EXPLANATORY MEMORANDUM TO

THE CUSTOMS (CONSEQUENTIAL AMENDMENTS) (EU EXIT) REGULATIONS 2019

2019 No. 140

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.

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, in the event of the United Kingdom (UK) leaving the European Union (EU) without a negotiated deal, the UK has a customs regime in place before the date of departure. This instrument will amend existing UK customs statutory instruments (SI) following the UK's exit from the EU that contained references and terms/phrases that would no longer be appropriate in a post-exit environment (e.g. replace "customs territory" with "United Kingdom").

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

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.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument is necessary to make sure the UK's customs regime has a coherent legislative base once we have left the EU. The instrument will amend references and terms/phrases that would no longer be appropriate in a post-exit environment (e.g. replace "customs territory" with "United Kingdom") and ensure that the relevant SIs refer to provisions that replace EU legislation.

6.2 This instrument amends SIs which make provision in relation to:

- in the case of the Customs Duties and Agricultural Levies (Goods for Free Circulation) Regulations 1977, when customs duty suspended under arrangements applying in other Member States becomes payable in the United Kingdom;
- in the case of the Customs and Excise (Transit) Regulations 1993, the penalties for the contravention of provisions giving effect to the Common Transit Convention (CTC) (which allows goods to be transported between countries with import taxes suspended);
- in the case of the Customs Traders (Accounts and Records) Regulations 1995, requirements for customs traders to keep and preserve records containing information about their businesses and about their dealings in customs goods;
- in the case of the Postal Packets (Revenue and Customs) Regulations 2011, customs requirements and procedures for goods imported or exported in the post.

6.3 The amendments are made under the power in section 56 TCTA as they are required in consequence of provision made by or under the TCTA.

7. Policy background

What is being done and why

7.1 This instrument amends the legislation specified in paragraph 6.2 to ensure that the effect remains relevant after the UK's exit from the EU.

7.2 The amendments are in consequence of the UK's exit from the EU. The instrument will amend references and terms/phrases that would no longer be appropriate after the UK has left the EU (e.g. replace "customs territory" with "United Kingdom") and ensure that the relevant SIs refer to provisions that replace EU legislation.

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 2018 but relates to the withdrawal of the UK from the EU because it, and other legislation made under TCTA, will ensure that the UK's customs regime operates as required after EU exit.

9. Consolidation

9.1 This is new legislation and therefore no consolidation is required.

10. Consultation outcome

10.1 The purpose of this instrument is to make simple amendments to UK customs SIs to ensure references that will no longer be required once the UK leaves the EU, are changed or removed. Therefore no consultation was considered necessary.

11. Guidance

11.1 Guidance for existing customs legislation is already available on GOV.UK and will be updated to reflect the impact of the UK leaving the EU.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument it is only required for the purposes of removing legislative anomalies that would occur in existing UK legislation from 29 March 2019 if the UK leaves EU in a no deal scenario and beyond.

12.2 There is no, or no significant, impact on the public sector as the amendments do not in introduce any new policies.

12.3 This instrument will be covered by an overarching HMRC impact assessment (second edition) which will be published and available on the website at https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal.

12.4 This instrument does not introduce any new policies and is only intended for the purposes of removing what would be legislative anomalies in legislation following the UK's departure from the EU.

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 (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that they should not be specifically disadvantaged by this regulation. The instrument amends terms/phrases in existing UK customs SIs and revokes a customs SI that would no longer be appropriate in a post-exit environment.

14. Monitoring & review

14.1 HM Revenue and Customs will keep the instrument under review to ensure that it meets the policy objectives set out in section 7.

14.2 A statutory review clause is not included within these regulations because the SI 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 Jim Holburn at HM Revenue and Customs Telephone: 03000 585778 or email: james.holburn@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Pamela Mulholland, Deputy Director for Customs EU Exit, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Mel Stride, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.