EXPLANATORY MEMORANDUM TO

THE CUSTOMS (AERODROMES AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 1202

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before the House of Commons by Command of His Majesty.

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

2. Purpose of the instrument

2.1 This instrument makes various changes to customs rules that apply for imported goods and goods which are to be exported. The changes include those which will enable HMRC to repay certain duty amounts which are found, on review, to no longer be due; provide for withdrawal of advance customs declarations made for goods that do not subsequently arrive in the United Kingdom (UK); and ensure that the appropriate controls are in place for approved aerodromes (where aircraft carrying goods and people into and departing from the UK are permitted to land). Other changes will clarify the customs treatment of goods used as stores on a ship, aircraft or railway vehicle.

2.2 The instrument will also provide that certain matters concerning relief from customs duty available for goods imported to the UK to alleviate the impact of a disaster ('disaster relief') may be set out in a notice published by His Majesty's Treasury.

2.3 These Regulations are being issued free of charge to anyone who purchased SI 2023/569. Regulations 4(3) and (13) correct defects identified in that instrument. The Commissioners for HMRC have complied with the requirement to consult with the S.I. Registrar on this matter.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 Provision allowing matters concerning disaster relief to be set out in a notice published by His Majesty's Treasury rely on section 32(8) of the Taxation (Cross-border Trade) Act 2018 (TCTA). This provides that any power to make regulations under Part 1 of TCTA includes a power conferring a discretion on any specified person to do anything by or under, or for the purposes of, the regulations, and a power to make provision by reference to things specified in a notice published in accordance with the regulations. Notices made in relation to disaster relief will be published at Customs, VAT and Excise UK transition legislation from January 2021 – GOV.UK (https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021).

3.2 Regulations 2 and 3 of these Regulations contain provision made in reliance on the power contained in section 20B(2) of the Customs and Excise Management Act 1979 (CEMA). This is the first exercise of this power.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 The main provisions in relation to duty chargeable for imported goods are in the TCTA, and regulations made under that Act. These regulations include the Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248) ('the Import Duty Regulations') which include provisions concerning pre-lodgement of customs declarations in specific cases, the presentation of imported goods (including stores) and the repayment by HMRC of duty amounts.

6.2 Regulations made under TCTA also include the Customs (Export) (EU Exit) Regulations 2019 (S.I. 2019/108) ('the Export Regulations') which set out the rules for goods that are being exported from the UK.

6.3 The Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1431) ('the Reliefs Regulations') are also made under TCTA. These regulations make provision for relief from duty for imported goods. Among other things, they provide for certain matters set out in the document 'United Kingdom Customs Tariff: Relief from Import Duty' (UK Reliefs document), including a description of the goods for which duty relief is available, the persons who can claim relief and the eligibility criteria for relief. Section 18 of the UK Reliefs document sets out rules concerning the relief available for goods imported for use by specified organisations for the benefit of disaster victims.

6.4 TCTA also establishes the Trade Remedies Authority (TRA) and the UK's trade remedies system. This includes the application of additional amounts of duty in cases where there has been dumping of goods, foreign subsidies causing injury to UK industry and increases of imports causing serious injury to UK producers. TCTA and regulations made under the Act (The Trade Remedies (Dumping & Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450)) ('the Trade Remedies Regulations') provide for arrangements under which the TRA makes recommendations to the Secretary of State concerning the application, suspension, variance or revocation of these additional amounts of import duty, including by undertaking trade remedies reviews.

6.5 In addition to the TCTA, CEMA sets out customs rules that apply in relation to imported goods and goods that are being exported. The Finance Act (No. 2) 2023

(FA) amended CEMA to provide that aircraft carrying passengers or goods into and out of the UK may only land at or depart from "regulated aerodromes". It also introduced new section 20B CEMA, which allows HMRC to issue approvals to aerodromes, and includes a power to enable the Commissioners for HMRC to make regulations specifying conditions to be met before an approval as a "regulated aerodrome" can be granted.

6.6 The Customs (Contravention of a Relevant Rule) Regulations 2003 (S.I. 2003/3113) ('the 2003 Penalty Regulations') are made under section 26 of the Finance Act 2003. These regulations set out penalties for breaches of the rules relating to customs duty and associated obligations.

6.7 The provisions of this instrument apply to movements into or out of Great Britain (GB) and into and out of Northern Ireland to the extent their application is in accordance with the provisions of the Windsor Framework. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145699/Joint_Declaration_by_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_European_Union_in_the_Withdrawal_Agreement_Joint_Committee_on_the_Windsor_Framework.pdf

7. Policy background

What is being done and why?

7.1 This instrument addresses various issues in current customs legislation. It provides additional clarity and addresses omissions in relation to the treatment of goods used as stores on ships, aircraft and railway vehicles; and the status of pre-lodged customs declarations for goods that do not arrive in the UK.

7.2 The instrument updates rules on repayment of customs duty to reflect changes to legislation concerning reviews of additional duty chargeable under the UK's trade remedies system. In addition, the instrument will ensure that appropriate conditions and penalties can be applied by HMRC in relation to regulated aerodromes in order to strengthen aerodrome operator accountability.

7.3 The instrument also makes provision for certain matters concerning the relief from duty for cases described in section 18 of the UK Reliefs document to be set out more flexibly in a notice published by His Majesty's Treasury, and enables eligibility for this relief to be widened.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 Customs legislation relating to the treatment of goods used as stores on ships, aircraft and railway vehicles needs to be updated to provide clarity to operators.

