



Law Society  
of Scotland

# Customs Bill: legislating for the UK's future customs, VAT and exise regimes

Policy response from the Law Society of Scotland

January 2018



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society welcomes the opportunity to consider and respond to the Government's plans for future customs arrangements with the EU.<sup>1</sup> The Society has the following comments to put forward for consideration.

## General Remarks

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It is important to note that the customs arrangements which the UK currently participates in as an EU Member State are closely linked to a whole host of other Internal Market measures. It is not only customs tariffs which can prove a barrier to entry of goods into given markets but also for example quotas or regulatory barriers. This paper focuses solely on customs arrangements but more general information on the UK's internal market participation can be found in other papers on our dedicated Brexit webpage,<sup>2</sup> including our response to the recent consultation on the UK approach to trade policy.<sup>3</sup>

Finally, we note that the legal arrangements regarding customs are inextricably linked to discussions regarding the border between Northern Ireland and the Irish Republic.

<sup>1</sup> Our comments on the Taxation (Cross-Border) Trade Bill can be found here: <https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-input-to-parliamentary-bills/bills-201718/taxation-cross-border-trade-bill-2017-19/>

<sup>2</sup> <https://www.lawscot.org.uk/research-and-policy/international-work/brexit/>

<sup>3</sup> [https://www.lawscot.org.uk/media/359078/lss-response-to-dit\\_preparing-for-future-uk-trade-policy\\_november-2017.pdf](https://www.lawscot.org.uk/media/359078/lss-response-to-dit_preparing-for-future-uk-trade-policy_november-2017.pdf)

## Background

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### Future Partnership Paper

In August HM Treasury, HM Revenue & Customs and the Department for Exiting the European Union together published a “partnership paper” on *Future customs arrangements for the UK and EU*.<sup>4</sup>

The paper is very high level setting out objectives for the new relationship. It offers two broad approaches as to how future cooperation would be structured: (1) a highly streamlined customs arrangement or (2) a new customs partnership with the EU. However, the paper offers little information as to how such systems would actually be constructed or details regarding the practical operation at a logistical level.

The paper also sets out some general trade goals but again these are very high level.

### Customs Bill

Following on from this HM Treasury published its white paper on a *Customs Bill: legislating for the UK’s future customs, VAT and excise regimes*.<sup>5</sup> We welcome the statement by the Chancellor of the Exchequer, Philip Hammond acknowledging the fact that “it makes sense to agree an interim implementation period” for customs arrangements, as with all aspects of the UK’s new relationship with the EU. We also welcome the Government’s objective “to forge new ambitious trade relationships with partners in Europe and around the world”.

In addition we note Michel Barnier’s statement in Italy in November which indicated the importance to the EU negotiating team of maintaining the integrity of the single market and customs union and that “it is not possible to leave the customs union but expect to enjoy frictionless trade with the EU.”<sup>6</sup>

The Customs Bill White paper sets out two options for the UK-EU customs arrangements following on from withdrawal:

1. A highly streamlines customs arrangement
2. A new customs partnership with the EU.

These are explored in further detail below

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/637748/Future\\_customs\\_arrangements\\_-\\_a\\_future\\_partnership\\_paper.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/637748/Future_customs_arrangements_-_a_future_partnership_paper.pdf)

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/650455/customs\\_bill\\_white\\_paper\\_print.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650455/customs_bill_white_paper_print.pdf)

<sup>6</sup> [http://europa.eu/rapid/press-release\\_SPEECH-17-4502\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-4502_en.htm)

## Option 1: A highly streamlined customs arrangement

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The paper sets out proposed key features of the “highly streamlined customs arrangement”:

- Return to declaration of goods for import and export with accompanying documentation
- Verification of declaration by HMRC (and intervention if necessary)
- Payment of customs duties and import tax

Legally the reintroduction of all of these elements in terms of EU trade is quite simple as the mechanisms already exist for trade to and from all countries with which the UK trades which are outside the customs union. In practice, however, this may pose a significant challenge, given the high percentage of UK trade which passes between the UK and the other countries in the Customs Union.<sup>7</sup>

In practical terms import and export procedures are likely to be of particular impact for fresh food and other agricultural products, where their perishable nature means that time is of the essence.<sup>8</sup> There are also certain supply chains where the supply chain requires goods to pass back and forth with in a short period of time in order to meet contractual deadlines. While improved efficiencies in domestic processes may go some way to ameliorating the negative impact of the introduction of customs checks, this is no guarantee of the speed with which other countries customs authority will process UK goods destined for consumers in the customs union.

