

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (TARIFF-FREE ACCESS FOR GOODS FROM BRITISH
OVERSEAS TERRITORIES) (EU EXIT) REGULATIONS 2020

2020 No. 1434

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade 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 These Regulations are made under section 9 of the Taxation (Cross-border Trade) Act 2018 (the Act). They make provision for goods originating from specified overseas territories of the United Kingdom (British Overseas Territories) to have tariff-free access to the United Kingdom. These Regulations implement the provisions of the *Arrangement for import duty on trade in goods from certain British Overseas Territories* dated 9th November 2020 (the Arrangement). The Arrangement can be found at: <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021>. The Arrangement covers all British Overseas Territories listed in Annex I of the Arrangement.
- 2.2 These Regulations are also made under section 31(6) of the Act. They make modifications to sections 9 and 19 of the Act and the Regulations to take account of the fact that the United Kingdom will be in a customs union with the Crown Dependencies at the end of the implementation period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Her Majesty's 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 United Kingdom continues to have a fully functioning customs regime in place from 31st 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 Votes for English Laws)

- 3.2 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 the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 As a member state of the European Union, the United Kingdom was party to an association agreement between the European Union and certain overseas territories of its member states, governed by Council Decision (EU) 755/2013, "the Overseas Association Decision" (OAD). The Overseas Territories to which the OAD applies are listed in Annex II to the Treaty on the Functioning of the European Union. Under this Decision, goods originating in the overseas territories concerned obtain tariff-free access to the European Union subject to certain conditions.
- 6.2 Paragraph 1 of Schedule 7 to the Act disapplies EU law relating to customs duty that would otherwise be part of the retained EU law of the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018. At the end of the implementation period, the import duty provisions of the OAD will therefore no longer have effect in the British Overseas Territories listed in Annex 1 of the Arrangement.
- 6.3 Section 8 of the Act enables HM Treasury, by regulations, to establish and maintain a system, known as the customs tariff, for determining the rate of import duty applicable to goods by commodity code. Further provisions in Part 1 of the Act allow the amount of import duty that would be applicable to goods in a standard case to be varied in different circumstances.
- 6.4 This instrument is part of a package of statutory instruments under Part 1 of the Act that establish the customs tariff of the United Kingdom and put into effect those variations from the rate of import duty in a standard case that will apply to imported goods at the end of the transition period.
- 6.5 Section 9 of the Act enables HM Treasury, upon recommendation of the Secretary of State, to make regulations giving effect to provisions of any arrangement made between Her Majesty's Government in the United Kingdom and the government of another country or territory that reduces the rate of import duty applicable in a standard case to goods imported into the United Kingdom from that country or territory.
- 6.6 The Arrangement maintains tariff-free access for goods from the British Overseas Territories to the United Kingdom. These Regulations give effect to the tariff provisions in paragraph 3 of the Arrangement as regards all imports into the United Kingdom of goods originating from the British Overseas Territories listed in Annex 1 of the Arrangement.

7. Policy background

What is being done and why?

- 7.1 Consistent with its prior commitments of Her Majesty's Government in the United Kingdom to the British Overseas Territories, the government is legislating to maintain tariff-free access for imports from those British Overseas Territories listed in Annex 1 of the Arrangement. This will avoid the creation of new barriers to trade between the United Kingdom and the British Overseas Territories at the end of the implementation period.
- 7.2 Regulation 3 sets out the application of the Regulations. It provides for the Regulations to apply to all imports into the United Kingdom of originating goods (as defined in regulation 2) from a British Overseas Territory listed in Annex 1 of the Arrangement. Regulation 3 also sets out that the Regulations give effect to tariff free access for originating goods as provided for in paragraph 3 of the Arrangement.
- 7.3 Regulation 4 provides that, subject to meeting the conditions set out in regulation 5, a rate of import duty of 0% will be applied to such imports.
- 7.4 Regulation 5 sets out the conditions that apply for the purposes of regulation 4. Except as otherwise provided, the goods must qualify as originating products under Annex 2 of the Arrangement and the importer must provide, on request from HMRC, a valid proof of origin in accordance with Annex 2 of the Arrangement and the documents required under Annex 2 of the Arrangement. However, it is not necessary for the importer to provide a valid proof of origin for goods that are exempt from this requirement under the terms of the Arrangement.
- 7.5 Regulation 6 provides that importers who do not have a valid proof of origin and who therefore end up paying the applicable standard rate of import duty in respect of their imported goods, can make a claim for partial repayment of the amount of import duty paid on presentation to HMRC of a valid proof of origin. The claim for repayment also needs to be made within a period of three years from the date of importation.
- 7.6 Regulations 7 provides that the modifications to the provisions of the Act and of the provision in regulations 8 and 9 have effect in respect of the customs matters covered by these Regulations having regard to the existence of the United Kingdom – Crown Dependencies Customs Union. Regulation 8 modifies section 9 of the Act so that the reference to “arrangements” in that section is read as meaning arrangements between Her Majesty's Government in the United Kingdom with any country or territory outside the United Kingdom apart from the Crown Dependencies. Regulation 8 also modifies section 19 of the Act so that the reference to “full or partial relief from a liability to import duty” in subsection (1) of that section is read as including a reference to full or partial relief from any such liability under equivalent provisions of customs legislation that have effect in the territories of the Crown Dependencies.
- 7.7 Regulation 9 provides that imports of originating products from the British Overseas Territories listed in Annex 1 of the Arrangement into the Crown Dependencies are, for the purposes of the Regulations, to be treated as imports of such products into the United Kingdom. Under the terms of the United Kingdom – Crown Dependencies Customs Union, imports of originating products from the specified British Overseas Territories into the Crown Dependencies will also benefit from a 0% rate of import duty under equivalent provisions of customs legislation in force in the Bailiwick of Guernsey or, as the case may be, the Isle of Man or the Bailiwick of Jersey.

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 United Kingdom from the European Union because the necessity for it arises as a result of that withdrawal. This is because the government has introduced new primary powers under the Taxation (Cross-border Trade) Act 2018 to establish a system known as the customs tariff the provisions of which will replace those regarding customs import duty which exist in EU legislation. The Taxation (Cross-border Trade) Act 2018, paragraph 1, Schedule 7, disapplies the power in section 3 of the European Union (Withdrawal) Act 2018 which would otherwise retain directly applicable EU legislation as it relates to Customs import duty or EU Customs duty.
- 8.2 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.

9. Consolidation

- 9.1 This instrument does not consolidate or amend any other legislation, as this is the first time the primary powers in section 9 of the Taxation (Cross Border Trade) Act 2018 have been used.

10. Consultation outcome

- 10.1 No formal consultation on this instrument has taken place.
- 10.2 The policy that this regulation implements underwent no formal consultation.

11. Guidance

- 11.1 Guidance on the customs tariff is currently available from HMRC. This guidance will continue to be published and available in its current format.

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 prior to withdrawal from the European Union.
- 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 Since the legislation maintains the existing position as far as possible, it imposes no significant additional burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is to monitor in the wider context of the customs tariff legislation. There will be the opportunity to review this legislation in the future, however this is at the United Kingdom Government's discretion.
- 14.2 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 James King at Department for International Trade, email: james.king@trade.gov.uk can be contacted with any queries regarding the instrument. Telephone - 0207 215 8316.
- 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, the Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.