

# HMRC plan to suspend the rule of law in the event of Br...

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The government has tabled the [most extraordinary statutory instrument](#) as a result of Brexit. It is called:

*The Cross-border Trade (Public Notices) (EU Exit) Regulations 2019*

The key provision is paragraph 3 (there are only four clauses), which says:

### **Power to make temporary provision by public notice**

3.-(1) The Treasury may give a public notice containing provision which-

(a)relates to value added tax, any duty of customs or any excise duty([1](#)); **and**  
**(b)is authorised by this regulation.**

**(2) They may do so only if, in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU, they consider it appropriate in the public interest to give the notice.**

**(3) The power to give a public notice under this regulation is exercisable only on the recommendation of HMRC Commissioners.**

**(4) Provision is authorised by this regulation if it has the effect of-**

**(a)disapplying any obligation imposed by or under any enactment;**

**(b)extending the period for complying with any such obligation;**

**(c)extending the period during which a person is authorised or approved to do anything;**

**(d)suspending any power or duty of HMRC to impose a penalty or other sanction on any person;**

**(e)authorising HMRC to give any approvals or authorisations subject to their being subsequently satisfied that any requirements are met; or**

**(f)otherwise conferring a benefit of any kind on any person other than provision-**

**(i)reducing the amount of import duty applicable to any goods equivalent to provision that may be made under the sections referred to in section 7 of the Act; or**

**(ii)reducing the rate of value added tax or excise duty.**

**(5) Provision (“modifying provision”) is also authorised by this regulation if-**

**(a)it modifies the operation of any provision made by or under any enactment; and**

**(b)the Treasury consider the modifying provision appropriate in consequence of, or otherwise in connection with, the making of provision that has an effect specified in paragraph (4) (whether or not the provision is made by a public notice under this regulation).**

**(6) The modifying provision authorised by paragraph (5) includes provision imposing obligations, or penalties for failure to comply with an obligation, on any person.**

**(7) The period for which a public notice given under this regulation has effect must not be longer than a period of 60 days beginning with the day on which the notice is given (and none of that period may fall after the end of the period specified in regulation 1(2)).**

**(8) This does not affect-**

**(a)anything previously done under the notice;**

**(b)the making by that or another public notice of transitional or transitory provision or savings in connection with its ceasing to have effect; or**

**(c)the making of a new public notice.**

What the regulation does, in effect say, is that HMRC may ask the Treasury, who can consent without having to advise or seek the permission of Parliament, to change the law applying to the application of VAT and excise duties in the UK for a period of six months from the date of our withdrawal from the EU.

In effect, they can waive the right to make returns, disapply penalties, waive otherwise

legal obligations, and effectively consent to the non-application of VAT and excise law without any form of parliamentary consent.

Such waivers do have to be retrospectively advised to Parliament, but they are legal come what may. And although they only last for sixty days they can, in effect, be repeated so that they can last for the whole six month period to which the Regulation applies.

In other words, whether the law works, how the law works, whether penalties are imposed or not and, indeed, whether taxes are in effect collected or not is a matter at the sole discretion of HMRC and parliament has no power to intervene.

We already know three things about Brexit, VAT and tariffs and excise duties. The first is that HMRC does not have the staff to manage its Brexit workload. Second, we know it has not got the infrastructure either in terms of IT or border presence to manage its new obligations. This is not just on the Irish border; it is on every border and with regard to not just major issues, but what many might think minor ones like parcels deliveries. And third, because there is no Brexit agreement of any sort HMRC does not know what law it will be applying on Brexit day, which might be 1 November, even if it wanted to put arrangements in place.

The consequence is apparent: in effect it will be suspending the law. In practice, you might ask what else it can do given the hand that it has been dealt? But that is an inappropriate question because the obvious answer to that is to halt the cards being dealt: Brexit has to either be delayed or a transition period where existing arrangements have to apply has to be put in place whilst an orderly transition can be arranged. Only the most unwise of politicians would do anything else. But we have them, we now know.

So we are going to have, in effect, a suspension of the law. There will be a free-for-all for smugglers. There will be a period when UK domestic business will be open to competition from abroad without any effective regulation to protect that domestic market, the businesses within it or the consumers it serves from harm.

Tax revenues will be substantially harmed: that is inevitable. The cost in terms of revenues lost is bound to run into billions of pounds, because there is not a shadow of a doubt that these regulations will have to be used.

And all this will be done without recourse to parliament. There will be non-taxation by Treasury edict without parliamentary consent. The idea that taxation is by representation has been foregone, but the cost will still fall on taxpayers.

So much for taking back control.