EXPLANATORY MEMORANDUM TO

THE CUSTOMS (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1552

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument forms part of legislation to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) and Finance Act 2003 to ensure that the United Kingdom (UK) has a customs regime in place at the end of the transition period following the withdrawal of the UK from the European Union (EU).

2.2 The measures contained within this instrument introduce changes that will allow customs procedures to continue to operate efficiently at the end of the transition period and will help to facilitate the movement of goods between Great Britain (GB) and the EU.

2.3 The measures in this instrument increase the value threshold for oral or simple online declarations for travellers. They allow declarations for imports and exports of oil, gas and electricity to be made using entry in declarant's records without the need for the operator to obtain authorisation. This instrument also expands the scope of the North Atlantic Treaty Organisation (NATO) 302 form, enabling it to be used as a customs declaration for eligible military movements into and out of the UK. The instrument will also require passengers travelling to GB via Coquelles in France to submit an advance electronic declaration before entry into the Eurotunnel terminal if they have goods that are in excess of passenger allowances.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument needs to come into force at the end of the transition period on 31 December 2020 to ensure customs procedures operate efficiently at the end of the transition period and there is smooth movement of goods between GB and the EU. Therefore the convention of leaving 21 days between a statutory instrument being laid and coming into force will be breached.

3.2 Making this instrument earlier was not possible as it is dependent on a measure in the Taxation Cross-border Trade (Special Procedures Supplementary and General Provision etc.) (EU Exit) Regulations 2020 (SI 2020/1439) coming into force. For that instrument to be made the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (SI 2020/1430) and then the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (SI 2020/1431) needed to have been made first. These were not made more than 21 days from when this

instrument needs to come into force. The short notice should not significantly affect businesses as the measures in this instrument broadly reduce administrative burdens.

3.3 The measures in this instrument will be brought into force using the power in section 52(2) of TCTA which allows subordinate legislation to be brought into force on a day appointed by the Treasury in regulations. This is on the basis that the Treasury is of the view that it is appropriate in consequence of, or otherwise in connection with, the UK's withdrawal from the EU.

3.4 This instrument makes provision by reference to things to be specified in notices published by HMRC. The need for explicit vires to sub-delegate and the consideration that the Joint Committee on Statutory Instruments gave to the draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (in the 30th report of session of 2017 – 2019) are noted. TCTA includes the express power to sub-delegate and in making this provision this instrument relies on section 32(8) of TCTA, which 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. The notices that will be made under this instrument will be published at https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021 no later than the date on which the relevant provisions of the instrument come into force.

3.5 Regulation 5(2) of these regulations corrects an error in the Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019 (SI 2019/385). The procedure for free issue of copies of this instrument has not been applied in this instance as this amendment is a very small proportion of the overall instrument. HMRC has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice (5th edition) to consult the SI Registrar.

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)

3.6 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 whole of the United Kingdom.

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

4.3 The provisions of this instrument apply to movements into or out of Great Britain and Northern Ireland (where in accordance with the Protocol on Ireland/Northern Ireland).

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 Currently the main provisions governing the import of goods into, and export of goods from, the UK are set out in directly applicable EU regulations. The Union Customs

Code (Regulation (EU) No 952/2013) (UCC) is the overarching legislative framework for customs adhered to by all EU Member States and by the UK during the transition period. Sitting under the UCC are the implementing regulation (Regulation (EU) 2015/2447) and delegated regulation (Regulation (EU) 2015/2446), which are supplemented by many other regulations (for example Council Regulation (EEC) No 2658/87, setting out the nomenclature and the tariff). The implementing regulation is in place to ensure the existence of uniform conditions for the implementation of the UCC and a harmonised application of procedures by all EU Member States and by the UK during the transition period. The delegated regulation supplements certain non-essential elements of the UCC.

6.2 When paragraph 1 of Schedule 7 to TCTA is commenced these EU regulations, to the extent that they apply in relation to customs duty, will be replaced by provision made by and under TCTA (including this instrument). These will be supplemented by the Customs and Excise Management Act 1979 (CEMA), sections 13A to 16 of, and Schedule 5 to, the Finance Act 1994 (reviews and appeals) and Part 3 of the Finance Act 2003 (penalties), all of which will remain in force following the end of the transition period.

6.3 The provisions of the Northern Ireland Protocol in relation to customs are given effect through section 7A of the European Union (Withdrawal) Act 2018. The government's position on various issues, including those relating to customs, was set out in the policy paper "The UK's approach to the Northern Ireland Protocol" of 20 May 2020. Further legislation relating to the implementation and application of the Northern Ireland Protocol will be set out in primary legislation and in secondary legislation to be made and laid later in December 2020.

