

## EXPLANATORY MEMORANDUM TO

### THE CUSTOMS (TARIFF ETC.) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 870

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 makes some minor technical amendments to subordinate legislation previously made under the Taxation (Cross-border Trade) Act 2018 (“TCTA”), which provided for the United Kingdom’s Customs, Value Added Tax (VAT) and Excise regimes to be in place after the end of the Implementation Period following the withdrawal of the United Kingdom (UK) from the European Union (EU).
- 2.2 Specifically, this instrument updates the reference documents which had been given legal effect by the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430), the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1431), the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (S.I. 2018/1249) and the Customs Tariff (Suspension of Import Duty) (EU Exit) Regulations 2020 (S.I. 2020/1435).
- 2.3 The purpose of this instrument is to effect technical updates to reference documents in order to change some of the information on the classification of imported goods (“commodity codes”) through which tariff rates are delivered, while maintaining the same tariff rates on the relevant goods, as under previous legislation and reference documents. The Government is making these changes to ensure it can meet its obligations under the Protocol on Ireland/Northern Ireland and to avoid any unnecessary complications for businesses. In some cases, classification changes may be required to meet new commitments, such as agreements with FTA partners, or to deliver wider UK trade policy, or for other technical reasons.
- 2.4 This instrument also makes a series of changes to 157 commodity codes, which have both an Authorised Use (AU) measure and a Most-Favoured Nation (MFN) rate of 0%. The descriptions and codes will remain the same, however the AU measure will be removed to reduce the administrative burden for traders.
- 2.5 This instrument also makes error corrections to a limited number of tariff lines concerning sugar beet and sugar cane in the “Authorised Use: Eligible goods and rates” reference document, which was given effect by S.I. 2020/1431, whereby two £28/100 kg duty rates were incorrectly omitted and one rate was incorrectly denominated in EUR rather than GBP.
- 2.6 Finally, the “General Interpretative Rules” are updated in the “Tariff of the United Kingdom” reference document to ensure their correct application. These rules play a

fundamental role in tariff classification, comprising the methodology by which goods are classified to a six-digit code.

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

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

- 3.1 The Financial Secretary to the Treasury wrote to the Chair of the Committee on 23rd March 2021 in the context of S.I. 2021/380, setting out the need to make these updates to commodity codes, and the Government’s approach to collate changes of this nature periodically, in order to minimise the burdens placed on Parliament. This instrument makes over 300 further changes to the commodity codes referenced in that letter.
- 3.2 These Regulations are being issued free of charge to anyone who purchased S.I. 2018/1249, 2020/1431, 2020/1432 or S.I. 2021/380. These instruments gave effect to either the “Authorised Use: Eligible Goods and Authorised Uses” reference document or the “Authorised Use: Eligible goods and rates” reference document, which these Regulations now update to correct errors identified in the previous reference documents, whereby two £28/100 kg duty rates were incorrectly omitted and one rate was incorrectly denominated in EUR rather than GBP. The Treasury has complied with the requirement to consult with the S.I. Registrar on this matter.

#### *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)*

- 3.3 Not applicable.

### **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 this 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 in exercise of the powers conferred by the TCTA.
- 6.2 In considering the rate of import duty that ought to apply to goods in a standard case as defined under section 8(8) of the TCTA, HM Treasury has had regard to the matters set out in section 8(5) of the Act and the recommendation about the rate made to them by the Secretary of State under section 8(6).
- 6.3 At the end of the Implementation Period, paragraph 1 of Schedule 7 to the 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 instrument amends legislation made under the TCTA which ensured that the UK’s Customs, VAT and Excise regimes were in place at the end of the Implementation Period. This package of legislation set out the associated rules of, and exceptions to, the UK’s applied MFN tariffs (also known as the “UK Global Tariff”) that have

applied since the end of the Implementation Period. This instrument amends parts of that package of legislation, to give legal effect to updated tariff reference documents.

