EXPLANATORY MEMORANDUM TO

THE CUSTOMS (BULK CUSTOMS DECLARATION AND MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2020

2020 No. 967

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 the Customs and Excise Management Act 1979 (CEMA) 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 United Kingdom from the European Union (EU).

2.2 Matters covered in this instrument include rules for declarations of low value goods contained in a parcel and new arrangements to make it easier for compliant and solvent importers to defer import duties without being required to provide a Customs Comprehensive Guarantee. The instrument also makes changes to the regulations relating to the recovery of import debt and other liabilities for goods declared in Admission Temporaire/Temporary Admission (ATA) Carnets and Carnets de Passages en Douane (CPD) so that they align with the provisions of the relevant conventions and current operational practices. The instrument also makes a number of minor or miscellaneous amendments to customs secondary legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 Some of 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 the provisions in this instrument relate to the UK's withdrawal from the EU. However, certain provisions relating to existing instruments or authorisations or approvals come into force, or partially come into force, on 1 October 2020 or 31 October 2020. This is to give businesses time to be notified and authorised before the end of the transition period if they qualify to use these arrangements.

3.2 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 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.

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)

3.3 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 Part 2 of this instrument (Bulk Customs declarations) applies only to movements into Great Britain. The other provisions of the instrument apply to movements into Great Britain and to some into Northern Ireland (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 UK regulations under TCTA (including this instrument). These will be supplemented by 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 Protocol on Ireland/Northern Ireland 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 Protocol on Ireland/Northern Ireland will be made and laid later this year.

7. Policy background

What is being done and why?

Bulk Customs Declarations

7.1 Bulking is a customs simplification process that allows parcel operators and other traders to declare multiple consignments of low value parcels in a single customs declaration using a significantly reduced set of data when compared to a full customs declaration. This arrangement can only be used if each parcel has an intrinsic value not exceeding £135, and the goods contained in the parcel are not classified as restricted or excise goods. The instrument will:

- support the smooth flow of parcels into Great Britain; and
- support the functioning of HMRC's customs declaration information technology systems.

7.2 The alternative to bulking would be a full customs declaration for each single parcel which would be more administratively burdensome for the parcel industry and require significant systems changes, not least given that goods from the EU will be subject to a customs declaration. Having this legislation in force will provide industry with a more facilitative customs declaration process until operators have systems in place to submit single declarations to support the smooth flow of parcels into Great Britain.

7.3 This instrument also enables the creation of an authorisation framework to support robust customs and tax compliance for traders using the customs bulk declaration process.

Changes to the guarantee requirements for duty deferment

7.4 This instrument will introduce new arrangements to make it easier for compliant and solvent importers to defer import duties without being required to provide a Customs Comprehensive Guarantee (CCG).

7.5 The majority of customs duty is paid through the Duty Deferment Scheme (DDS) which allows payment of customs duties incurred during a calendar month to be deferred until the middle of the following month. Under the existing EU rules, users of the scheme need to provide a guarantee equivalent to double their monthly deferral limit unless they qualify for a guarantee reduction or waiver. To qualify for a guarantee reduction or waiver, businesses need to be approved for one or more of the following schemes:

- Authorised Economic Operator (Customs Simplification) – this entitles businesses to a 70% guarantee reduction for the customs element of the deferral limit;
- Simplified Import Value Added Tax (VAT) Accounting – this entitles businesses to a guarantee waiver for the import VAT element of the deferral limit.

7.6 Following the end of the transition period many businesses that import goods only from the EU will need to use the DDS for the first time. These provisions will allow most of these businesses to do so on an ongoing basis without the effort and expense of needing to obtain a CCG.

7.7 These changes will be achieved by: (i) allowing businesses to be approved to use the DDS up to a threshold amount (covering customs duty, import VAT and excise duty) subject to those businesses meeting core eligibility criteria relating to compliance and solvency; and (ii) allowing businesses seeking to defer above this amount to apply for a guarantee waiver authorisation which will contain an additional criterion relating to a business's financial standing relative to the amount they intend to defer.

