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Our Ref PPL
Your Ref PUB2.3

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DX 146765 LONDON

Dear Sirs,

Proposed Judicial Review of the decision to make “The Cross-border Trade (Public Notices) (EU Exit) Regulations 2019”

Thank you for your letter dated 9 October 2019 (“your Letter”) and for agreeing to extend time for a substantive response until 4pm today.

Proposed Defendant

HMRC Solicitors Office are responding to your Letter on behalf of HMT and HMRC and will have conduct of any proceedings issued by you in relation to the Cross-border Trade (Public Notices) (EU Exit) Regulations 2019 (“the Regulations”). We should add, that if you do issue a Claim in Judicial Review then HMRC would want to be added to the Claim as an interested party in relation to those Regulations.

Proposed Claimant

We note that you are a charity and what you say about the charity's aims, in particular in relation to the SIFT project, and for the purposes of the issues you raise in your Letter, and any challenge you may bring in relation to the Regulations, HMT and HMRC will not take issue with your interest in these matters and so will not argue that the charity does not have sufficient interest.

The Regulations

The Regulations form part of legislation to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) to ensure that, in the event of the UK leaving the EU without a withdrawal agreement, the UK has a functioning customs, VAT and excise regime in place for the date of departure.

To enable compliance to be as easy as possible and ensure that trade continues to flow HMRC has introduced a number of easements that make it easier for traders to move through customs processes. However, unexpected barriers to trade flow may arise and it is possible that further changes will need to be made quickly to VAT, customs and excise processes, following the UK's exit, in order to support the flow of trade and to prevent congestion at the ports; hence the need for these Regulations.

These Regulations are designed to give HMRC and the Treasury the flexibility to act quickly in an unpredictable environment after the UK's departure from the EU.


The way forward

As is clear the Regulations are designed to ease the flow of trade and to allow flexibility. However, we have very carefully considered the points you raise in your Letter and, on reflection, we have decided to revoke the Regulations. As I am sure you will appreciate due to pressure on Parliamentary time it is not possible to say exactly when these Regulations will be revoked. However, HMRC undertake not to use the powers in these Regulations before Exit date. As we have confirmed that the Regulations that are the subject of your proposed challenge will be withdrawn, we do not consider it necessary to respond to the further requests in your paragraph 46.

We should say that the revoking of the Regulations should not be taken as a concession by HMT/HMRC that we consider that the points and arguments raised in your Letter are correct.

As we have now made clear that we are withdrawing the Regulations as requested at paragraph 46 (a) of your Letter we trust that you will not be issuing proceedings but we would, however, be grateful for your confirmation.

Yours faithfully,

A handwritten signature in blue ink, consisting of a large, stylized 'C' followed by a long horizontal stroke.

Christina Parkinson
Senior Lawyer Team Manager