

EXPLANATORY MEMORANDUM TO
THE CUSTOMS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 No. 628

1. Introduction

- 1.1 This 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 reduces and simplifies conditions that must be met before certain premises can be approved as a temporary storage facility for the storage of imported goods. These simplified approval conditions will apply in relation to premises at which an approved person (an authorised consignee) is permitted by HMRC to receive goods imported to Great Britain under a common transit procedure, as provided for at Schedule 1 to the Customs Transit procedures (EU Exit) Regulations 2018 (SI 2018/1258) (transit regulations).
- 2.2 This instrument also makes provision concerning the use of simplified processes for the declaration of imported goods. It will enable goods that are to be kept in a customs free zone to be declared using simplified processes. It also provides that there will be no requirement to provide supplementary information in relation to goods declared under this process and provides for cases in which simplified customs processes cannot be used to declare imported goods to a customs procedure.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument makes provision by reference to things to be specified in a notice 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. The Taxation (Cross-border Trade) Act 2018 (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 notice to be made under this instrument will be published at <https://www.gov.uk/government/collections/customsvat-and-excise-uk-transition-legislation-from-1-january-2021> no later than the date on which the relevant provision of the instrument comes 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.

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 The main provisions in relation to customs duty for goods that are imported into Great Britain can be found in TCTA, and regulations made under that Act. Those regulations include the transit regulations (which this instrument amends). Schedule 1 to the transit regulations concerns rules governing the common transit procedure. That Schedule includes requirements concerning the approval of persons as authorised consignees (who are permitted to receive goods moved under a common transit procedure at an authorised place, in order to end that common transit procedure), and provisions deeming certain imported goods to be in temporary storage once a common transit procedure has been discharged.
- 6.2 Regulations made under TCTA also include the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) (import duty regulations). Those regulations include provisions amended by this instrument concerning imported goods kept in a temporary storage facility before being released to a customs procedure or exported, and the use of simplified declaration processes to place imported goods under a customs procedure.
- 6.3 TCTA is supplemented in relation to the import and export of goods to Great Britain by the Customs and Excise Management Act 1979 (CEMA) and regulations made under that Act. Certain provisions within this instrument are being made in exercise of the powers in CEMA, which enable regulations to specify conditions that must be met before premises may be authorised as a temporary storage facility. Regulations previously made under the CEMA provisions include the Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulation 2018 (SI 2018/1247) and the Wharves, Examination Stations and Temporary Storage (Approval Conditions) (EU Exit) Regulations 2018 (SI 2018/1265), both of which are amended by this instrument.
- 6.4 The Customs (Contravention of a Relevant Rule) Regulations 2003 (SI 2003/3113) (which this instrument also amends) is made under powers at section 26 of the Finance Act 2003. Those regulations set out penalties that apply where prescribed rules relating to customs duty are breached.

7. Policy background

Temporary Storage

- 7.1 The instrument will reduce the requirements of temporary storage that apply where an authorised consignee receives goods imported to Great Britain under a common transit procedure. Such goods will be permitted to be kept in temporary storage at the

premises for a period up to six days, starting with the date from which the goods are discharged from the common transit procedure.

- 7.2 Consequential changes are made to other legislation to clarify the temporary storage status of goods held in an authorised consignee's premises at the end of the common transit procedure and to ensure that appropriate penalties are in place for breaches of the customs rules concerning the approval of these premises. This instrument also provides that an authorised consignee will need to have a temporary storage facility at their premises (but this provision will be commenced six months after the regulations come into force to give authorised consignees time to make the relevant changes).
- 7.3 In relation to the common transit procedure, paragraphs 14 and 39 of Schedule 1 to the transit regulations provide that once a common transit procedure has been discharged, any chargeable goods that were subject to that procedure become subject to the charge to import duty and obligation to declare goods to another customs procedure. Until those goods are placed under another customs procedure or exported, they are deemed to have been declared for storage in a temporary storage facility.
- 7.4 The consequence of this position is that premises used by authorised consignees to end a common transit procedure must also be approved by HMRC as a temporary storage facility, so that they can be used to store goods that have been deemed to be declared for storage in a temporary storage facility.
- 7.5 In relation to the common transit procedure and temporary storage, this change is intended to reduce the costs and burdens faced by authorised consignees complying with the temporary storage requirements that apply at the end of the common transit procedure