7.5 Moreover, customs legislation does not make any provision for the withdrawal of a pre-lodged declaration in cases where the goods in question do not subsequently arrive in the UK; or for conditions that must be met before HMRC approval as a regulated aerodrome can be granted.

7.6 The UK Reliefs document provides that duty relief is available for goods imported to alleviate the impact of a disaster where an His Majesty's Treasury minister designates an incident in the UK to be a disaster. The UK Reliefs document sets out who is eligible to claim disaster relief, including charities and philanthropic organisations.

7.7 There are currently only limited circumstances in which duty amounts can be repaid by HMRC following a trade remedy repayment investigation conducted under the Trade Remedies Regulations.

Why is it being changed?

7.8 Changes are necessary to clarify the treatment of goods used as stores on ships, aircraft or railway vehicles and the status of customs declarations made for goods which do not subsequently arrive in the UK.

7.9 The instrument will also establish necessary conditions that must be met by a person in control of an aerodrome in relation to the aerodrome before the aerodrome can be approved by HMRC, and permit amounts of duty imposed under trade remedies legislation to be repaid by HMRC, where this is necessary after a review of these amounts by the TRA.

7.10 Changes in relation to disaster relief will provide the government with flexibility to tailor the disaster relief quickly and more appropriately to particular disasters and will expand the current category of eligible claimants, to ensure that the relief is as effective as possible.

What will it now do?

7.11 The Import Duty Regulations will be amended to create a new exception to the requirement to present goods to Customs on import where certain stores are unloaded and re-loaded. In addition, the regulations will permit non-domestic stores to be used, consumed or sold on board ships, aircraft and railway vehicles within the UK customs territory. Where such use, sale or consumption takes place in the course of a domestic journey, it will amount to a declaration by conduct for the free-circulation procedure, which must be completed by the provision of further information to HMRC. A new penalty is applicable where the further information specified in a public notice is not provided. Declarations by conduct for the customs warehouse and inward processing procedures will additionally be permitted where surplus stores are unloaded for storage and stores are unloaded and removed for refurbishment.

7.12 The Export Regulations will be amended to allow stores that have been imported and held in a customs warehouse without payment of duty, or have been unloaded from a vehicle and refurbished, to be loaded onto a vessel without the need for an export declaration. In addition, the categories of stores that are not required to be exported in accordance with the applicable export provisions are expanded.

7.13 The Relief Regulations will be amended to provide that specified matters in relation to disaster relief may be set out in a notice published by His Majesty's Treasury. Any such notice will include a description of the goods eligible for relief, the period that the relief is available for, and the period within which any relief conditions (such as delivery of goods to disaster victims) must be satisfied. The instrument will also provide for an updated version of the UK Reliefs document to have effect. This updated document will extend the eligibility criteria for disaster relief, so that relief will be available to private sector providers that meet particular criteria and persons who donate goods to other eligible bodies.

7.14 Pre-lodged declarations for goods that do not subsequently arrive in the UK, will be treated as withdrawn as a result of changes to the Import Duty Regulations.

7.15 The Import Duty Regulations will also be updated to enable HMRC to repay duty following certain TRA reviews of duty amounts charged under trade remedies legislation, as specified in the instrument.

7.16 The conditions which must be met by a person in control of an aerodrome in relation to the aerodrome before HMRC can approve the aerodrome are also set out in these Regulations. The regulations also set out further conditions that HMRC may specify in any case before approving a particular aerodrome, but that would not be operationally necessary or appropriate for all aerodromes and so are not required in all cases. No penalty is provided for breaches of these pre-approval conditions as failure to comply with them will result in the aerodrome not being approved by HMRC. A new penalty is however inserted into the 2003 Penalty Regulations for breaches of any ongoing conditions imposed by HMRC on the approved aerodrome under section 20B(3).

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation of existing legislation is considered appropriate at this time, but this will be kept under review.

10. Consultation outcome

10.1 HMRC has informally discussed some of the changes with businesses and other stakeholders as part of ongoing discussions concerning the development of the UK's customs rules. Other changes are minor technical changes where consultation is not needed.

10.2 A virtual reading room on the full draft instrument was conducted on 9 November 2023 with members of the Joint Customs Consultative Committee (JCCC), who were able to discuss the draft legislation with policy officials. The JCCC is a HMRC sponsored forum established to exchange views on, and discuss proposed changes to, customs procedures and documentation relating to the entry and clearance of goods.

11. Guidance

11.1 Guidance has been, or will be, published on some matters covered in this instrument and will, where necessary, be updated before the changes take effect. Guidance can be found at (https://www.gov.uk/government/publications/general-aviation-operators-and-pilots-notification-of-flights/aerodrome-designation-status and https://www.gov.uk/guidance/how-to-apply-for-a-repayment-of-import-duty-and-vat-if-youve-overpaid-c285)

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 A Tax Information and Impact Note covering this instrument will be published at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 Some of the legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is necessary to minimise regulatory burdens on small businesses because many of the changes in this instrument are minor or technical changes which have no significant impact on businesses. The instrument will only impose new requirements on business in limited circumstances and where necessary for the purposes of customs controls and supervision of goods, which are essential to control our borders.

13.3 The basis for the final decision on what action to take to assist small businesses is that the changes introduced by this instrument is expected to have only a limited effect on businesses, regardless of size.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to keep customs rules under review through ongoing stakeholder engagement, to ensure that this instrument meets the policy objectives set out in section 7 of this Explanatory Memorandum.

14.2 A statutory review clause is not included in the instrument 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 Iram Akhtar/Angela Miles at HMRC email: (jobshareiramangela@hmrc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Phil Bower, Deputy Director for Customs Co-ordination, Controls and Declarations, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.