EXPLANATORY MEMORANDUM TO

THE CHANNEL TUNNEL (CUSTOMS AND EXCISE) (AMENDMENT) (EU EXIT) ORDER 2020

2020 No. 1417

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes an amendment to the Channel Tunnel (Customs and Excise) Order 1990 (SI 1990/2167) to ensure that goods will not be treated as imported if they leave the control zone in France before boarding the train to the United Kingdom (UK). The "control zone" means the part of the territory of France agreed between the French and UK governments within which Border Force officers are empowered to effect customs controls.

2.2 The instrument further ensures that such treatment of goods does not prejudice any enforcement activity that may be required, such as a penalty for not correctly declaring goods, when the goods were first brought into the control zone.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This order is made by statutory instrument under sections 11(1)(c) (d), (g) and (h), 13(1) and (2) and 34(4) of the Channel Tunnel Act 1987. Under section 34 of the Act, such an instrument is subject to the negative resolution procedure, unless a draft of the instrument containing the order has been approved by resolution of each House of Parliament before the order is made. The issue of the choice of procedure has been considered.

3.2 The instrument makes an amendment to the Channel Tunnel (Customs and Excise) Order 1990 and that order and subsequent amending orders were made under the negative resolution procedure. This instrument does not make any substantive change to the rules on the time of importation of goods set out in article 5 of the Channel Tunnel (Customs and Excise) Order 1990. It sets out to preserve the original intended effect of article 5, in response to changes in the layout of the Channel Tunnel site in France that pose a risk to the collection of duties and Value Added Tax.

3.3 On the basis of the precedent followed in similar instruments, and of the substance of the amendment, it is considered that the negative resolution procedure is appropriate in this case.

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)

3.4 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 United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 5 of the Customs and Excise Management Act 1979 makes provision to define the time of import and export of goods into and out of the UK, by reference to different modes of transport.

6.2 Section 11 of the Channel Tunnel Act 1987 allows "the appropriate Minister" to make provision by order for the purpose of applying any English law provisions, or excluding or modifying any of those provisions, in relation to matters arising in the Channel Tunnel system (whether in England or in France). For these purposes, reference to the appropriate Minister includes a reference to the Commissioners for HMRC.

6.3 Article 5 of the Channel Tunnel (Customs and Excise) Order 1990 sets out modifications of the rules as to the time of import or export of goods through the Channel Tunnel.

6.4 Paragraph 6 of Schedule 4 to the Channel Tunnel (Miscellaneous Provisions) Order 1994 (SI 1994/1405) amended the import and export timing rules provided in article 5 of the 1990 Order, giving the rules their current form.

6.5 The article 5 provision that is relevant to this measure is article 5(2)(a): Goods intended to be brought into the United Kingdom through the tunnel shall be treated as being imported into the United Kingdom:

(a) in the case of goods intended to be carried in a shuttle train, when they are taken into a control zone in France within the tunnel system.

6.6 Goods are treated as imported into the UK when they enter the control zone. For travellers coming to the UK, who drive into the Eurotunnel site in France and who subsequently board a shuttle train in their vehicles with personal goods in their baggage, the goods are imported in a driving route that has established customs control points.

7. Policy background

What is being done and why?

7.1 Following the withdrawal of the UK from the European Union (EU), the government announced in September 2020 new rules which will apply to goods carried across

borders by travellers going to and from Great Britain outside the UK. These changes will apply from 1 January 2021 when the transition period comes to an end. Under the new rules, travellers arriving from the EU will be subject to the same allowances as those arriving from rest of the world countries.

7.2 Where non-commercial goods and personal gifts are being brought into the UK by travellers in their accompanied baggage an advanced declaration of importation may be made to HMRC through an electronic system. Where the goods are below the relevant duty-free allowance, a declaration may be made by conduct, for example by driving in a vehicle past a customs lane or customs office.

7.3 Changes at the Eurotunnel site in France mean that a duty-free shop will be sited outside the control zone. As a result, travellers will be able to enter the control zone, and then subsequently exit and re-enter the control zone, having made further purchases, before boarding a shuttle train. This would have the effect that the same traveller could import goods, including alcohol and tobacco, more than once, and therefore benefit from duty-free limits more than once, contrary to the policy intention and the position at other points of entry into the UK.

7.4 This instrument amends the time of importation to ensure that, when a traveller enters the control zone more than once, any previous importation before boarding the train will be disregarded. Consequently, only one set of duty-free allowances can apply to the goods the traveller is importing.

7.5 This instrument also ensures that the disregard of that first occasion of entry is without prejudice to any enforcement action (for example, a penalty for not correctly declaring goods) that is applied to the goods that were brought into the control zone on that first entry.

7.6 Subsequent legislation under the Taxation (Cross-border Trade) Act 2018 will be introduced to make advance declarations mandatory for travellers entering the UK on shuttle trains through the Eurotunnel site in France. This will ensure that when goods carried by travellers are subject to control by Border Force officers, there can be no doubt that the goods ought to have been subject to a declaration at that point.

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 but relates to the withdrawal of the United Kingdom from the European Union because it will ensure that the UK's customs regime operates as required at the end of the transition period following the withdrawal of the UK from the EU.

9. Consolidation

9.1 The provisions of this instrument are inserted into the Channel Tunnel (Customs and Excise) Order 1990. However, no consolidation is planned.

10. Consultation outcome

10.1 The government has held discussions with Eurotunnel about the effect of the legislation set out in this instrument and has shared the full draft instrument with them. Eurotunnel are intending to reconfigure their site in France, so that goods can only enter the control zone once, after the passenger has been to the terminal building. However, it is not certain that this will be in place for 1 January 2021.

11. Guidance

11.1 There are no plans to issue specific guidance for this instrument. However, given that this instrument will mainly affect Eurotunnel, HMRC will handle any issues relating to it with the company directly.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out in this explanatory memorandum

14.2 A statutory review provision is not included within this instrument by virtue of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015. This section sets out that there is an exemption where a provision is in connection with imposing a tax or duty.

15. Contact

15.1 Stuart Pyle at HMRC Telephone: 03000 541389 or email: stuart.pyle@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sally Beggs, Deputy Director for Customs, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.