EXPLANATORY MEMORANDUM TO

THE CUSTOMS (MISCELLANEOUS AMENDMENTS) (NO. 2) REGULATIONS 2022

2022 No. 1312

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

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

2. Purpose of the instrument

2.1 The instrument makes amendments to various statutory instruments to provide a legislative basis for a number of customs simplifications and easements. These will provide additional options and flexibility for importers who need to notify imports to HMRC or declare reusable packaging for customs purposes. The instrument also clarifies when an economic condition applies to authorisations for the inward processing procedure (under which goods can be imported for processing, without duty being chargeable).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 Certain provisions within this instrument rely on section 32(8) of Taxation (Cross-border Trade) Act 2018 (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. Relevant notices will be published at Customs, VAT and Excise UK transition legislation from January 2021 - GOV.UK (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.

3.2 These Regulations are being issued free of charge to anyone who purchased SI 2018/1249 and SI 2021/478. Regulations 2(3)(4) and (5) and regulation 3 correct defects identified in those instruments. The Commissioners for HMRC have complied with the requirement to consult with the S.I. Registrar on this matter.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 The main provisions in relation to import duty chargeable where goods are brought into the United Kingdom (UK) can be found in the TCTA, and regulations made under that Act.

6.2 In particular, the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) (import duty regulations) (which this instrument amends) include provisions setting out cases in which goods entering Great Britain can be declared for customs purposes orally to an officer of HMRC, or by a person carrying out certain specified conduct, such as passing through a 'green' lane at a port (a 'by conduct' declaration). Eligible goods are listed in the document entitled "List of Goods Applicable to Oral and By Conduct Declarations" known as the Oral and By Conduct List by virtue of Regulation 14 of the import duty regulations.

6.3 The import duty regulations also set out rules concerning the notification of importation of goods to HMRC.

6.4 Regulations made under TCTA also include the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (SI 2018/1249) (special procedures regulations), which this instrument also amends. These regulations set out further rules and conditions concerning the use of special customs procedures, including the inward processing procedure.

6.5 The provisions of this instrument apply to movements into or out of Great Britain and Northern Ireland to the extent their application is in accordance with provisions relating to the Protocol on Ireland/Northern Ireland.

7. Policy background

What is being done and why?

7.1 This instrument introduces several targeted changes to customs requirements that apply for imported goods. These changes will provide additional flexibility for importers who need to notify imports to HMRC or declare reusable packaging for customs purposes and clarifies when an economic condition applies to authorisations for the use of the inward processing customs procedure.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 Most goods imported into the UK are required to be presented to HMRC. Presentation includes providing HMRC with a notification that the goods have arrived in the UK (a notification of importation). The import duty regulations set out the time at which this notification must be given to HMRC and currently do not permit a notification to be given before goods arrive in the UK.

7.3 TCTA, and public notices made under TCTA, specify the form and manner in which a customs declaration must be made to HMRC when goods are imported. In most cases, an electronic declaration is required, but the import duty regulations also make

provision in limited cases for a declaration to be made 'by conduct'. This form of declaration is not available to businesses importing reusable packaging when unaccompanied unless transported through certain ports.

7.4 The special procedures regulations set out conditions that a holder of an authorisation for inward processing must meet. For some authorisations this includes an 'economic condition' which requires that HMRC must be satisfied that the use of the authorisation does not adversely affect UK producers if they hold evidence that this is likely to be the case, or if no such evidence is held, that the operation to which the authorisation relates is not of a type listed in a public notice.

Why is it being changed?

7.5 The changes within this instrument are generally intended to simplify the processes that apply for notifying the importation of goods, or declaring imported goods. However, they also amend legislation to provide clarity as to how the legislation is being applied.

7.6 Allowing a notification of importation to be provided before goods enter the UK in cases where goods have already been declared, will formalise processes that currently apply at certain ports in Great Britain. Because of these processes, ferry operators and hauliers can be made aware at an earlier point whether the goods they carry will be subject to further checks on arrival at the port. This approach has helped to prevent congestion when goods arrive and has aided the flow of goods leaving ports.

7.7 Enabling wider use of 'by conduct' declarations for reusable packaging will reduce burdens on importers.

7.8 Changes to the conditions that apply for the use of an inward processing procedure are intended to clarify the circumstances in which the economic condition applies once an authorisation has been granted to ensure that the legislation reflects the policy intent.

What will it now do?

7.9 As a result of changes in this instrument, the import duty regulations will enable notification of importation of goods to be given up to four hours before the arrival of the goods in specified cases. This will formalise arrangements currently in operation at certain locations.

7.10 The import duty regulations will also be amended to provide that where reusable packaging is imported by a business, and is eligible for certain import duty reliefs, a customs declaration can be made 'by conduct'. It will also apply the correct provisions for relief of customs duties, excise duties and VAT which allow goods to be declared by conduct in certain situations.

7.11 In relation to the changes on the inward processing procedure, the conditions of an authorisation are amended to clarify when the economic condition is required to be met.

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 of existing legislation is considered appropriate at this time, but this will be kept under review.

10. Consultation outcome

10.1 No formal consultation in relation to this instrument has been undertaken. However, some of the changes proposed in this instrument were brought about following views and feedback received from industry stakeholders.

10.2 A virtual reading room on the full draft instrument was conducted on 9 December 2022 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.

11. Guidance

11.1 Guidance has been published on all of the matters covered in this instrument and will, where necessary, be updated before the changes take effect. Guidance can be found at; Submit an arrival notification to the Import Control System - GOV.UK (https://www.gov.uk/guidance/submit-an-arrival-notification-to-the-import-control-system); Declaring reusable packaging for Great Britain import and exports - GOV.UK (https://www.gov.uk/gudiance/declaring-reusable-packaging-for-great-britain-imports-and-exports); and Apply to delay or pay less duty on goods you import to process or repair- GOV.UK - (https://www.gov.uk/guidance/apply-to-delay-or-pay-less-duty-on-goods-you-import-to-process-or-repair).

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 This instrument applies to activities that are undertaken by small businesses.

13.2 No action is necessary to minimise the impact of the requirements on small businesses (employing up to 50 people) as the changes are intended to simplify or clarify customs requirements.

13.3 The basis for the final decision on what action to take to assist small businesses is that the changes introduced by this instrument will extend customs simplifications and easements available to any businesses, regardless of size.

14. Monitoring & review

14.1 The approach to monitoring this legislation will be to keep customs rules under review through ongoing stakeholder engagement, to ensure that this instrument meets the policy objective set out in section 7 of this Explanatory Memorandum.

14.2 A statutory review clause is not included within these regulations because the SI relates to a tax or duty, and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Iram Akhtar/Angela Miles at HMRC (email: jobshareiramangela@hmrc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Sarah Khan, Deputy Director for Customs Control, Infrastructure and Declarations at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.