EXPLANATORY MEMORANDUM TO

THE CUSTOMS (AMENDMENTS AND MISCELLANEOUS PROVISIONS) REGULATIONS 2022

2022 No. 615

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before the House of Commons by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument makes amendments to subordinate legislation previously made under the Taxation (Cross-border Trade) Act 2018 ("TCTA"), which provided for the United Kingdom's Customs, Value Added Tax (VAT) and Excise regimes to be in place after the end of the Implementation Period following the withdrawal of the United Kingdom (UK) from the European Union (EU).

2.2 This instrument updates a number of tariff reference documents. These are documents which detail the classifications and duty rates of goods that are included in the UK's tariff schedule. Specifically, the reference documents updated in this instrument have been given legal effect by the following Regulations:

- The Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (S.I. 2018/1249)
- The Customs Tariff (Establishment) (EU Exit) Regulations 2020 (S.I. 2020/1430)
- The Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1431)

2.3 The Taxation Cross-border Trade (Special Procedures) (Supplementary and General Provision etc.) (EU Exit) Regulations 2020 (S.I. 2020/1439) are also amended by this instrument to ensure their provisions remain aligned with the updated reference documents.

2.4 This instrument makes a limited number of technical updates to the tariff classification nomenclature. All products listed in the tariff reference documents are provided with unique classifications, called commodity codes. This instrument makes technical amendments to some of these codes to ensure the UK's tariff schedule is up to date and that goods imported will be subject to the correct classifications.

2.5 This instrument also corrects a small number of errors in the tariff schedule. These include the insertion of rates of import duty in the "Tariff of the United Kingdom" reference document (given legal effect by S.I. 2020/1430, as amended), and the "Authorised Use: Eligible Goods and Rates" reference document (given legal effect by S.I. 2020/1431), which were erroneously omitted from previous versions of the documents. They are inserted to ensure that legislation is delivering the intended policy. A summary of the corrections is detailed in section 7 below.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 These Regulations are being issued free of charge to anyone who purchased S.I. 2020/1430, S.I. 2020/1431, S.I. 2021/63, S.I. 2021/380, S.I. 2021/520, S.I. 2021/661, S.I. 2021/870, 2021/1191 and 2021/1489. These Instruments gave effect to the "Tariff of the United Kingdom" and the "Authorised Use: Eligible Goods and Rates" reference documents, which these Regulations now update to correct errors identified in the previous versions of both reference documents. The Treasury has complied with the requirement to consult with the S.I. Registrar on this matter.

3.2 In relation to the specific goods in respect of which the tariff is changed as a consequence of this amendment, until the errors were identified, the importers of the relevant goods may have been under the impression that the import duty was being lawfully applied and in line with the stated policy. HMRC are planning to refund affected traders who have consequently overpaid.

3.3 These Regulations amend references to the reference documents entitled "Authorised Use: Eligible Goods and Authorised Uses (version 2.3)" dated 28th December 2021; "Tariff of the United Kingdom", version 1.7, dated 28th December 2021, and "Authorised Use: Eligible goods and rates", version 1.3 dated 28th December 2021. However, the version numbers of the reference documents are amended non-sequentially, i.e., version 2.3 becomes version 2.5, 1.7 becomes 1.9 and 1.3 becomes 1.5. This is because, since these definitions were last amended by the Customs (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2021/1489, a public notice published on 28th April 2022 under section 32A(2) of the Taxation (Cross-border Trade) Act 2018, has modified the relevant statutory references to refer to new versions of those documents. Upon making those updates, the version numbers of those reference documents were also updated.

3.4 However, because these updates were made by way of public notice and took effect as non-textual modifications, as opposed to textual amendments, the underlying statutory words still refer to the previous versions of those documents. Accordingly, the substitutions made by these Regulations appear to miss out a version of the relevant reference documents

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is United Kingdom.

4.2 The territorial application of this instrument is United Kingdom

5. European Convention on Human Rights

5.1 The Financial Secretary to the Treasury, the Rt Hon Lucy Frazer QC MP has made the following statement regarding Human Rights:

"In my view the provisions of The Customs Tariff (Amendments and Miscellaneous Provisions) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The TCTA confers powers on HM Treasury to make provision in regulations for the purposes of establishing duties applicable to imports entering the UK.

6.2 In considering the rate of import duty that ought to apply to goods, HM Treasury has had regard to the matters set out in section 8(5) of the Act and the recommendation about the rate made to them by the Secretary of State under section 8(6).

6.3 Paragraph 1 of Schedule 2 to the TCTA makes further provision in relation to regulations entitling a person to declare goods for a special Customs procedure, as defined in section 3(4) of the TCTA, if that person is authorised to do so under the regulations, and any other specified conditions are met in relation to the making of the declaration.

6.4 Section 19(1) of the TCTA gives powers to HM Treasury to make provisions by regulations that relieve imported goods of some, or all, of their import duty in cases where levying the normal duty is not considered appropriate.

