EXPLANATORY MEMORANDUM TO

THE CUSTOMS IMPORTATION (MISCELLANEOUS PROVISIONS AND AMENDMENT) (EU EXIT) (AMENDMENT) REGULATIONS 2021

2021 No. 1442

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument allows European Union goods[1], which were in the Republic of Ireland immediately before they were imported into the United Kingdom (UK) or where relevant, in Northern Ireland (NI)[2] immediately before they were removed to Great Britain (GB), to be able to leave the port after arriving by sea while the goods are still subject to customs controls. Under this measure, such goods will be excluded from restrictions that only allow goods to leave the port in GB if they are released to the free-circulation procedure or are moving under a special customs procedure, or alternatively allow goods that require checks to leave a port on condition that they go directly to an Inland Border Facility (IBF) for further checks. This measure, therefore, continues the treatment that such goods received under staged customs controls when imported at locations where declarations are required before the goods are imported, but only for European Union goods entering GB from the island of Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The measure in this instrument will be made using the power in section 42(1)(b) of the Customs and Excise Management Act 1979, which empowers the Commissioners for HMRC to make regulations on the unloading, landing, movement and removal of goods on their importation. This instrument amends a measure made in the Customs Importation (Miscellaneous Provisions and Amendment) (EU Exit) Regulations 2021 (SI 2021/1312).

3.2 Under that provision, goods subject to the requirement to lodge a declaration before importation should not be removed from the port or border location they arrive at unless they have been released to the free-circulation procedure or their movement is approved by an HMRC officer. When HMRC intends to check the customs declaration, the approval to leave the location is conditional on the goods being moved to an inland facility for checks.

[1] Broadly, European Union goods consist of products that are manufactured in the EU and are in free circulation within the EU.

[2] Qualifying Northern Ireland goods will continue to benefit from unfettered access when moving directly from Northern Ireland to Great Britain.

3.3 That measure was designed to enable full border controls to function in all border locations, including those locations with restricted space, and was part of a government commitment to have full customs controls on European Union (EU) imports in place by 1 January 2022, which would bring an increased need for fiscal checks on goods.

3.4 The government now considers that goods moving from the island of Ireland into GB should not be subject to any change in processes from 1 January 2022, while discussions between the UK and EU on the operation of the NI Protocol are continuing.

3.5 In the case of goods that are European Union goods in the Republic of Ireland immediately before they are imported into the United Kingdom, or relevant European Union goods in Northern Ireland immediately before they are removed to GB, this instrument continues current processes. This instrument removes a requirement that would have had effect from 1 January 2022, that such goods not be removed from the port or border location they arrive at unless they have been released to the free-circulation procedure or their movement is approved by an HMRC officer.

3.6 The measure in this instrument needs to be in force on 31 December 2021 because otherwise some goods arriving in GB from the island of Ireland would be subject to full customs controls from 1 January 2022. As with the government's broader "standstill" approach, this statutory instrument avoids any disruption while discussions with the EU on the Northern Ireland Protocol are continuing. The convention of leaving 21 days between a statutory instrument being laid and coming into force will, unfortunately, be breached.

3.7 The short notice between laying this instrument and commencement should not significantly affect businesses moving goods from the island of Ireland to GB as the effect of the instrument is to continue current processes that they already undertake. Where changes may be required at border locations, the Government has undertaken engagement with relevant port operators to ensure that this can be done in the time available.

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.

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 This instrument is being made in exercise of the powers conferred by section 42(1)(b) of the Customs and Excise Management Act 1979 (CEMA) which empowers the Commissioners for HMRC to make regulations on the unloading, landing, movement and removal of goods on their importation.

6.2 The main provisions governing the import of goods into the UK are set out in the Taxation (Cross-border Trade) Act 2018 (TCTA) and the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) (Import Duty Regulations).

6.3 This instrument applies in connection to regulation 131(2) or 131F(3) of the Import Duty Regulations, relating to chargeable goods carried by Roll-on Roll-off (RoRo) vehicles destined for RoRo listed locations or ships or aircraft destined for other listed locations where pre-lodgement of declarations are required. At those locations, declarations are required to be made prior to boarding the ship, train or aircraft destined for the UK. At UK port locations, where there is limited space to carry out customs checks these checks will be carried out inland.

