

EXPLANATORY MEMORANDUM TO

THE CUSTOMS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2021

2021 No. 478

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 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 from the end of the transition period following the withdrawal of the UK from the European Union (EU). It introduces a number of legislative changes that will allow customs procedures to continue to operate efficiently and will help to facilitate the movement of goods.
- 2.2 The instrument will amend regulations to: allow most reusable packaging protecting goods during transportation to be declared for import or export either orally or by conduct; enable imports or exports of human blood, blood products, organs, tissues and cells for emergency use in transplants or medical procedures to be declared by conduct; and ensure consistency with the excise rules so that excise goods intended for commercial use and carried in accompanied baggage are subject to the appropriate customs import and export declaration requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The instrument corrects drafting inconsistencies in the Customs Transit Procedures (EU Exit) Regulations 2018 (SI 2018/1258), as amended by the Customs Transit Procedures (Amendment, etc) (EU Exit) Regulations 2020 (SI 2020/1491). These were identified by the Select Committee on Statutory Instruments in its letter of 20 January 2021 to HM Treasury. In responding, HMRC undertook to correct these points by a further amending instrument at the earliest opportunity. HMRC assured the Committee that no one would be adversely impacted by the errors identified. In the light of this, it has been decided that the procedure for the free issue of this instrument to all known recipients of the Customs Transit Procedures (Amendment, etc) (EU Exit) Regulations 2020 should be applied.

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.
- 4.3 The provisions of this instrument apply to movements into or 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 any 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. These provisions are supplemented by the Customs and Excise Management Act 1979, 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), all of which remained in force during the transition period.

7. Policy background

What is being done and why?

Reusable Packaging

- 7.1 This instrument widens the scope of reusable packaging used to protect goods in transport that can be declared orally or by conduct for the free circulation procedure (allowing for such packaging to be moved from the port area), for a temporary admission procedure or for export. An oral declaration requires an individual to identify the relevant goods to an HMRC officer, a declaration by conduct is where a person follows a course of action described in the regulations, such as by going through a ‘nothing to declare’ green channel. The reusable packaging declared in this way must not be intended for sale. On import it must be filled and intended for export (whether empty or filled) or imported empty and intended for export filled. On export it must be filled and intended for import (whether empty or filled) or exported empty and intended for import filled. This facilitation will reduce the burden on industries that rely on reusable packaging to protect goods during transportation.

Declarations by conduct for human blood, blood products etc

- 7.2 This instrument will allow human blood, blood products, organs, tissues and cells that are to be used in grafting, implanting (that is transplanting) and transfusion to be declared by conduct in cases of an emergency by the person accompanying the movement of these products. The purpose is to ensure that in cases where these products are to be used in life-saving medical treatment they will not be delayed unduly by customs processes at the border. These provisions align with the relief from import duty provisions that have recently been inserted into the ‘United Kingdom

Customs Tariff: Reliefs from Import Duty’ document given effect by the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (SI 2020/1431), which was amended by the Customs (Tariff etc.) (Amendment) Regulations 2021 (SI 2021/380).

- 7.3 The instrument also makes consequential amendments to the following legislation:
- the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) so that it references the ‘List of Goods Applicable to Oral and By Conduct Declarations’ published on 16 April 2021.
 - the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2108 (SI 2018/1249) and the Taxation Cross-border Trade (Special Procedures Supplementary and General Provision etc.) (EU Exit) Regulations 2020 (SI 2020/1439) so that they reference the ‘Temporary Admission: Eligible Goods and Conditions for Relief’ document published on 16 April 2021.

Goods "liable to excise duty" in accompanied baggage

- 7.4 This instrument will correct existing legislation to prevent passengers with excise goods for commercial use in their accompanied baggage from being declared by conduct. The goods will instead be subject to full import and export declarations. It will also clarify the position for goods (not necessarily excise goods) imported for personal use, enabling such goods to be declared by conduct unless there is a liability to Value Added Tax or excise duty by amending provisions which can be considered ambiguous at present.
- 7.5 The purpose of these provisions is to maintain control over commercial excise goods, while facilitating the flow of passengers carrying small amounts of goods for their personal use. It will support a system that will help to prevent fraud and the smuggling of high-risk goods.

Customs declarations made by conduct: general

- 7.6 This instrument also removes a requirement stipulating that a person may not make a declaration orally or by conduct on another person’s behalf unless they are an employee or officer of that person. As a consequence, this amendment widens the scope of who can make a declaration in this manner.

Transit

- 7.7 This instrument makes minor amendments to the Customs Transit Procedures (EU Exit) Regulations 2018 about the content of certain notices for common transit procedure purposes and the procedural requirements for variation of such notices.

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 because it, and other legislation made under TCTA, will ensure that the UK’s customs regime operates as required following 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. Much of the original legislation was drafted to deal with the possibility that there would not be a deal with the EU by the end of 29 March 2019. This legislation has been required to be amended in the light of issues arising following extensions which took place in order for an agreement to be reached with 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 deliver this legislation by consolidation at this time. This is primarily because further amendments to the legislation will be required over the coming months.

10. Consultation outcome

- 10.1 No formal consultation regarding this instrument has taken place. However, a consultation of major industries identified the burdens placed on businesses using reusable packaging prior to the end of the transition period. As a result, a temporary solution was identified using powers available to HMRC under the Customs (Managed Transition Procedure) (EU Exit) Regulations 2019 (SI 2019/487). This legislation gives HMRC a temporary power which has been used to allow businesses to declare reusable packaging by conduct on import and on export. Imports of reusable packaging can, however, only be declared by conduct for the free circulation procedure. Additional information has to be provided on these imports and exports on a quarterly basis. The more permanent solution provided by this instrument will provide further flexibility to the trade.
- 10.2 In relation to the measure covering by conduct declarations for human blood, blood products, organs, tissues and cells, HMRC has consulted the Department of Health and Social Care (DHSC) to ensure that the legislative changes will meet the needs of the organisations dealing with the movement of these items.
- 10.3 A virtual reading room on the full draft instrument was conducted on 9 April 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.

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/starting-to-export>. There is specific guidance on packaging at <https://www.gov.uk/guidance/declaring-reusable-packaging-for-great-britain-imports-and-exports>.
- 11.2 Guidance has been provided to the DHSC to provide targeted communications to the organisations involved in the movements of human blood, blood products, organs, tissues and cells.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 The provisions of this instrument introduce a number of targeted legislative changes that will allow customs procedures to continue to operate efficiently and will help facilitate the movement of goods.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 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 additional 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 Darryl Wall at HMRC Telephone: 03000 585977 or email: darryl.wall@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Sabourin, 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 Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.