

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS AND EXCISE BORDER PROCEDURES (MISCELLANEOUS**  
**AMENDMENTS) (EU EXIT) (NO. 2) REGULATIONS 2021**

**2021 No. 1347**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and HMRC 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's (UK's) customs regime functions as intended following the withdrawal of the UK from the European Union (EU).
- 2.2 This instrument replaces regulations in the Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) Regulations 2021 (SI 2021/830) after the Select Committee on Statutory Instruments identified errors in that instrument. Those regulations provide for full customs controls at all border locations from 1 January 2022 and help facilitate the movement of goods.
- 2.3 In addition, this instrument makes changes which provide for penalties for failure to comply with regulations where checks on imported goods need to be done inland and for failure to comply with instructions given by an HMRC officer.

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

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

- 3.1 A memorandum of the Select Committee on Statutory Instruments (SCSI) of 20 September 2021 sent to HMRC noted that the powers used in the Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) Regulations ("the First Regulations") did not cover the customs penalties provided for in regulation 4. HMRC responded to the memorandum on 28 September 2021 accepting that regulation 4 of the First Regulations was ultra vires due to the correct vires not being cited. In addition, a letter dated 20 September 2021 from the SCSI also identified a minor non-reportable error in regulation 4(d) of the First Regulations. This instrument revokes the First Regulations and replaces the provisions of that instrument with identical provisions but additionally uses the powers under section 26(1) of the Finance Act 2003 which allow for the imposition of penalties. The minor error in regulation 4(d) is also rectified. In the light of these points, it has been decided that the procedure for the free issue of this instrument to all known recipients of the First Regulations should be applied. The SI Registrar has been consulted on this matter to comply with the requirements in 4.7.6 of Statutory Instrument Practice (5<sup>th</sup> edition).

- 3.2 This instrument makes provision by reference to things to be specified in notices published by HMRC. 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. 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.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.
- 4.3 The provisions of this instrument apply to movements into and out of Great Britain and Northern Ireland (where their application is 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 At the end of the transition period, paragraph 1 of Schedule 7 to TCTA was commenced whereby direct EU legislation imposing or otherwise applying in relation to an EU customs duty – which formed part of the law of the UK as a result of section 3 of the European Union (Withdrawal) Act 2018 – ceased to have effect. This EU legislation was replaced by provisions made by and under TCTA. Currently the main provisions governing the import of goods into, and export of goods from, the UK of most relevance to this instrument are set out in TCTA, the Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108), the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248), the Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018 (SI 2018/1247) and the Wharves and Temporary Storage Facilities (Approval Condition and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1264). These provisions are supplemented by the Customs and Excise Management Act 1979 (CEMA), sections 13A to 16 of, and Schedule 5 to, the Finance Act 1994 (reviews and appeals) and Part 3 of the Finance Act 2003 (penalties). The Customs (Contravention of a Relevant Rule) Regulations 2003 (SI 2003/3113) set out the various penalties for breaches of rules relating to customs duty.
- 6.2 Section 42(1)(b) of CEMA empowers the Commissioners for HMRC to make regulations on the unloading, landing, movement and removal of goods on their importation. The Customs Importation (Miscellaneous Provisions and Amendment) (EU Exit) Regulations 2021 (SI 2021/1312) introduced obligations relating to goods imported at border locations where pre-lodgement of declarations is required and where such goods are required to undergo checks carried out inland. Paragraph 1(2) of Schedule 1 to TCTA provides that goods are subject to the control of any HMRC

officer as soon as they are imported into the UK. Section 37(7) of TCTA clarifies the reference to goods being “subject to the control of an HMRC officer” as including control being exercised by requiring the goods to be handled, or otherwise dealt with, in accordance with instructions given by an HMRC officer (whether given orally or in any other way), or requiring the goods to be kept in any place specified by an HMRC officer.

## **7. Policy background**

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

- 7.1 This instrument revokes the Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) Regulations 2021 and replaces the provisions in that instrument with identical provisions made under the correct powers. The opportunity is also taken to make a few minor corrections identified in that instrument. In addition, three new penalties are inserted into the Customs (Contravention of a Relevant Rule) Regulations 2003 as detailed in paragraph 7.11.
- 7.2 Recognising the impact of coronavirus on businesses’ ability to prepare, the government announced that border controls would be introduced in stages. Following the end of the transition period, staged border controls allowed goods to move without full customs controls through border locations without existing customs control systems (i.e. inventory linked systems). These are also known as specified Roll-on Roll-Off (Ro-Ro) and “other listed” border locations.
- 7.3 The Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) Regulations 2021 concerned changes relating to the removal or permanent replacement of the provisions for staged border controls, together with the introduction of new arrangements for applying full controls on goods exported from or imported to Great Britain (GB) from 1 January 2022. It also provided for a penalty where obligations arising from the new arrangements are not complied with.
- 7.4 Under Parts 13 and 13C of the Customs (Import Duty) (EU Exit) Regulations 2018, goods that are imported at specified Roll-on Roll-off (Ro-Ro) and “other listed” border locations, must be declared before import. “Other listed locations” are border locations which are not Ro-Ro locations and are listed as such by HMRC where they consider that customs procedures would be significantly impeded if declarations were not made prior to import. Where this is required, that instrument requires carriers to notify HMRC when the vessel, aircraft or train carrying the goods has embarked for GB, at the latest point of no return, and provided for exceptions to the requirement. That instrument enables HMRC to provide details of the notification in a public notice. The person declaring these goods will no longer be required to notify HMRC that goods have arrived in GB by 23:59 the day after the day on which the goods were imported.
- 7.5 Furthermore, where pre-lodgement of declarations is required at “other listed locations”, that instrument provided that declarations must be made by importers before goods are loaded and after that time declarations cannot be amended or withdrawn without permission. Those changes to timings ensure consistency with RoRo locations.
- 7.6 That instrument also made minor changes to the process by which HMRC Commissioners issue lists of Ro-Ro and other border locations.

