EXPLANATORY MEMORANDUM TO

THE CUSTOMS (IMPORT AND EXPORT DECLARATIONS BY CONDUCT) (AMENDMENT) REGULATIONS 2021

2021 No. 1205

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 amends regulations made under the Taxation (Cross-border Trade) Act 2018 (TCTA). It introduces a legislative change that will enable imports and exports of human blood, blood products, organs, tissues and cells for use in transplants, grafting or transfusion to be declared by conduct in a wider variety of circumstances to avoid the need for full electronic customs declarations in more cases where such goods are needed for medical treatment.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The instrument also corrects an inconsistency between declarations which may be made orally and those which may be made by conduct by a third party for certain goods in vehicles. It was intended that a third party should be able to make a declaration by conduct on behalf of another person for certain goods in vehicles in the same cases where that third party could make an oral declaration. Regulation 22(1) of the Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108) as amended by the Customs and Excise (Miscellaneous Provisions and Amendments) (EU Exit) Regulations 2019 (SI 2019/1215) however, prevents a third party from making a declaration by conduct on behalf of another person for certain goods in vehicles by carrying the goods in a vehicle while displaying a nothing to declare sticker. These same goods however, can be declared orally by a third party. This inconsistency was identified when reviewing the regulations in relation to allowing declarations by conduct for human blood, blood products, organs, tissues and cells. Regulation 22(1) is amended by this instrument to remove the prohibition on third parties making a declaration by conduct for another person in relation to certain goods in a vehicle.

3.2 This instrument is being issued free of charge to anyone who purchased the Customs (Export) (EU Exit) Regulations 2019 and the Customs and Excise (Miscellaneous Provisions and Amendments) (EU Exit) Regulations 2019. This is because this instrument amends provisions of those regulations to address errors or matters that were overlooked when the Customs and Excise (Miscellaneous Provisions and Amendments) (EU Exit) Regulations 2019 were prepared. The SI Registrar has been consulted on this matter to comply with the requirements in 4.7.6 of Statutory Instrument Practice.

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 TCTA allows for HMRC to make regulations in relation to the import and export of goods. Currently, the main provisions governing the import of goods into, and export of goods from, the UK relating to this instrument are set out in TCTA, the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) (Import Duty Regulations) and the Customs (Export) (EU Exit) Regulations 2019 (Export Regulations). These provisions are supplemented by the 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 remained in force during the transition period.

6.2 Part 4, Chapter 1, Section 4 of the Import Duty Regulations makes provision using the vires in section 32(10) of, and paragraph 6 of Schedule 1 to TCTA to allow certain goods to be declared for the free-circulation procedure and the temporary admission procedure by specified conduct rather than a person having to make a formal customs declaration. Part 4, Chapter 4, Section 3 of the Export Regulations makes provision using the vires in section 35(2)(b) and (4) of TCTA to allow certain goods to be declared for the common export procedure by specified conduct rather than having to make a written or electronic export declaration.

6.3 This instrument amends those sections of the Import Duty Regulations and Export Regulations to change the type of conduct which may be used to declare human blood, blood products, organs, tissues and cells that are to be used in grafting, implanting (that is transplanting) and transfusion for the free-circulation procedure (on import) or the common export procedure (on export) so that these goods can be declared by conduct in more cases.

7. Policy background

What is being done and why?

New form of declarations by conduct for human blood, blood products etc.

7.1 This instrument will allow human blood, blood products, organs, tissues and cells used in medical procedures to be declared by conduct, that is to say loading them onto the means of transport carrying them into or out of Great Britain. This form of declaration can only be made where the goods are to be used in grafting, implanting (transplant) and transfusion where the movement of the item is time-critical and customs processes will delay the items reaching the patient in good condition. The

purpose is to ensure that in all cases where these products are to be used in life-saving medical treatment they will not be delayed unduly by customs processes at the border.

7.2 These provisions will allow hospitals and institutions greater certainty that however they import or export these goods they will be able to move them through the border quickly which is vital for these time sensitive movements. However the goods are moved they can be declared by conduct rather than by having to submit an electronic declaration. Prior to this amendment these goods could only be imported or exported when accompanied by a qualifying traveller, usually a courier or representative of the hospital or institution travelling into Great Britain temporarily, or returning to Great Britain after a temporary stay in another country. Whilst these types of good typically travel in this manner, on occasions they are moved without an accompanying traveller and this change ensures that where this is the case the same approach to declarations is taken. In order to be exported it was necessary for the goods to pass a customs channel which may not always happen and so this change removes this requirement.

Declarations by conduct made by third parties

7.3 This instrument will rectify an inconsistency between declarations which may be made orally and those which may be made by conduct in regulation 22(1)(a) of the Customs (Export) (EU Exit) Regulations 2019. This amendment allows goods, which can currently be declared orally to also be declared by conduct on export by an individual making that declaration on behalf of another person.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 Whilst this change to legislation does not relate to withdrawal from the European Union (EU), the Regulations amended by this instrument formed part of the significant programme of secondary legislation delivered by HMRC relating to the UK's departure from the EU. Much of the original legislation was drafted to deal with the possibility that there would not be a deal with the EU by the end of 29 March 2019, and has subsequently been amended in the light of issues arising following extensions to and the end of the transition period. It is now necessary to again amend this legislation; however it is not possible to deliver this legislation by consolidation at this time. This is primarily because further amendments to the legislation will be required over the coming months.

10. Consultation outcome

10.1 HMRC has consulted the Department of Health and Social Care (DHSC) and confirmed that the legislative changes set out in this instrument covering by conduct declarations for human blood, blood products, organs, tissues and cells meets the needs of the organisations dealing with the movement of these items.

10.2 A virtual reading room on the full draft instrument was conducted on 19 October 2021 with members of the Joint Customs Consultative Committee, who were able to discuss the draft legislation with policy officials. The Joint Customs Consultative Committee 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. The attending stakeholders supported the changes introduced by this instrument.

11. Guidance

11.1 There is already guidance on the declaration of human blood, blood products, organs tissues and cells at: https://www.gov.uk/guidance/declare-substances-of-human-origin-for-transplant-for-uk-import-or-export. This guidance will be updated before this instrument comes into force.

11.2 Further guidance will be provided to DHSC and their stakeholders to ensure movements of these items will be as smooth as possible.

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 Tax Information and Impact Note covering this instrument will be published on the website at: https://www.gofv.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 provide hospitals and institutions with more flexibility over the arrangements for declaring imports or exports of human blood, blood products, organs, tissues and cells.

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. That section sets out that there is an exemption where provisions are in connection with a tax or duty.

15. Contact

15.1 Theresa Goodwin at HMRC Telephone: 03000 588957 or email: Theresa.goodwin@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 HMRC 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.