Customs Free Zones

- 7.6 In relation to the simplified customs declaration process, regulation 30 of the import duty regulations currently provides that this simplified process cannot be used to declare goods for a free zone procedure.
- 7.7 In relation to customs free zones, the change will provide an additional simplification and customs facilitation for persons authorised to use the simplified declaration process, who wish to declare goods to a free zone procedure.
- 7.8 The instrument also amends the import duty regulations to remove the current restriction on the use of the simplified customs declaration process to place goods under a free zone customs procedure. In relation to simplified declarations to the free zone procedure it also removes the normal requirement that a supplementary customs declaration should be submitted. The instrument also provides for cases in which the simplified declaration process cannot be used to place goods under a customs procedure to be specified in a public notice issued by HMRC.
- 7.9 It will also be possible for a person authorised to use simplified customs declaration procedures to declare certain goods for a free zone procedure using these simplified procedures. No supplementary information will be required in relation to such a simplified customs declaration.
- 7.10 The import duty regulations will also permit provision concerning cases in which simplified customs declaration processes cannot be used to be set out in a notice published by HMRC.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are plans for consolidation, as this is not a stand-alone instrument.

10. Consultation outcome

10.1 During the summer of 2021, HMRC conducted an informal consultation on the temporary storage changes within this instrument with a wide range of trade bodies and businesses from sectors including logistics and freight forwarders, fast parcel operators, motor manufacturing, food retailers and a community service provider, which helped shape the policy change.

10.2 HMRC has carried out further stakeholder engagement on these changes including presentations at the Joint Customs Consultative Committee (JCCC) (which 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) and trade bodies. The change has been well received.

10.3 A virtual reading room on the full draft instrument was conducted on 15 February 2022 with members of the JCCC, who were able to discuss the draft legislation with policy officials, which was positively received.

10.4 Introducing simplified declarations for the free zone procedure is in line with the Government's response to the wider consultation on Freeports published in 2020, available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924644/FINAL_-_200923_-_OFF_SEN_-_Freeports_Con_Res_FINAL.pdf.

11. Guidance

11.1 HMRC provides guidance at <https://www.gov.uk/government/publications/transit-manual-supplement> for businesses on operating common transit procedures, and this guidance will be updated and available when this instrument enters into force.

11.2 HMRC also provides guidance relating to simplified declarations at <https://www.gov.uk/guidance/using-simplified-declarations-for-imports>

11.3 Guidance will be published by HMRC to coincide with the regulations coming into force on 1 July 2022.

12. Impact

12.1 The impact on business, charities or voluntary bodies is positive as the policy objective is to reduce costs for authorised consignees, by simplifying the rules that apply where goods subject to customs controls are stored at their premises at the end of a cross-border common transit procedure. This could enable more businesses using customs transit arrangements to complete customs formalities at an authorised consignee's premises, rather than at the place where the goods arrive in Great Britain.

- 12.2 For customs free zones, the measure is expected to have a positive impact on a small number of businesses who choose to keep imported goods in a customs free zone in Great Britain and are authorised to use simplified customs declaration processes.
- 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 on the website at <https://www.gov.uk/government/collections/tax-information-and-impactnotes-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 business is that the instrument does not change existing rules with which small businesses must comply if they elect to use a common transit procedure. Guidance on common 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 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 Angela Nagarajah at HMRC, Telephone: 03000 586087 or email: angela.nagarajah@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sally Beggs, Deputy Director, Guidance, Stakeholder, Transit, Authorisations and Facilitations, at HM Revenue and Customs 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 standards.