EXPLANATORY MEMORANDUM TO

THE CUSTOMS (DECLARATIONS) (AMENDMENT AND MODIFICATION) (EU EXIT) REGULATIONS 2020

2020 No. 1234

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) 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 in this instrument introduce a number of 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 and the EU. They include the application of staged border controls by allowing goods to move without full customs controls through border locations without existing customs control systems, clarifying the simplified declaration process, introducing new rules for travellers for goods that cannot be declared orally or by using paper declarations, and extending the scope of the process for making declarations by conduct.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The measures in this instrument will largely 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, the provision enabling the listing of locations at which advance declarations will be required will come into force on 1 December 2020 in order to allow such listings to come into effect at the end of the transition period, while giving appropriate notice to traders.

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 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.

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 The provisions of this instrument apply to movements into 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 UK regulations under TCTA (including this instrument). These will be supplemented by Customs and Excise Management Act 1979, 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 Northern Ireland Protocol will be made and laid later this year.

7. Policy background

What is being done and why?

7.1 Recognising the impact of coronavirus on businesses' ability to prepare, the government announced on 12 June 2020 that border controls will be introduced in three stages up until 1 July 2021. This instrument concerns changes applying from the end of the transition period which will allow goods to move without full customs controls through border locations without existing customs control systems (such as an inventory linked system). This will apply until full controls on goods moving between the EU and Great Britain (GB) are introduced from 1 July 2021 under legislation planned for 2021.

7.2 This instrument will require pre-lodgement of declarations at locations as listed in a notice ("other listed locations") in addition to Ro-Ro listed locations (Roll-on-Roll-off locations) under the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248).

7.3 Where there are advance declarations of EU goods imported at other listed locations, the instrument provides that a notification of importation is deemed to have been made to HMRC when the goods are imported into GB. This instrument also provides that HMRC is deemed to have notified the person declaring the goods that their declaration has been accepted. Where declarations are made other than by making an entry in the importer's records, the instrument will have the effect of requiring the person to notify HMRC that the goods have arrived by the end of the working day after the day on which the goods arrived. This instrument will also require a person in possession or control of the goods during their importation, as specified in a notice, to provide evidence that a customs declaration has been made where required – the evidence required will be specified in a public notice.

7.4 For exports through other listed locations, this instrument will require that an export declaration must be submitted before the goods have left the trader's premises in such a way that the declaration will be instantly processed and the trader notified of the outcome. This instrument deems presentation to have taken place when the declaration has been accepted, therefore allowing this earlier export declaration process. Unless required to be taken to a place of examination for controls (which can include physical inspection of the goods), goods will be deemed to be presented at the border location and released for export. Messages will not need to be sent to HMRC confirming that goods have left the UK other than by traders exporting excise duty suspended goods (such as alcohol or tobacco products). For these, traders or the location will need to confirm manually to HMRC that the goods have left the UK. This is permissible as this instrument deems the notification of export to have occurred. Where required, those involved in moving goods through other listed locations may need to provide evidence a declaration has been made.

7.5 The provisions of the instrument relating to imports, with the exception of matters relating to pre-lodgement, only apply to goods that were EU goods immediately before import. Deferring full customs controls gives operators of border locations and those involved in moving goods additional time to prepare for customs processes.

Simplified declaration process

7.6 This instrument amends the rules for simplified declarations including the entry in a declarant's records (EIDR) procedure (under which an import or export declaration is made by a trader updating their own records).

7.7 The changes made will clarify when a simplified customs declaration made using the EIDR procedure is accepted, clarify when acceptance and notification of an EIDR simplified export declaration is treated as occurring and makes changes to the exceptions to the requirement to make a supplementary customs declaration.

Travellers

7.8 The instrument will give HMRC the power to list in a public notice the GB ports where no oral or paper declarations will be allowed to be made by travellers with either personal or commercial goods in accompanied baggage. These will be ports where there are no Red (goods to declare) Channels. Travellers arriving at or departing from these specific ports will be required to make use of the online declaration services that HMRC have designed for travellers in advance of arriving into or departing from GB. Where this is not possible because the traveller needs digital assistance then an HMRC telephone service has been set up to supplement the online declaration services. This will enable a more efficient service and allow risk to be managed more effectively.

By conduct declarations

7.9 To ensure continuity, this instrument makes minor amendments to the Customs (Import Duty) (EU Exit) Regulations 2018 and the Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108) by widening the scope of declarations made orally and by conduct (where an individual follows the actions described in those Regulations for making a declaration in this way. For example, this might be where the individual disembarks from a vessel at a Ro-Ro or other listed location by driving a vehicle with the goods carried by the vehicle). Among other things, this will give individuals the necessary flexibility to declare miscellaneous goods that have no direct economic value and are temporarily imported to the UK for a specific matter, such as a major sports event, for no more than three months. The instrument is necessary to ensure that individuals will continue to receive the same treatment as they do now when the UK leaves the EU.

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 The provisions amending the declaration and presentation of imported and exported goods moving through border locations without existing customs control systems goods are inserted into the Customs (Import Duty) (EU Exit) Regulations 2018 and the Customs (Export) (EU Exit) Regulations 2019. Further changes will be made to

these provisions to introduce full customs controls from 1 July 2021. However, it is not possible to consolidate this legislation at this time.

10. Consultation outcome

10.1 No formal consultation has been held on this instrument due to time constraints. An informal consultation was carried out through engagement calls with border location operators, carriers and representative bodies on the proposed changes to customs controls covered in this instrument. A virtual reading room on the full draft instrument was conducted on 30 October 2020 with members of the Joint Customs Consultative Committee, who were able to discuss the draft legislation with policy officials. The Joint Customs Consultative 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 expected to be negligible, although the impact will vary. The instrument defers full controls that would otherwise have applied when trading with the EU immediately upon the end of the transition period. It will allow port operators of the listed border locations additional time to prepare for full customs controls and ensure businesses can continue to trade while they make preparations to be fully compliant from 1 July 2021 onwards.

12.2 The impact on the public sector is that HMRC will not need to put the processes and procedures for full controls in place. Certain processes with resources will be required to support compliance. This resource will mostly take the form of HMRC staff being re-directed from other work.

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 majority of business new to customs procedures, particularly small businesses that would otherwise would have had to comply with full customs controls, will now have additional time to prepare.

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 Charlotte Axson, 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.