6.4 In certain situations, an advance customs declaration may be required when goods are removed from NI to GB for the purposes of the duty in section 30C of TCTA. This is achieved by the provisions of regulation 32 of the Customs (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1605), which apply regulations 131(2) and 131(F)(3) of the Import Duty Regulations. In relation to section 42(1)(b) of CEMA, its effect is modified by paragraph 158(2) of Schedule 7 to TCTA so that its regulation making power in relation to the movement etc of goods upon "importation" can include the removal of goods from NI to GB.

6.5 The Customs Importation (Miscellaneous Provisions and Amendment) (EU Exit) Regulations 2021 (SI 2021/1312) introduced regulations that require that goods subject to the requirement in regulation 131(2) or 131F(3) of the Import Duty Regulations should not be removed from the port or border location they arrive at unless they have been released to the free-circulation procedure or their movement is approved by an HMRC officer. Approval is treated as granted to take the goods to an IBF where the goods are required to undergo customs checks.

6.6 This instrument introduces an additional qualification to SI 2021/1312. The requirements on removal are only to apply in the case of "relevant goods". Relevant goods are goods which are not European Union goods in the Republic of Ireland immediately before their importation into the UK or are not European Union goods in Northern Ireland immediately before their removal to GB.

7. Policy background

What is being done and why?

7.1 This instrument maintains the status-quo for goods moving from the island of Ireland to GB whilst discussions between the UK and EU on the operation of the NI Protocol are continuing. This means whilst full import controls will be introduced on 1 January 2022 for EU to GB movements, this will not apply to movements from the island of Ireland to GB[3].

7.2 This policy aligns with the current approach to the NI Protocol, particularly in light of the 'standstill' arrangements which seeks to ensure there will be no changes for businesses whilst negotiations with the EU continue.

7.3 This instrument removes restrictions relating to goods which must be declared before import at locations specified under Parts 13 and 13C of the Import Duty Regulations. The restrictions will not apply to European Union goods in the Republic of Ireland immediately before their importation into the UK or from Northern Ireland immediately before their removal into GB. It retains the treatment under staged customs controls for goods moving from the Republic of Ireland and from Northern

[3] Businesses moving Northern Ireland qualifying goods will continue to have unfettered access on the Northern Ireland to Great Britain direct route.

Ireland to GB in relation to their movement out of the port. The instrument allows goods on this route to leave the port without being released to the free-circulation procedure (allowing the goods to be made available in the UK market).

8. European Union Withdrawal and Future Relationship

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 concerns the operation of the UK's customs regime following the UK's withdrawal from the EU.

9. Consolidation

9.1 No consolidation is planned, but that will be kept under review

10. Consultation outcome

10.1 HMRC has engaged with trusted stakeholders essential to the operational delivery of this policy, including port operators and carriers operating across the Irish sea. Engagement with third parties critical to delivering the change in approach has been positive, with carriers indicating that their systems are capable of delivering this policy from 1 January 2022.

11. Guidance

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

12. Impact

12.1 There is no, or no significant, impact on businesses, charities or voluntary bodies involved in the movement of goods from the island of Ireland to GB as this policy is a continuation of current arrangements.

12.2 There is no, or no significant, impact on the public sector as this policy is a continuation of current arrangements for goods moving from the island of Ireland to GB.

12.3 A Tax Information and Impact Note covering this instrument will be published on the 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 basis for the final decision on what action to take to assist small businesses is that the majority of businesses or their agents, who continue to make an entry in their commercial records at the time of import, will still be able to remove their goods from the port without those goods being released to the free-circulation procedure.

14. Monitoring & review

14.1 HMRC will keep the instrument under review to ensure that it meets the government's policy objectives.

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 Kam Munir at HMRC Telephone: 0300 052 5614 or email: kam.munir@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Catherine Stewart, Deputy Director for NI Customs Policy 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.