The Government paper sets out the following four sets of suggested measures for simplifying requirements:

### ***Moving goods across borders***

- A continued waiver for the requirement to submit entry and exit summary declarations
- Membership of the Common Transit Convention.

### ***Reducing risk of delay at ports and airports***

- negotiating mutual recognition of Authorised Economic Operators (AEOs)
- bilateral implementation of a technology-based solution for roll-on, roll-off ports which could consist of pre-arrival notification of consignments on a port IT system

We also note that there will be resourcing ramifications and more customs officers if customs procedures are reintroduced for trade between the UK and remaining EU. The UK can choose to channel resources to

<sup>7</sup> Ie the EU Member States and Turkey

<sup>8</sup> See eg <http://www.itv.com/news/2017-09-04/sainsburys-boss-warns-post-brex-it-customs-rules-could-leave-food-rotting-at-uk-border/>

ensure that port and airport procedures are as speedy as possible but EU resourcing will be a decision for the respective Member States.

### ***Safety and security***

- negotiating customs co-operation, mutual assistance and data-sharing which replicates existing levels of UK cooperation with other Member States

We consider that cooperation, mutual assistance and data-sharing should ensure more effective enforcement.

### ***Reducing the time and costs of complying with administrative requirements***

- simplification for business - for example through introduction of self-assessment for traders
- improved authorisation processes
- simplifying domestic procedures to reduce the requirements traders must comply with at the border

Self-assessment processes could help speed up the system for businesses and eg aggregation of customs declarations might provide efficiencies. However, if the self-assessment process is not truly accessible for all traders it may generate additional costs for businesses who will need to employ advisers to ensure that their customs declarations are correct.

We consider that reducing the requirements for clearance could also be helpful but emphasise that this should not be at the expense of quality, particularly where this relates to public health and vital consumer protection. In this context we note the arrangements around the mutual recognition of standards (such as product standards and other technical requirements) may be linked to expedited compliance approvals at the border where EU products are being imported into the UK.

### **Other issues**

The following issues should also be considered in the context of the Option 1 proposal.

#### ***Unilateral measures***

Unilateral measures may provide significant benefits and improvements to customs processes, for example practical measures to speed up import checks. However, this can only provide a partial solution.

In legal terms one of the most important considerations is the “most favoured nation” (MFN) principle which forms part of the WTO rules.<sup>9</sup> These state that where a WTO member offers a particular benefit or advantage to one WTO trading partner, it must offer the same advantage to all other WTO members

<sup>9</sup> [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm)

unless the advantage is offered as part of a bilateral or multilateral free trade agreement.<sup>10</sup> Although EU Membership is broader than a simple trade agreement, it qualifies as an exception in these terms.

### ***IT systems***

One of the unilateral measures suggested is the use of IT solutions to improve the efficiency of customs procedures. Interoperability is key in this regard. The systems will need to be accessible for those businesses which need to be able to communicate with customs and excise: if technology is not essential to their business they may not be operating on the newest system and this will need to be taken into account in creating any new system. Similarly if information is to be shared with EU partners, the UK system will need to interact with disparate EU systems. Our understanding is that at present the EU systems are not necessarily able to “speak” to each other effectively so it is not merely a question of coordinating with a single EU system.