- 7.7 Under regulation 53 of the Customs (Export) (EU Exit) Regulations 2019, goods exported at specified Ro-Ro locations, as listed in a public notice, must be declared before the goods have left the trader's premises in such a way that the declaration will be instantly processed, and the trader notified of the outcome. That instrument made provision for listing other locations ("specified export locations") where HMRC considers that the location does not have sufficient physical space in which to operate the processes for full customs controls used at all other border locations (the standard export procedure). At the specified Ro-Ro and other "specified export locations", that instrument requires carriers to verify that all goods permitted to be loaded for export onto vessels, aircraft and trains have obtained a Permission to Progress message. Messages will need to be sent to HMRC confirming that goods have left GB for all goods, but this will be done automatically by the Goods Vehicle Movement Service (GVMS) (or an alternative equivalent system) and require no action by exporters. This also means that where excise duty suspended goods (such as alcohol or tobacco products) are exported through these locations, traders or the location will no longer need to confirm manually to HMRC that the goods have left GB. Where required, those involved in moving goods through these locations, and exporters, may need to provide evidence that a declaration has been made as under staged border controls.
- 7.8 That instrument also provided the Commissioners for HMRC with the ability to apply existing modifications at Ro-Ro locations for declarations by conduct (where a person in control of the goods carries those goods in a vehicle which passes a customs office before the goods depart from the UK) at other export locations.
- 7.9 That instrument also allowed goods imported through border locations where pre-lodgement of declarations is required to go into inland temporary storage facilities, without first requiring the consent of an HMRC officer. Those changes mean that goods will not be required first to go into temporary storage facilities at the border.
- 7.10 That instrument also made consequential changes to other legislation, including to the Customs (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1605). This ensured that changes also apply where legislation for Ro-Ro locations applies to the removal of certain goods to GB from Northern Ireland.
- 7.11 Additionally, this instrument provides for penalties to be able to be imposed on the person in possession or control of goods where those goods are imported at Ro-Ro and "other listed" locations and required to go for checks inland (because there is insufficient physical capacity to conduct checks at the border location) should those goods not be taken directly to an inland border facility or are tampered with en route. This instrument also provides for a penalty to be able to be imposed on a person instructed by an HMRC officer in relation to goods subject to the control of an HMRC officer where those instructions are not complied with.

## **8. European Union Withdrawal and Future Relationship**

- 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 because it relates to changes that were made to the UK's customs regime following the end of the transition period on 1 January 2021. Legislation relating to the new import and export regime between the EU and GB has been in force since the end of the transition period.

## **9. Consolidation**

- 9.1 These regulations form part of the significant programme of secondary legislation delivered by HMRC relating to the UK's departure from the EU. In view of the identification of further legislative requirements following the end of the transition period, it is now necessary to again update this legislation. However, it is not possible to consolidate this legislation at this time as the pace of change following the end of the transition period has not sufficiently slowed to make this reasonably practical.

## **10. Consultation outcome**

- 10.1 No formal consultation has been conducted on this instrument. However, an informal consultation was carried out through calls with border location operators, carriers and representative bodies on the proposed changes to customs controls covered in the Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) Regulations 2021. Informal consultation has also been carried out through calls with industry representative bodies on promoting a culture of compliance for where goods need to go for checks inland, supported by penalties to incentivise compliance.
- 10.2 A virtual reading room on the full draft instrument was conducted on 22 November 2021 with members of the Joint Customs Consultative Committee, who were able to discuss the draft legislation with policy officials. The Joint Customs Consultative Committee is an HMRC-sponsored forum established to exchange views on, and discuss proposed changes to, customs procedures and documentation relating to the entry and clearance of goods. The attending stakeholders supported the changes introduced by this instrument.

## **11. Guidance**

- 11.1 There is already guidance on customs matters at: <https://www.gov.uk/import-goods-into-uk> and <https://www.gov.uk/export-goods>.
- 11.2 All guidance is currently being reviewed and where necessary will be updated prior to the changes to be made by this instrument on 1 January 2022.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 This instrument replaces regulations implementing new ways for border locations to achieve full customs controls that would otherwise have applied when trading goods with the EU immediately upon the end of the transition period. The instrument also replaces regulations giving those importing goods through border locations without temporary storage facilities the option to put goods into temporary storage and delay making a customs declaration.
- 12.3 This instrument introduces penalties for failure to comply with regulations where checks on imported goods need to be done inland and for failure to comply with instructions given by an HMRC officer. However, these are intended to act as a deterrent and HMRC will continue working with industry representatives to promote compliance.
- 12.4 There is no, or no significant, impact on the public sector.
- 12.5 A Tax Information and Impact Note covering this instrument will be published 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 (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the measures in this instrument will not be burdensome.

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

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out in section 7.
- 14.2 A statutory review provision 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 Hayley Harris at HMRC Telephone: 03000 586720 or email: [hayley.harris@hmrc.gov.uk](mailto:hayley.harris@hmrc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Phil Bower, Deputy Director for Customs Border Processes and Declarations, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.