

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS TRANSIT PROCEDURES (AMENDMENT, ETC) (EU EXIT)**  
**REGULATIONS 2020**

**2020 No. 1491**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC), partly on behalf of Her Majesty's 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 the additional legislation to be made under the Taxation (Cross-border) Trade Act 2018 (TCTA) that make changes to the existing legislation ahead of the end of the transition period. This instrument will be necessary to amend the legislation that was introduced to implement the United Kingdom's (UK) obligations and benefits as a contracting party to the Common Transit Convention (CTC) when it accedes following the end of the transition period. It also contains a change to allow for the charging of certain additional fees at government inland facilities to align with the charge for services usually applied at existing border locations. The instrument also makes minor consequential amendments to regulations not yet in force.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 This instrument will be brought into force using various powers of TCTA including those in section 52(2), 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.
- 3.2 This instrument makes provision by reference to things to be specified in notices published by HMRC. The need for explicit vires to sub-delegate and the consideration that the Joint Committee on Statutory Instruments gave to the draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (in the 30th report of session 2017 – 2019) are noted. TCTA includes the express power to sub-delegate and in making this provision this instrument relies on section 32(8) of TCTA, which provides that any power to make regulations under Part 1 of TCTA includes a power conferring a discretion on any specified person to do anything by or under, or for the purposes of, the regulations, and a power to make provision by reference to things specified in a notice published in accordance with the regulations.
- 3.3 The notices that will be made under this instrument will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021> no later than the date on which the relevant

provisions of the instrument come into force. The notices that will be published in draft at a later date are:

- the notice described in regulation 5 which gives the locations of the points of entry in Great Britain (GB) where the pre-notification of transit documentation is mandatory for goods moved under the Common Transit Procedure completing an Office of Transit.
- the notice described in regulation 7 which gives details of the fees that will be applicable for certain services carried out at inland border facilities to align with the charge for services usually applied at existing border locations.

*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 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 to movements into Great Britain.

#### **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 Currently the main provisions governing the import 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 EU Member States and the UK during the transition period. Sitting under the UCC are the implementing regulation (Regulation (EU) 2015/2447) and delegated regulation (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 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 EU Member States and by the UK during the transition period. The delegated regulation supplements certain non-essential elements 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 UK regulations under TCTA (including this instrument).
- 6.3 The Customs Transit Procedures (EU Exit) Regulations 2018 (SI 2018/1258) were laid on 30 November 2018 to implement the requirements of the CTC into UK law.
- 6.4 The Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) were laid on 30 November 2018 to implement various changes relating to the UK's withdrawal from the EU and Part 14 contains the existing fees charged by HMRC.

## 7. Policy background

### *What is being done and why?*

#### 7.1 The amendments will:

- Update the list of GB port locations where the pre-notification of a transit declaration will be necessary. This will expand the locations where the Office of Transit can take place digitally.
- allow HMRC to introduce fees for certain services which will be carried out at government inland border facilities to align with the charge for services usually applied at existing border locations. This will facilitate flow and prevent congestion at new government inland infrastructure locations.
- bring the transit regulations in line with the Common Transit Convention by retaining the flexibility for traders to use guarantees authorised by other CTC customs authorities to start transit movements in GB and a minor technical change to bring the wording of our domestic legislation in line with the CTC.

7.2 The government set out in the [Border Operating Model](#) the UK's approach to border controls following the end of the transition period. The Border Operating Model sets out the CTC processes that will apply from 1 January 2021, specifically the process for moving goods into the UK under CTC, and the new inland infrastructure locations that the government is providing in Great Britain to support with different customs processes.

7.3 The CTC is an international agreement concerning the movement of goods across borders. It allows traders to make a single declaration when goods are transported across CTC member countries and suspends import duty payments until the goods reach their final destination.

7.4 The first amendment relates to the Office of Transit. Under the CTC, each time goods cross into a new customs territory they must complete Office of Transit procedures – this marks the arrival of the goods in the new customs territory. When transit movements arrive at GB ports, the goods and the Transit Accompanying Document must be presented at an Office of Transit. From 1 January 2021, the UK government will allow the presentation at the Office of Transit to be completed digitally. At locations using this process, hauliers will be required to pre-notify their transit documentation and a registration number for their vehicle, trailer or container in advance of crossing into GB. This will support UK customs officials in conducting the Office of Transit process for arrivals into GB digitally. This amendment will allow HMRC to set out in a public notice the additional locations where pre-notification is required.

