EXPLANATORY MEMORANDUM TO

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

2021 No. 1312

1. Introduction

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

2. Purpose of the instrument

2.1 From 1 January 2022 full customs controls will apply to goods moving from the European Union (EU) to Great Britain (GB). This means that 'risk profiles' will be applied to customs declarations, with the result that a small proportion of imports will need to be checked for fiscal or security risk, or product safety among other matters.

2.2 For ports and border locations that have limited space and infrastructure to hold goods on arrival and conduct checks at the border (in particular Dover, the Eurotunnel terminal at Cheriton and Holyhead) these checks must take place inland at Inland Border Facilities (IBFs). This instrument gives effect to a legal requirement for goods imported to GB to go for a check at the IBFs if selected for inspection.

2.3 This instrument will come into force on 1 January 2022 to fulfil the government's commitment to have full customs controls on EU imports in place by that date.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 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 United Kingdom (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 where goods are subject 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 these locations declarations are required to be made prior to boarding the ship, train or aircraft destined for the UK. At locations where there is limited space to carry out customs checks these checks will be carried out inland.

6.4 This instrument introduces regulations which 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.

6.5 The Customs (Contravention of a Relevant Rule) Regulations (SI 2003/3113) set out the various penalties for breaches of rules relating to customs duty. HMRC is intending to amend those regulations in a subsequent instrument in order to provide for penalties where the new requirements in this instrument are not met.

6.6 The powers under which this instrument is made can also be exercised for the purposes of duty under section 30C of TCTA, where goods are removed from Northern Ireland (NI) to GB and in accordance with the Protocol on Ireland/Northern Ireland.

6.7 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.

6.8 In this instrument, HMRC is also making a further amendment to the Ship's Report, Importation and Exportation by Sea Regulations 1981 (SI 1981/1260). Under regulation 8, goods are not to be removed from a port without the authority of the proper officer. Regulation 8(iv)(bb) creates an exception to that restriction in the case of goods arriving at 'RoRo listed locations' under regulation 130 of the Import Duty Regulations. The amendment in this instrument extends that exception to 'other listed locations' under regulation 131F of the Import Duty Regulations as such goods will now be covered by the new regulation 8A which is inserted by this instrument.

7. Policy background

What is being done and why?

7.1 This instrument is a key part of fulfilling the government's commitment to implementing full customs controls at the border from 1 January 2022. This instrument places additional restrictions on goods above and beyond those which were required to be met when moving goods from the EU to GB previously when the UK

was an EU member state or subsequently during the transition period. These additional restrictions give effect to a legal requirement for goods imported to be removed from border locations for a check at IBFs and form part of a risk-based compliance system designed to protect the UK economy, security and consumers from a range of threats.

7.2 The customs process imposing full controls on goods entering the UK allows for physical checks of goods to take place away from the ports and other border locations. HMRC will carry out physical customs checks in accordance with the relevant provisions in TCTA and CEMA at IBFs which are separate locations from UK ports.

7.3 The ports and other border locations where these restrictions apply are locations where goods are imported in Heavy Goods Vehicles (HGVs) that are carried into GB by ferries or Channel Tunnel trains. The HGVs drive off the train or ferry with the goods at the port or other border location. The new regime HMRC is introducing places restrictions on the removal of goods from ports and other border locations that have limited space and infrastructure to conduct checks on arrival. Goods will only be able to leave the port or control area where the goods have been released to the free-circulation procedure (allowing the goods to be made available in the UK market), or to take the goods to an IBF. Drivers will be able to determine the status of the goods (and therefore whether the goods have been released or need to go to an IBF), before disembarking from the ferry or train.

7.4 This instrument will ensure that from 1 January 2022 goods which are required to go to IBFs for customs checks are removed directly to those locations and are not tampered with en route. Goods that are cleared from checks on arrival in the UK are allowed to leave the port or other border location they arrived at to be moved to their destination.

7.5 There is a risk that goods selected for a check would likely never arrive at IBFs which have been built specifically for the purpose of conducting such checks. This instrument strengthens HMRC's powers to ensure compliance on this matter by providing legal obligations for goods imported at ports and other border locations with limited space and infrastructure to be removed and checked at the IBFs. Additionally, this helps in mitigating the fiscal risk of goods not undergoing necessary customs checks and controls as well as addresses the security risk of unsafe, falsely declared goods entering the UK. This would also have a positive impact on legitimate businesses who do follow the rules.

7.6 This instrument ensures that HMRC will be able to conduct further investigations into the accuracy of the information submitted in a customs declaration and, in combination with existing criminal offences under CEMA and the subsequent instrument referenced in paragraph 6.5, issue sanctions for persons who fail to produce goods to HMRC for inspection.

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 United Kingdom from the European Union because it relates to the introduction of customs controls for goods moving from the EU to GB from 1 January 2022.

9. Consolidation

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

10. Consultation outcome

10.1 HMRC has been engaging with industry groups representing hauliers and logistics providers on this policy.

10.2 While no formally structured consultation has been carried out, early indications from engagement with trusted UK and EU representatives of the industry during the policy development stage have shown that this measure will be broadly supported by the trade by protecting legitimate traders from non-compliant rivals.

10.3 A virtual reading room on the full draft instrument was conducted on 22 November 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 import of goods from the EU available at: https://www.gov.uk/import-goods-into-uk which will be updated before the 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 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 measures in this instrument will not be burdensome.

14. Monitoring & review

14.1 HMRC will keep the instrument under review to ensure it meets the policy objective 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 John Lazarou at HMRC email: john.lazarou@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Joanne Cheetham, Deputy Director for Customs Compliance, Audit and Law, 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.