

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2024**

**2024 No. 194**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

**2. Declaration**

- 2.1 Nigel Huddleston MP, Financial Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Alexander Pienaar, Director for Customs Policy and Strategy, at HMRC confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Danny Alvarez at HMRC, Telephone: 03000 526645 ([customsauthorisationspolicy@hmrc.gov.uk](mailto:customsauthorisationspolicy@hmrc.gov.uk)) can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 This instrument will harmonise eligibility criteria applying to different types of customs authorisations and approvals. It will also provide for new administrative rules relating to how HMRC may determine applications for customs approvals or authorisations.

*Where does the legislation extend to, and apply?*

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

**5. Policy Context**

*What is being done and why?*

- 5.1 Businesses involved in international trade who meet specific criteria can benefit from a range of special schemes (authorisations or approvals) to facilitate their business activities, for example not needing to pay import duty at the point of importation or being able to use a simplified customs declaration. Each of these special schemes has an associated authorisation process.

- 5.2 This instrument creates more consistent eligibility criteria across 42 authorisations to meet 3 core criteria: good financial standing, competence to use that customs authorisation, and a good compliance history.
- 5.3 This instrument also creates a power for HMRC to set general approval conditions applying to certain types of approval by using a public notice. Traders will be able to see these conditions before applying so will be able to make informed judgements about whether they wish to apply for an authorisation.
- 5.4 HMRC must currently make decisions about whether to grant an approval within time periods in secondary legislation. This instrument creates a power for HMRC to request further information from a trader, which HMRC intends to use where it is essential for HMRC to make a decision on an application. The time period before the further information is provided will not be counted within HMRC's time limits to determine the application. This will prevent traders from having applications rejected because staff handling authorisation applications are absent, or because the additional information requires significant time to gather and they are unable to meet HMRC time limits.

*What was the previous policy, how is this different?*

- 5.5 The legislation for customs authorisations has been developed over many years. Post EU exit HMRC requires legislation that will reflect the future tax system by harmonising authorisations where appropriate. The changes we are proposing above will facilitate this.

## **6. Legislative and Legal Context**

*How has the law changed?*

- 6.1 Customs authorisations and approvals are granted under regulations made under Section 23 of the Taxation (Cross-Border Trade) Act 2018 (TCTA) and Part III of the Customs and Excise Management Act 1979 (CEMA).
- 6.2 The powers under section 23 of TCTA are powers related to the administration of approvals that relate to matters in Part 1 of TCTA. Regulations made under section 23 (found in Part 9 of the Customs (Import Duty) (EU Exit) Regulations 2018) (the 2018 Regulations) deal with applications for approval, the consideration of applications, notification of the outcome of an application, and appeals and reviews. Regulations in Part 9 of the 2018 Regulations also deal with powers to amend, suspend or revoke approvals.
- 6.3 This explanatory memorandum uses the terms “authorisation” and “approval” to refer to both approvals and authorisations. The original legislation that establishes the different facilitations, uses both terms in different contexts, but for all practical purposes, an “approval” and an “authorisation” are the same thing.
- 6.4 This instrument makes changes to regulations 89 and 91 of the 2018 Regulations. It amends regulation 89 of the 2018 Regulations, creating a new power for an officer of HMRC to give a notice to an applicant for a customs approval requesting further information. It also permits the officer to disregard the time period between that notice and the further information being provided for the purpose of establishing whether or not the approval decision was made within the specified time period. Regulation 89 is also amended to add a new paragraph (5A) which contains a power for HMRC to specify conditions of approval in a public notice. This supplements current provision in regulation 89(5) which provides that approvals are subject to

compliance with conditions of approval specified in or under regulations, or in a notification of approval. An amendment is also made to regulation 91(2A) of the 2018 Regulations to allow an HMRC officer to make amendments to an approval in cases where certain approval conditions are specified in a public notice made under regulation 89(5A).

- 6.5 In contrast, the administrative matters that regulations under section 23 TCTA are concerned with, and which span a wide range of approvals, the eligibility rules for each individual type of approval are laid out in regulations that are made under specific powers to specify rules relating to that particular customs facilitation, process or procedure.
- 6.6 Legislative changes have been made in four areas to modernise the authorisations regime.
- 6.7 Eligibility criteria have been standardised across a number of different types of customs approvals through amendments to the 2018 Regulations, The Customs Transit Procedures (EU Exit) Regulations 2018, and the Customs (Bulk Customs Declaration and Miscellaneous Amendments) (EU Exit) Regulations 2020. The changes to these regulations have the effect of introducing additional eligibility criteria in some cases, (for example the amendments to regulations 31 and 37 of the 2018 Regulations and reducing the applicable criteria in other cases (for example the amendments to regulations 97 and 99 of the 2018 Regulations).
- 6.8 CEMA section 25(1A)(a) allows the Commissioners to make regulations to impose mandatory conditions that operators of Temporary Storage Facilities must fulfil before they are approved. In the interests of standardising conditions, the Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018 are amended to introduce an additional approval condition.

***Why was this approach taken to change the law?***

- 6.9 This approach was taken as amending provisions of existing instruments setting the eligibility criteria for different types of authorisations represented the best mechanism to support the policy intent. The policy intent of standardising approval criteria takes as its starting point the existing approval conditions legislated for in regulations under TCTA and CEMA, and making amendments to the existing conditions by way of amending the relevant regulations was the best way of achieving that outcome. Similarly, the process and administrative changes build on and modernise current rules in Part 9 of the 2018 Regulations, so making changes to those regulations was chosen as the means to achieve that outcome.

## **7. Consultation**

***Summary of consultation outcome and methodology***

- 7.1 HMRC did not conduct a formal consultation on this SI because continual, informal and iterative engagement has taken place with industry groups during development of the policy. This began from March 2023 and is ongoing.

## **8. Applicable Guidance**

- 8.1 There will be a complete re-structure and re-design of the guidance set out on GOV.UK and there will also be guidance on how to use the new I.T portal that will be

built for businesses to apply for and manage their authorisations. Guidance will be available before the legislation comes into force.

## **Part Two: Impact and the Better Regulation Framework**

### **9. Impact Assessment**

9.1 A full Impact Assessment has not been prepared for this instrument because it does not meet the financial threshold above which such an assessment is required.

#### *Impact on businesses, charities and voluntary bodies*

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because our proposed changes will improve how businesses manage and interact with customs authorisations.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no significant impact on the public sector because the proposed changes will improve how businesses in the public sector interact with customs authorisations.

### **10. Monitoring and review**

#### *What is the approach to monitoring and reviewing this legislation?*

10.1 The approach to monitoring of this legislation is to keep customs rules under review through ongoing stakeholder engagement, to ensure that this instrument meets the policy objectives set out in section 5 of this Explanatory Memorandum.

10.2 As this instrument is not made by a Minister of the Crown, no statutory review clause is required.

## **Part Three: Statements and Matters of Particular Interest to Parliament**

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

11.1 None.

### **12. European Convention on Human Rights**

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

### **13. The Relevant European Union Acts**

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).