7.5 Secondly, where ports do not have the space, the government is providing inland infrastructure to carry out certain customs functions, including functions relating to transit movements. This amendment allows for fees to be introduced as set out at in a public notice. These fees will align with the charge for services usually applied at existing border locations and will facilitate flow and prevent congestion at the new government sites. The types of services that HMRC expect to charge for at inland sites include fees for parking and the costs of releasing goods from inventory systems at the sites. Commercial pricing is not widely published but to the best of HMRC's understanding, these fees will be in line with existing charges at border locations that offer these services.

- 7.6 The regulation also retains the ability of traders to use guarantees authorised by other CTC customs authorities to start transit movements in GB This is a flexibility currently available in the UK which will continue to operate in Northern Ireland. This amendment ensures that the same flexibility will continue to operate in Great Britain beyond the 1 January.
- 7.7 Finally, this regulation also makes a minor technical amendment paragraph 19 to Schedule 1 to the Customs Transit Procedures (EU Exit) Regulations 2018 (SI 2018, 1258), to bring it in line with Appendix 1, Article 30 of the CTC.

## **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 as it, and other legislation made under TCTA, will ensure that the UK's customs regime operates as required after EU exit.

## **9. Consolidation**

- 9.1 There are no plans for consolidation as this is a stand-alone instrument

## **10. Consultation outcome**

- 10.1 This instrument has not been subject to formal consultation as the UK is already a member of the Convention. The UK has always intended to implement the Convention in its own right once it leaves the EU, so there is continuity for business. There has however been engagement on this policy with key stakeholders (local authorities, ports and roads organisations) through regular meetings, and they welcome the UK's intention to continue to implement the Convention and maintain other customs transit rules.
- 10.2 This is a reserved matter under the UK's devolution settlements. No devolved administration interests arise. Further details on the arrangements for trade between Northern Ireland and Ireland were published in the Northern Ireland Command Paper.

## **11. Guidance**

- 11.1 HMRC already provides guidance at <https://www.gov.uk/guidance/what-you-need-to-move-goods-between-or-through-common-transit-countries-including-the-eu> for businesses on operating the Convention and customs transit procedures. It also provides a Transit Manual and Notices, and this guidance will be updated and available when this instrument enters force.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is negligible, although the impact will vary.
- 12.2 It will be a commercial decision for port operators and carriers as to whether they will implement a digital Office of Transit or continue to implement a manual process. If these locations choose to use the digital process, there will be some initial costs for hauliers and carriers who will need to put in place additional processes and systems to ensure that the information required is notified and processed before goods arrive at their port of entry in GB. However, these integration costs will be offset by faster

processing of these goods on arrival into GB, and longer term, this digital process is less resource and time intensive for carriers, hauliers, ports and the government than the alternative manual process.

- 12.3 There will be a cost to hauliers who will incur a fee at the government inland sites. These charges are being introduced to avoid market distortion. If HMRC did not introduce these charges, the government inland sites would be providing free services where these would otherwise be charged for at commercial border locations. To the best of HMRC's understanding, the fees are set to be comparable with commercial locations and will be set at cost recovery levels only.
- 12.4 The impact on the public sector is that there will be a one-off cost to HMRC of setting up a payment process to administer the fees at government inland sites.
- 12.5 Where GB ports opt to implement digital Office of Transit processes, the demand for customs authority resource and infrastructure requirements will be significantly reduced compared to operating a manual process.
- 12.6 There should be no impact from the regulation of the ability of traders to use guarantees authorised by other CTC customs authorities. This change acts to retain existing flexibility which had been omitted from the previous legislation.
- 12.1 A Tax Information and Impact Note covering this instrument will be published on 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 this instrument does not change existing rules with which they must comply if they elect to use a transit procedure. Guidance on transit procedures is already available and will continue to be updated.

### **14. Monitoring & review**

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out above in section 7 of this EM, and to ensure burdens on business are carefully monitored.
- 14.2 A statutory review clause is not included within this instrument by virtue of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015. This section sets out that there is an exemption where provisions are in connection with a tax or duty.

### **15. Contact**

- 15.1 Oliver Rodin at HM Revenue and Customs Email [Oliver.Rodin@hmrc.gov.uk](mailto:Oliver.Rodin@hmrc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Phil Bower, Deputy Director for the Customs Borders and Processes Team at HM Revenue and Customs 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.