

EXPLANATORY MEMORANDUM TO
THE CUSTOMS AND VALUE ADDED TAX (MANAGED TRANSITION
PROCEDURE) (EU EXIT) REGULATIONS 2021

2021 No. 1375

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 is being made using powers in connection with the United Kingdom's (UK) withdrawal from the European Union under the Taxation (Cross-border Trade) Act 2018 (TCTA) to extend the end date of the Customs (Managed Transition Procedure) (EU Exit) Regulations 2019 (SI 2019/487) (MT Regulations) from 31 December 2021 until 31 December 2022 and to set out how Value Added Tax (VAT) registered persons making customs declarations by conduct on importation are to account for import VAT.
- 2.2 Since the end of the transition period and until the end of 2021, European Union to Great Britain imports and exports have been subject to easements under staged customs controls. From 1 January 2022, full customs controls will apply at Great Britain (GB) border locations for European Union (EU)-GB imports and exports. This will mean that at ports operating the pre-lodgement model, a pre-lodged customs declaration will be required before the goods are permitted to board the carrier and depart. For ports operating the temporary storage model, goods will not be able to progress from the port into GB until a customs declaration is submitted, as is the case already for goods from the rest of the world.
- 2.3 This instrument extends the end date of the existing MT Regulations to allow HMRC to address any disruption arising from these changes, for example as a result of a lack of haulier or trader readiness.
- 2.4 This instrument also makes provision for how import VAT is to be accounted for by VAT registered businesses in the event that the MT Regulations powers are utilised to provide for declaration by conduct on importation. Declaration by conduct in this regard means the actions specified by HMRC in a public notice, which legally count as a declaration, for example the act of carrying the goods across the port boundary.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument is being made under Section 51 of the TCTA. Section 51(3)(a) provides that regulations made under Section 51 may include such provision as might be made by Act of Parliament. The MT Regulations permit the Commissioners for HMRC (Commissioners) to make certain provision by public notice. Provisions that

may be made by the Commissioners using the public notice powers under the MT Regulations include such matters as who is an “eligible person” to make a customs declaration at the border in accordance with the regulations, the location and circumstances in which such declarations may be made, which goods are “excepted goods” (excluded from the easement), a description of the actions which would be accepted as a declaration for goods to proceed for import or export, and what further information must be provided to HMRC to complete their declaration requirements. This instrument extends the ability of the Commissioners to use the public notice powers until 31 December 2022, or an earlier date specified by the Treasury in regulations. The MT Regulations will not form part of the longer-term customs model for the UK.

- 3.2 HMRC has relied on the powers once previously (from 1 January 2021 to 11 May 2021) to alleviate disproportionate administrative burdens arising in connection with the import and export of reusable packaging.
- 3.3 Where the Commissioners exercise their powers to make a public notice allowing declaration by conduct for importation in accordance with the MT Regulations, this instrument requires eligible persons making such declarations by conduct to account for import VAT on relevant importations in accordance with this instrument.
- 3.4 Under regulation 1(4) of the MT regulations the Treasury may make regulations by statutory instrument providing for the regulations to cease to have effect before their expiry date and under regulation 1(5) the Treasury may make appropriate transitional, transitory or saving provision in connection with the regulations ceasing to have effect. Any such regulations would not be subject to any parliamentary procedure.

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.

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 This instrument is being made using regulation making powers under section 51 of TCTA to extend the end date of the MT Regulations from 31 December 2021 until 31 December 2022 and to set out how VAT registered persons making customs declarations by conduct on importation are to account for import VAT. The Treasury consider it appropriate to make this instrument in consequence of, or otherwise in connection with, the UK’s withdrawal from the EU.
- 6.2 Under regulation 1(3) of the MT Regulations the regulations cease to have effect at the end of 12 months beginning with the appointed day. Under regulation 2 of and Schedule 2 to the Customs and Tariff (Appointed Day) (EU Exit) Regulations 2020 (SI 2020/1643) the appointed day is the end of the transition period and so without this instrument the MT Regulations would cease to have effect on 31 December 2021.
- 6.3 The main provisions governing the import and export of goods to and from the UK are set out in the TCTA and the Customs (Import Duty) (EU Exit) Regulations 2018

(SI 2018/1248) (Import Duty Regulations) and the Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108) (Export Regulations) made under that Act.