Guaranteeing associations

7.8 This instrument ensures that provisions in the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) for recovering import debt and other liabilities for goods declared by ATA and CPD carnets align with the provisions of the relevant conventions and current operational practice. The ATA carnet is an international customs document that can be used in different countries around the world to cover temporary use or transit of the goods without payment of customs charges. ATA carnets also provide an international guarantee for the payment of customs charges given by a national guaranteeing association. These associations guarantee to their customs administration the payment of duties and taxes when goods declared by ATA carnets are not dealt with in accordance with the applicable customs procedure. The CPD carnet allows travellers to temporarily import their vehicles and provides an international guarantee, given by a guaranteeing association, for payment of customs charges should vehicles not be re-exported from the country visited.

7.9 This instrument makes an amendment to ensure the requirement in TCTA to notify a debtor in order to enforce a liability to import duty, is treated as being satisfied when HMRC makes a claim on the guaranteeing association. The debt recovery process currently works effectively by notifying the guaranteeing association of its liability without separately notifying the debtor. Notifying the debtor is not a requirement of the relevant conventions. Making this part of the debt recovery process would make the process more burdensome to administer without improving the prospects of debt recovery.

Changing the definition of UK establishment for temporary storage facilities

7.10 This instrument makes minor amendments to ensure that the definition of a person "established in the UK" used in the Customs (Temporary Storage Facilities Approval Conditions and Miscellaneous Amendments) (EU Exit) Regulations 2018 (SI 2018/1247) aligns with the definition used in the Customs (Import Duty) (EU Exit) Regulations 2018.

Simplified Declarations and Entry in Declarants Records

7.11 This instrument amends provisions in the Customs (Import Duty) (EU Exit) Regulations 2018 and the Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108) relating to the eligibility criteria for authorisation to use simplified declaration processes. This change ensures greater consistency with the corresponding provisions in EU legislation.

Customs rules for goods on board trains

7.12 Under provisions in The Customs (Import Duty) (EU Exit) Regulations 2018, goods unloaded from and reloaded to a vessel or aircraft (or that remain on a vessel or aircraft) do not need to be presented for customs purposes. This means that there is no liability to import duty. There is also no liability to import VAT.

7.13 This instrument extends these provisions to include trains by amending regulations 6 and 6A of the Customs (Import Duty) (EU Exit) Regulations 2018. Without this change, there would be an inconsistency in the treatment of goods arriving by vessel and aircraft and those arriving by train. This issue only arises as goods on board trains arriving from the EU will be treated as imports following the end of the transition period.

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 UK from the EU 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 The provisions relating to bulk customs declarations is new legislation and no consolidation for these provisions is required. There are no plans to consolidate the amendments set out in this instrument at this time.

10. Consultation outcome

10.1 An informal consultation was carried out with members of the British International Freight Association and the Association of International Courier and Express Services on the proposed changes to Bulk Customs declarations covered in this instrument. A virtual reading room on the full draft instrument was conducted on 24 August 2020 with members of the Joint Customs Consultative Committee, 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, who were able to discuss the draft legislation with policy officials.

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 businesses, charities and voluntary bodies is expected to be negligible, although the impact will vary.

12.2 The impact on the public sector is that HMRC will need to put certain processes and procedures in place to implement an authorisation process for the bulking of low value parcels. This may result in a one-off cost to amend existing information technology (IT) systems. Additional minor IT changes may also need to be made to

develop a new application form for the duty deferment scheme. The costs to HMRC are currently being developed, but it is anticipated that this will be managed within existing UK transition funding.

12.3 A Tax Information and Impact Note covering this instrument will be published on the GOV.UK website 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 majority of businesses new to customs procedures, particularly small businesses that would otherwise have had to undertake the expense of obtaining a CCG, will now be able to apply for duty deferment.

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 email: stuart.pyle@hmrc.gov.uk can be contacted with any queries regarding the instrument.

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

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