6.5 At the end of the Implementation Period, paragraph 1 of Schedule 7 to the TCTA was commenced, whereby direct retained EU law imposing or otherwise applying in relation to any EU customs duty - which formed part of the law of the UK as a result of section 3 of the European Union (Withdrawal) Act 2018 - ceased to have effect. This instrument amends legislation made under the TCTA which ensured that the UK's Customs, VAT and Excise regimes were in place at the end of the Implementation Period. This package of legislation set out the associated rules of, and exceptions to, the UK's applied MFN tariffs (also known as the "UK Global Tariff") that have applied since the end of the Implementation Period. This instrument amends parts of that package of legislation, to give legal effect to updated tariff reference documents.

7. Policy background

What is being done and why?

7.1 As outlined in the preceding paragraph, a package of tariff legislation was made under the TCTA and laid before Parliament on 16th December 2020 which ensured that the UK had a properly functioning customs regime in place after the end of the Implementation Period and following the withdrawal of the UK from the EU. The legislation also set out the exceptions to the standard rate of import duty.

7.2 Like the Customs (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2021, this instrument will make technical commodity code changes that are needed to reflect updates made to tariff classification nomenclature by the World Customs Organization at the end of 2021, but not captured in previous Regulations.

7.3 The Regulations listed below give effect to reference documents which contain the commodity codes that are updated by this instrument:

- "List of sensitive goods" is updated to version 1.1, dated 1st June 2022 in the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018.
- "Temporary Admission, eligible goods and conditions for relief" is updated to version 4.1, dated 1st June 2022 in the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018.

7.4 This instrument also gives effect to a series of more technical adjustments in the following reference documents:

- "Authorised Use: Eligible Goods and Authorised Uses" is updated to version 2.5, dated 1st June 2022 in The Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018.
- "Authorised Use: Eligible goods and rates" is updated to version 1.5, dated 1st June 2022 in the Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020.
- "Tariff of the United Kingdom" is updated to version 1.9, dated 1st June 2022 in the Customs Tariff (Establishment) (EU Exit) Regulations 2020.

7.5 The "Tariff of the United Kingdom" reference document is updated to add a 6.00% duty rate to commodity codes 3204900090 and 3204120090, and an 8.00% duty rate to 5703310000. The first two commodity codes relate to chemical dyes used in pharmaceutical manufacturing. Commodity code 3204900090 includes the chemicals anazolene sodium and olsalazine, whilst commodity code 3204120090 relates to oftasceine. The final commodity code relates to carpets and textile floor coverings.

7.6 A further update in the reference document is also made to insert the correct seasonal import duty rate, during the period of August-December, for commodity code 08083090 which lists the seasonal import duty rates of pears. In the previous version of the "Tariff of the United Kingdom" reference document, the 10.00% duty rate for the period August-December was mistakenly omitted. All other previous iterations of this reference document included the correct 10.00% duty rate for August-December, and no reimbursements are owed to traders.

7.7 Finally, an update is also made to the "Authorised Use: Eligible Goods and Rates" reference document. In total 7 commodity codes (in Chapters 7 and 15) have been updated to clarify the differences of duty rates applicable to specific countries.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 and does not directly relate to the withdrawal of the United Kingdom from the European Union, but does amend legislation that was itself related because withdrawal required the UK to replace the EU's customs regime with a UK-specific customs regime.

9. Consolidation

9.1 These regulations do not provide for any consolidation of existing legislation, and none is necessary in the circumstances.

10. Consultation outcome

10.1 No consultation in relation to this instrument has been undertaken. This instrument makes corrections to minor errors identified in legislation to align with what is occurring operationally, and as policy intended. These changes are consistent with the principles underlying the UK Global Tariff which were previously consulted on.

11. Guidance

11.1 Since the end of the Implementation Period, the UK Global Tariff has applied to all goods imported into the UK unless an exception applies, such as a tariff relief or tariff suspension, the goods are imported from countries that have tariff-free granted

unilaterally, or as part of a preferential trading arrangement. Further guidance is available at https://www.gov.uk/guidance/duty-suspensions-and-tariff-quotas.

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 largely maintains the position of existing legislation, which were covered by an overarching Tax Information and Impact Note published last year: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins#uk-transition.

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 as the changes do not result in a change of tariff policy, but a slight adjustment to the structure that delivers the same tariff rates that are currently in place.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is in line with the Government's general approach to tariff legislation, which are kept under review to ensure that it meets the policy objectives set out above in section 7 of this explanatory memorandum, and ensures burdens on business are carefully monitored.

14.2 A statutory review clause is not included in these regulations because this instrument 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 Bilal Mazhar at HM Treasury, email: bilal.mazhar@hmtreasury.gov.uk can be contacted with any queries regarding this instrument.

15.2 Catherine Stewart, Deputy Director for Trade Policy, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

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