### ***Rules of origin***

The Rules of Origin (ROO) system under FTAs imposes a further practical and administrative burden where goods are crossing borders into a customs union. The rules are intended to avoid goods from one trading party where this is no or a less favourable FTA with the destination party being routed through intermediary countries to take advantage of lower tariffs under an FTA between the intermediary and final destination.

Goods passing from outside the EU customs union to the EU need to meet the EU’s ROO requirements if they are being supplied duty free. This includes goods from the EEA/EFTA states which are within the internal market but do not participate in the customs union.

In practice ROO are very complex, generating costs for compliance and requiring significant internal border controls between parties to an FTA to ensure compliance.<sup>11</sup> The House of Lords EU Committee also examined the impact of ROO in its trade inquiry. The Committee’s report, *Brexit: the options for trade*<sup>12</sup> summarises the issue as follows:

“Rules of origin add costs through additional bureaucracy, including the difficulty of identifying the origin of goods with a complex supply chain, and an additional cost for consumers in importing goods.[..] They also slow down the process of trade.”<sup>13</sup>

<sup>10</sup> There are other limited exceptions, for example a higher level of access can be offered to developing countries

<sup>11</sup> See eg House of Lords Library Note 2017/007 (<http://researchbriefings.files.parliament.uk/documents/LLN-2017-0007/LLN-2017-0007.pdf>)

<sup>12</sup> <https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/72/72.pdf>

<sup>13</sup> See para 98 at p31

## Option 2: A new customs partnership with the EU

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*“One potential approach the UK intends to explore further with the EU would involve the UK acting in partnership with the EU to operate a regime for imports that aligns precisely with the EU’s external customs border, for goods that will be consumed in the EU market, even if they are part of a supply chain in the UK first. The UK would need to apply the same tariffs as the EU, and provide the same treatment for rules of origin for those goods arriving in the UK and destined for the EU.*

*By mirroring the EU’s customs approach at its external border, we could ensure that all goods entering the EU via the UK have paid the correct EU duties. This would remove the need for the UK and the EU to introduce customs processes between us, so that goods moving between the UK and the EU would be treated as they are now for customs purposes...”*

As emphasised in the Government paper, this would be an entirely new approach. One of the advantages would be that operating the same duty levels would remove the requirement for customs checks and application of the rules of origin system. However, at present there is not sufficient detail on how this would work for us to provide detailed comment.

## General issues to be considered

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There are also a number of general issues which it is important to highlight in this context. These may be of relevance to discussions regarding a new customs partnership and should also be considered in light of the highly streamlined customs arrangements detailed in Option 1.

### Transitional arrangements

It will be essential to ensure that any transitional agreement incorporates specific rules in relation to customs. If a transitional arrangement to maintain the status quo regarding cross border trade between the UK and the rest of the EU is put in place to allow agreement to be reached on a new trading relationship this must also extend to customs provisions. It is not possible to make provision for a transitional agreement which introduces changes until the shape of the final agreement has been ascertained.

### Contract adjustments

Contracts for sale of goods between the UK and other EU Member States will be predicated on the current arrangements. Changes to customs procedures may necessitate adjustment - and perhaps also renegotiation – of those agreements. Such adjustments may take time to put into effect and the businesses involved - both buyers and sellers as well as transport/logistics companies - will need to know what the new arrangements for customs. This extends to both legal and logistical arrangements as both components will need to be in order to settle the relevant terms of the contracts for sale or services provision.

## Mutual recognition of standards

As noted above, customs duties are not the only hurdle for import/export of goods. Harmonised product standards throughout the EU – from toys and electrical items to foods and pharmaceuticals – play a key role in facilitating the free movement of goods within the Internal Market. For this reason, countries negotiating trade facilitation agreements will often seek mutual recognition of standards, thus removing the requirements for product testing. This can also increase the length of time which it takes to process goods on the import side.

## Provision of services

Customs duties are not relevant to services. However, as a general rule it is not tariff barriers which pose difficulties in terms of international services provision. Rather it is non-tariff barriers for example recognition of qualifications, nationality requirements and other regulatory barriers which prevent foreign entities from entering markets.

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