EXPLANATORY MEMORANDUM TO

THE CUSTOMS (IMPORT AND EXPORT DECLARATIONS) (AMENDMENT) REGULATIONS 2022

2022 No. 271

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (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 provides for certain goods being exported from the United Kingdom to support victims of the humanitarian crisis in Ukraine to be declared for customs purposes orally or by an individual carrying out certain specified conduct (a 'by conduct declaration'). This easement is being provided for a time limited period (until 19th June 2022).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The instrument amends the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) (import duty regulations) and the Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108) (export regulations) to provide for a new version of the document entitled 'List of Goods Applicable to Oral and By Conduct Declarations'. This document sets out cases in which a customs or export declaration can be given to an HMRC Officer orally, or made by an individual carrying out certain specified conduct. The new list will allow export declarations to be made orally or by conduct where certain goods are being exported to support victims of the humanitarian crisis in Ukraine.

3.2 The instrument will come into force immediately after it has been laid. This is in order to allow oral and by conduct declarations as soon as possible to remove a barrier to aid given the developing humanitarian crisis. The convention of leaving 21 days between a statutory instrument being laid and coming into force will, unfortunately, be breached.

3.3 The short notice between laying this instrument and commencement should not significantly affect businesses. Rather it will allow businesses and individuals to provide goods for the humanitarian crisis with greater ease.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

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

4.3 The provisions of this instrument apply to movements into or out of Great Britain and Northern Ireland (where their application is 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 The main provisions in relation to declarations and other customs formalities that apply where goods are exported from the United Kingdom as a result of their removal from Great Britain can be found in the Taxation (Cross-border Trade) Act 2018 (TCTA) and regulations made under that Act. In particular, the export regulations (which this instrument amends) make provision in certain cases for declarations required in relation to the export of goods (declarations for the common export procedure) to be given orally to an officer of HMRC, or to be made by an individual carrying out certain specified conduct. These export regulations also set out other rules that apply where such an oral or by conduct declaration is made.

6.2 The cases in which the export regulations provide for a declaration for the common export procedure to be made orally or by conduct include those specified in a document entitled 'List of Goods Applicable to Oral and By Conduct Declarations'. This applicable version of this document is referred to (as version 5, issued 10 March) in the import duty regulations, which are being amended by this instrument to give effect to a new version of this document.

7. Policy background

What is being done and why?

7.1 This instrument will allow oral or by conduct declarations to be made for the common export procedure where certain goods intended to support those affected by the humanitarian crisis in Ukraine are exported from Great Britain. Goods from Northern Ireland can flow into Great Britain under unfettered access protocols and be exported from there into Europe. Oral or by conduct declarations for these goods will only be allowed for a time limited period (until the 19th June). The effect of this change will be to significantly simplify and reduce the customs formalities required where such goods are exported from the United Kingdom.

7.2 This simplification is intended to apply to most goods intended to support those affected by the humanitarian crisis. Detailed rules concerning eligibility are set out in the updated 'List of Goods Applicable to Oral and By Conduct declarations' given effect by this instrument. It is intended that limited categories of goods will not qualify for this simplification, including goods that are intended to be sold; goods whose export is subject to prohibitions or restrictions, including dual-use goods; goods that are subject to excise duties; and goods that are destined for, or are intended to pass through, Russia or Belarus. Restricted goods which are food and listed in Part G of the Oral and By Conduct List will also be able to be declared orally and by conduct.

7.3 When an oral or by conduct declaration for the common export procedure is made, this will remove any requirement to complete and submit an electronic declaration

prior to the export of the goods. It will also remove other customs formalities in relation to the goods, such as the requirement to notify HMRC of the export.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No consolidation is currently planned, but this will be kept under review.

10. Consultation outcome

10.1 No consultation has been carried out as the intention of the instrument is to urgently make a customs easement in relation to exported humanitarian aid available to those who wish to use it.

11. Guidance

11.1 All GOV.UK guidance relevant to this policy will be published and updated before this instrument comes into force.

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 full Impact Assessment has not been prepared for this instrument at the time of laying however a Tax Information and Impacting Note covering this instrument will be published on the gov.uk website in due course.

13. Regulating small business

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

13.2 No specific action is proposed to minimise the impact of the requirements 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 and organisations is that the measure introduced by this instrument will provide simplified means of making the declaration that is required where certain goods are exported, and will also remove other customs formalities in relation to these goods.

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 The instrument does not include a statutory review clause by virtue of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015. That section sets out that there is an exemption where provisions are in connection with a tax or duty.

15. Contact

15.1 Matthew Rimmer at the HM Revenue and Customs Telephone: 03000 538 227 or email: Matthew.Rimmer1@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Phil Bower, Deputy Director for Customs Border Processes and Declarations, at the HM Revenue and Customs 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.