## **7. Policy background**

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

- 7.1 As outlined in the preceding paragraph, a package of tariff legislation was laid under the TCTA on 16th December 2020 which ensured that the UK had a properly functioning customs regime in place after the end of the Implementation Period and following the withdrawal of the UK from the EU.
- 7.2 As part of this package, the Customs Tariff (Establishment) (EU Exit) Regulations 2020 brought into effect the customs tariff of the UK by giving effect to “The Tariff of the United Kingdom” reference document. This document sets out both the rules for how goods are to be classified - with each good assigned a “commodity code” - and the standard rate of import duty that applies to each commodity code. The package of legislation also introduced exceptions to the standard rate of import duty – such as a tariff relief or tariff suspension – which were largely given effect by reference documents contained within that legislation.
- 7.3 The commodity codes through which tariff rates are delivered are subject to ongoing updates. This instrument reflects technical updates that have been made to over 300 commodity codes since previous regulations on this matter (S.I. 2021/380) was laid. These updates do not affect the tariff rates applied to the relevant goods, as set out under previous legislation and reference documents. In other words, these technical updates do not result in a change of tariff, but a slight adjustment to the structure that delivers those same rates. The Government is making these changes to ensure it can meet its obligations under the Protocol on Ireland/Northern Ireland and to avoid any unnecessary complications for businesses. In some cases, classification changes may be required to meet new commitments, such as agreements with FTA partners, or to deliver wider UK trade policy, or for other technical reasons.
- 7.4 This instrument updates existing legislation to ensure that these changes are reflected in the relevant legislation. These updates affect the following reference documents and the instruments that have given legal effect to them:
- “The Tariff of the United Kingdom” is updated to version 1.5, dated 19th July 2021 in the Customs Tariff (Establishment) (EU Exit) Regulations 2020.
  - “Authorised Use: Eligible goods and rates” is updated to version 1.2, dated 19th July 2021 in the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020.
  - “Authorised Use: Eligible Goods and authorised uses” is updated to version 2.2, dated 19th July 2021 in the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018.
  - “The Suspensions of Import Duty Rates Document” is updated to version 1.3, dated 19th July 2021 in the Customs Tariff (Suspension of Import Duty) (EU Exit) Regulations 2020.
- 7.5 This instrument also makes a series of changes to 157 commodity codes, which had both an AU measure and an MFN rate of 0%. Removing AU on these codes will eliminate unnecessary administrative burdens for traders. This is in line with the

principle of simplification under the UK Global Tariff. These changes affect the following reference documents and the instruments that gave effect to them:

- “The Tariff of the United Kingdom” is updated to version 1.5, dated 19th July 2021 in the Customs Tariff (Establishment) (EU Exit) Regulations 2020.
- “Authorised Use: Eligible goods and rates” is updated to version 1.2, dated 19th July 2021 in the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020.
- “Authorised Use: Eligible Goods and authorised uses” is updated to version 2.2, dated 19th July 2021 in the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018.

7.6 This instrument also makes error corrections to a limited number of tariff lines concerning sugar beet and sugar cane, whereby two £28/100 kg duty rates were incorrectly omitted, and one rate was incorrectly denominated in EUR rather than GBP:

- “Authorised Use: Eligible goods and rates” is updated to version 1.2, dated 19<sup>th</sup> July 2021 in the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020.

7.7 Finally, the “General Interpretative Rules” are updated in the “Tariff of the United Kingdom” reference document to ensure their correct application. These rules play a fundamental role in tariff classification, comprising the methodology by which goods are classified to a six-digit code. The rules must be applied in the order as set out in the Harmonised System of the World Customs Organisation, as this ensures a uniform approach to tariff classification in practice.

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

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 withdrawal required the UK to replace the EU’s customs regime with a UK-specific customs regime.

## **9. Consolidation**

9.1 These regulations do not provide for any consolidation of existing legislation, and none is necessary in the circumstances. Given the recurrent nature of this type of amending legislation, the Government considers it would be inappropriate to consolidate the legislation at this time.

## **10. Consultation outcome**

10.1 No consultation in relation to this instrument has been undertaken. Consultation is not required because this instrument makes a series of limited amendments to existing provisions, which maintain the current position with regard to the tariff rates and are consistent with principles underlying the UK Global Tariff which were previously consulted on.

## **11. Guidance**

11.1 Since the end of the Implementation Period, the UK Global Tariff has applied to all goods imported into the UK unless an exception applies, such as a tariff relief or tariff suspension, the goods are imported from countries that have tariff-free granted

unilaterally, or as part of a preferential trading arrangement. Further guidance is available at <https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021>.

## **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 as it largely maintains the position of existing legislation, which were covered by an overarching Tax Information and Impact Note published earlier this year:  
<https://www.gov.uk/government/collections/tax-information-and-impact-notestiins#uk-transition>.

## **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 as the changes do not result in a change of tariff policy, but a slight adjustment to the structure that delivers the same tariff rates that are currently in place.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is in line with the Government's general approach to tariff legislation, which are kept under review to ensure that it meets the policy objectives set out above in section 7 of this explanatory memorandum, and ensures burdens on business are carefully monitored.
- 14.2 A statutory review clause is not included in these regulations because this instrument relates to a tax or 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 James Repper at HM Revenue & Customs, email: [james.repper@hmrc.gov.uk](mailto:james.repper@hmrc.gov.uk) and Jessica Bolton at the Department for International Trade, email: [Jessica.Bolton@trade.gov.uk](mailto:Jessica.Bolton@trade.gov.uk) can be contacted with any queries regarding the instrument.
- 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, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.