.7 These regulations also give effect in UK law to provisions required for the effective operation of the UK-Crown Dependencies Customs Union, using the powers contained in sections 31(6) and 31(7) of the Act. The modifications in [Schedule 4] allow for the importation of goods into the Crown Dependencies under quota arrangements. They also modify provisions for traders importing goods into the Crown Dependencies to apply to the Secretary of State for an import licence.

7. Policy background

What is being done and why?

- 7.1 The purpose of this instrument is to establish TRQs for certain goods which are imported into the UK. The UK has set out its list or 'schedule' of TRQs which will apply at the WTO at the end of the Implementation Period, and this instrument will establish these in domestic legislation. In addition, this instrument will establish autonomous TRQs outside the WTO framework.
- 7.2 This instrument also sets out in domestic legislation the way in which TRQs are managed. The default administration system for TRQs is known as 'First-Come First-Served' (FCFS). This means that the volume of the quota is used up as and when importers declare their goods at customs and ask to make use of the relevant quota. When the volume is fully utilised within a quota period, any operator wishing to import this good into the UK will have to pay the standard rate of import duty. This instrument replicates the UCC legislation that provides for FCFS quota administration. This is the simplest management system and it will be used where it is currently under EU legislation to ensure continuity. This system will be managed by HMRC and quotas will be allocated when goods are cleared for free circulation or specific customs procedures.
- 7.3 This instrument is also designed to establish a licence-based management system for import TRQs which will replace the current EU regulations at the end of the Implementation Period. Under this management system, importers can apply for a licence that permits them to make use of a particular TRQ during a certain time period. This allows them to import the volume of goods specified in the licence at a lower or zero tariff rate.
- 7.4 The licence management system will be managed by the Rural Payments Agency and is mainly used for those quotas which are regularly oversubscribed, as it allows for the volume available for any given quota period to be apportioned among all licence applicants using an allocation coefficient. The volumes are scaled down so that all applicants receive a proportionate share of the quantity available under the quota.
- 7.5 The licences also require the operator to lodge a security which is returned to them upon proof that they have imported the volume of the goods within the prescribed timescale stated on the licence.
- 7.6 This instrument also provides for certain TRQs only to have effect where the goods are declared for an authorised use procedure. This is where importers are required to declare chargeable goods for a customs procedure. Those applicable to TRQs are the

free circulation procedure (under which the goods are released for free circulation in the UK) or an authorised use procedure, which involves a declaration that the goods are to be subject to a use of a description specified in regulations made by HMRC.

- 7.7 The declaration of goods for an authorised use procedure enables HMRC to supervise that goods are put to certain specific end-uses after they are imported into the UK. In the majority of cases, the TRQs established by this instrument require the goods to be declared for free circulation. However, some of the TRQs established by this instrument only have effect where the goods to which they apply are declared for specific authorised uses. The uses to which the goods may be put are set out in “the authorised use document”, which is given the force of law by the Customs (Special Procedures and Outward uses Processing) (EU Exit) Regulations 2018 (‘the Special Procedures Regulations’). A corresponding amendment is made to the Special Procedures Regulations by this instrument to provide for this.
- 7.8 Details of the TRQs established by this instrument will be set out in the Quota Table, a reference document given the force of law by these regulations, but which is published separately. The Quota Table will be available both online (and in hard copy). The Quota Table sets out, for each TRQ: the quota number identifying the TRQ, the goods to which the TRQ applies, the country of origin of the goods, the quota duty rate which quota goods attract, and the period during which the TRQ applies.
- 7.9 The Quota Table, which will be published on gov.uk, is divided into three parts.
- Part A sets out these details for TRQs to which the FCFS administration system applies, apart from authorised use quotas.
 - Part B deals with those FCFS TRQs which have effect only where the goods are declared for a specific authorised use.
 - Part C deals with TRQs which are administered according to the license management system.
 - Section 2 of Part C deals with those TRQs which have effect only where the goods are declared for a specific authorised use.

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. This is because the legislation is concerned with establishing a UK regime of TRQs. TRQs are currently established at EU level under the framework of the UCC and in accordance with Schedule 7 to the Taxation (Cross-border Trade) Act 2018 (the “Act”) this legislation will cease to apply to the UK after the end of the Implementation Period. This instrument is part of a package of legislation made under the Act to establish a standalone UK customs regime.

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. TRQs were 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 on <https://www.gov.uk/government/consultations/the-uk-global-tariff>.

11. Guidance

- 11.1 Guidance is currently being reviewed and where necessary new versions will be published prior to the end of the Implementation Period.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the effect of the Statutory Instrument is to maintain, as far as possible, the position prevailing currently.
- 12.4 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 However, this legislation maintains the existing position as far as possible, imposing no significant additional burdens on small businesses. Therefore no specific action is proposed to minimise the impact on small businesses, and no review clause is required.

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 burdens on business are carefully monitored.
- 14.3 A statutory review clause is not included in these regulations as the content relates to a tax or duty and therefore meets the requirements of the exception set out in section 28(3)(c) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Darren Stretton at the Department for Environment, Food and Rural Affairs (email: darren.stretton@defra.gov.uk, phone: 020 8026 2979) can be contacted with any queries regarding this 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 Balwinder Dhoot, Deputy Director for Food & Farming Sectors & Trade, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Lord Goldsmith, Minister of State for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.