- 6.4 The MT Regulations permit the Commissioners to specify in a public notice the circumstances in which certain traders importing goods at specified locations will be allowed to make a declaration by conduct of goods at the border and then submit further information after the goods have left the specified location. They make equivalent provision in relation to goods to be exported from the UK at locations specified in a public notice.
- 6.5 This instrument sets out how VAT registered persons making customs declarations by conduct on importation are to account for import VAT.
- 6.6 The main provisions governing import VAT are set out in the Value Added Tax Act 1994, the Value Added Tax Regulations 1995 (SI 1995/2518) (Part 5 deals with Accounting, payment and records), and the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (SI 2019/60) (Postponed VAT Accounting).
- 6.7 Where the Commissioners make provision in a public notice issued in accordance with the MT Regulations permitting declaration by conduct, VAT registered businesses will be required to account for any import VAT in their VAT returns covering the period in which a declaration by conduct is made. Otherwise import VAT would not be due until the subsequent submission of the customs declaration. This instrument therefore modifies the application of section 16(2) of the Value Added Tax Act 1994 and the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 in circumstances where a declaration by conduct is made by virtue of a notice published under regulation 4 of the MT Regulations.

7. Policy background

What is being done and why?

- 7.1 This instrument extends the end-date of the MT Regulations until the end of 2022. This will ensure that HMRC continues to have temporary powers to vary declaration requirements through a public notice should this be required to deal with any possible disruption following the introduction of full customs controls on EU traffic from 1 January 2022. It also introduces associated accounting rules for VAT.
- 7.2 This instrument provides that where a VAT registered business makes a declaration by conduct under the customs public notice provisions it must bring the import VAT to account in its VAT return at that point rather than waiting for the supplementary declaration. This prevents a tax flow loss to the exchequer. VAT registered businesses can currently choose to account for import VAT this way. The instrument has the effect of requiring all such businesses to account for import VAT in this way where there is a declaration by conduct.

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 UK from the EU as it, and other legislation made under the TCTA, will ensure that the UK's customs and VAT regimes operate as required after EU exit.

9. Consolidation

- 9.1 This instrument extends the current MT Regulations and makes no further changes to them. Accordingly, no consolidation is required.

10. Consultation outcome

- 10.1 While no formal consultation was carried out, discussions with traders, carriers, ports, agents and other intermediaries have continued during the staging in of customs controls to support their readiness preparations and gather feedback. In the event a lack of readiness leads to disruption at the border, this instrument will give HMRC a temporary power to allow certain traders to import or export goods and complete their customs declarations at a later date.

11. Guidance

- 11.1 Guidance on existing customs legislation is already available on the gov.uk website and will be updated to reflect what the requirements will be for importing and exporting on 1 January 2022 (<https://www.gov.uk/government/publications/guides-to-importing-and-exporting-goods-between-great-britain-and-the-eu>). Should HMRC issues a public notice under the MT Regulations guidance will be published explaining the impact of the public notice, the requirements for a customs declaration to be provided at a later date and how import VAT should be accounted for.

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 A Tax Information and Impact Note covering this instrument will be published on the website 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 no mitigating action is proposed as the rules would reduce, if exercised, burdens on traders. Use of the approaches set out in any public notice will be voluntary as businesses will also be able to, and will be encouraged to, move goods under normal customs rules and procedures wherever possible.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is through reviewing communications with key stakeholder groups, including the Joint Customs Consultative Committee and the Joint VAT Consultative Committee (each made up of a wide range of tax, legal and business representative bodies), to ensure that it meets the policy objectives set out in section 7 above.
- 14.2 The instrument does not include a statutory review clause because it relates to tax and duty and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Umar Hanif at HMRC Telephone: 03000 055 7228 or email: umar.hanif@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Phil Bower, Deputy Director for Customs, 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.