6.4 The instrument makes a number of amendments to customs EU Exit regulations that were laid in Parliament as part of a potential no deal before the Withdrawal Agreement of the UK from the EU was agreed in October 2019. These include the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248), the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (SI 2018/1249), the Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108) the Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019 and the Taxation (Cross-border Trade) (Miscellaneous Provisions) (EU Exit) Regulations 2019 (SI 2019/486).

7. Policy background

What is being done and why?

Merchandise in Baggage

7.1 Travellers bringing in commercial goods into the UK in their accompanied baggage are exempt from lodging a full customs declaration where the value of the goods does not exceed a set amount. Instead, these travellers can make an oral or simple online declaration. The value threshold for whether an oral or simple online declaration can be used is increased by this instrument from £900 to £1500. This will help reduce the customs administrative burden on travellers as well as reducing the demand for customs agents. For the simple online declaration service, this instrument provides for the calculation of customs duty based on a flat rate of customs duty. This will ensure that the online service remains accessible and easy to use and therefore minimises the administrative burdens for the traveller.

Eurotunnel

7.2 This instrument will require travellers coming to GB via Eurotunnel shuttle trains to submit an advance electronic declaration before entry into the Eurotunnel control zone if they have goods that are in excess of passenger allowances. This advance declaration is required to ensure that customs enforcement can be effective given the unique circumstances of the Eurotunnel site at Coquelles. Together with the provisions of the Channel Tunnel (Customs and Excise) (Amendment) (EU Exit) Order 2020 (SI 2020/1417) this will also ensure that the correct passenger allowances are given for travellers coming to GB on shuttle trains, so they do not enjoy an advantage over travellers arriving by other modes of transport. The advance electronic declaration will not be a requirement for travellers who are not digitally enabled. These travellers will be able to make their declaration by an HMRC dedicated telephone helpline. The rules for traveller declarations are already covered in Part 4 of the Customs (Import Duty) (EU Exit) Regulations 2018.

Energy movements

7.3 This instrument allows import and export customs declarations to be made using an entry in declarant's records without the need for authorisation of oil, gas or electricity (energy) movements via pipe-lines or electrical cables, known collectively as fixed transport installations (FTIs). It also makes provision for a public notice to provide for single export declarations covering a number of movements, allowing the existing export declaration process for rest of world pipe-lines to continue, and mirroring the rest of world pipelines import process.

NATO 302

7.4 This instrument allows for an increase in the scope of the NATO 302 form to enable it to be used as a customs or export declaration for eligible military movements into and out of the UK to ensure the UK remains aligned with its international obligations under the NATO Status of Forces Agreement.

Crown Dependencies

7.5 The instrument amends the Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019 by clarifying that the reference to the United Kingdom includes the Isle of Man in certain provisions describing goods that are not required to be exported in accordance with the applicable export regulations.

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, and other legislation made under TCTA, will ensure that the UK's customs regime operates as required following the end of the transition period.

9. Consolidation

9.1 These regulations form part of the significant programme of secondary legislation to be delivered by HMRC by the end of 2020 relating to the UK's departure from the EU. The original legislation was drafted to deal with the event that there would not be a deal with the EU by the 29 March 2019. This legislation has been required to be

amended in light of issues arising following extensions which took place in order for an agreement to be reached with the EU. Following the ratification of the EU Withdrawal Agreement it is now necessary to again update this legislation prior to 31 December 2020. Further changes will need to be made to the Customs (Import Duty) (EU Exit) Regulations 2018 before 31 December 2020. Consequently, it is not possible to deliver this legislation by consolidation at this time.

10. Consultation outcome

10.1 No formal consultation has been carried out on this instrument. The changes for energy movements were discussed with FTI operators and at a Department for Business, Energy and Industrial Strategy UK energy forum in August 2020. A virtual reading room on the full draft instrument was conducted on 4 December 2020 with members of the Joint Customs Consultative Committee (JCCC), who were able to discuss the draft legislation with policy officials. The JCCC is an 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 There is already guidance on customs matters at: https://www.gov.uk/starting-to-import and https://www.gov.uk/starting-to-export.

11.2 All guidance is currently being reviewed and where necessary will be updated prior to the end of the transition period.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that it is anticipated to provide easements. Overall it will help to minimise the administrative burden of completing customs declarations, particularly for businesses new to customs procedures. This measure is not expected to impact on civil society organisations.

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 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that the measures in this instrument will not be burdensome.

14. Monitoring & review

14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out in section 7.

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 provisions are in connection with a tax or duty.

15. Contact

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

15.2 Matthew Sabourin, Deputy Director for Customs Border Processes and Declarations, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.