EXPLANATORY MEMORANDUM TO

THE CUSTOMS (MISCELLANEOUS AMENDMENTS) (NO. 3) REGULATIONS 2024

2024 No. 1265

1. Introduction

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

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Joanne Cheetham, Deputy Director for Customs Compliance, Audit and Law, at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Iram Akhtar/Angela Miles at HMRC email: cpsbriefingandco-ordinationteam@gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument introduces changes to customs rules which enable HMRC to repay customs duty amounts to businesses, where this is appropriate following a review of a rate of duty that has previously been charged.

Where does the legislation extend to, and apply?

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

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Customs legislation makes provision for additional duty amounts to be charged for the purposes of the UK's trade remedies policy. One example is where additional duty amounts are chargeable on certain imported goods as anti-dumping duty. However, the application of this additional duty may be subject to a subsequent review by the UK's Trade Remedies Authority (TRA). Following a TRA review, the Secretary of State for the Department for Business and Trade (DBT) may issue a public notice which has the effect of reducing the amount of duty chargeable in respect of imported goods.

5.2 This instrument extends HMRC's ability to repay duty amounts that have been paid where this review process results in a backdated reduction of the duty amount due in respect of imported goods. This change will enable HMRC to make the appropriate repayments of duty.

What was the previous policy, how is this different?

5.3 Current law enables HMRC to repay duty amounts in certain circumstances where appropriate following a TRA review of additional duty amounts chargeable under the UK's trade remedies measures. However, the current provisions do not cover all of the circumstances in which the Secretary of State for DBT may issue a public notice that has the effect of reducing the duty amount now chargeable under a trade remedies measure, or exempting goods from such a measure. This instrument ensures that HMRC can repay duty amounts where appropriate in all such cases.

6. Legislative and Legal Context

How has the law changed?

6.1 Most rules in relation to customs duty are set out in the Taxation (Cross-border Trade) Act 2018 (TCTA), and in regulations made under the TCTA. These regulations include the Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248) (the import duty regulations) and the Customs (Northern Ireland) (EU Exit) Regulations (S.I. 2020/1605) (the Northern Ireland regulations).

6.2 The import duty regulations enable HMRC to make repayments of import duty following certain reviews of duty measures by the TRA. These regulations are being updated to permit the repayment of duty by HMRC in further cases where the issue of a public notice by the Secretary of State for DBT (following a review by the TRA) has the effect of providing a reduction of the amount of duty chargeable in respect of imported goods. Circumstances in which the Secretary of State can issue such a public notice are set out in certain provisions of the TCTA and in the UK's secondary legislation made under the TCTA concerning trade remedies measures, including the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (S.I. 2019/450) and the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (S.I. 2019/910).

6.3 The Northern Ireland regulations set out how certain provisions of UK customs legislation apply in Northern Ireland, including how the UK legislation concerning customs duty and tariffs applies when goods for the UK's internal market are imported. The Northern Ireland regulations are being updated to ensure that repayments of customs duty will be available in respect of these goods for the UK's internal market, where the duty chargeable has been reviewed under the UK's trade remedies legislation.

Why was this approach taken to change the law?

6.4 This instrument amends two sets of customs regulations made under powers in the TCTA. Making these amendments to regulations by primary legislation (such as a Finance Bill) would not be proportionate. Similarly, the changes made by this instrument do not require consolidation or restatement of either of the regulations that are being amended. A single amending instrument to amend these regulations is therefore the most proportionate approach to changing the law.

7. Consultation

Summary of consultation outcome and methodology

7.1 Consultation is not considered necessary for the changes in this instrument as the measure merely rectifies a gap in existing legal provisions, is beneficial for traders, and is uncontroversial.

8. Applicable Guidance

8.1 Guidance has been, or will be, published on the matters covered in this instrument and will, where necessary, be updated before the changes take effect. Guidance on repayments of duty can be found on the GOV.UK website[1].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the instrument does not contain any non-tax matters. A Tax Information and Impact Note covering this instrument will be published on the GOV.UK website[2].

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is not expected to be significant. The change will enable businesses to obtain a repayment of duty that has been paid, where appropriate.

9.3 The legislation does impact small or micro businesses.

9.4 No measures are proposed to minimise the impact of the requirements on small or micro businesses (employing up to 50 people) as the change merely enables HMRC to repay duty in the circumstances described. The process a business must follow to obtain a repayment has not changed. The measure in this instrument applies to any business that has paid certain duty amounts, regardless of size.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to keep customs rules under review through ongoing stakeholder engagement to ensure that this instrument meets the policy objectives set out in section 5 of this Explanatory Memorandum.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, James Murray MP has made the following statement:

"a statutory review clause is not included in the instrument because the instrument 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".

[1] Guidance on repayments of duty: https://www.gov.uk/guidance/how-to-apply-for-a-repayment-of-import-duty-and-vat-if-youve-overpaid-c285

[2] Tax Information and Impact Note: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").