EXPLANATORY MEMORANDUM TO

THE CUSTOMS (MODIFICATION AND AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1629

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury 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 forms part of legislation to be made under the Taxation (Cross-border Trade) Act 2018 (TCTA) and Finance Act 2003 to ensure that the United Kingdom (UK) has a customs regime in place at the end of the transition period following the withdrawal of the UK from the European Union (EU).

2.2 In relation to Northern Ireland (NI), the instrument provides for how goods are to be treated when the 'separation provisions' of the EU Withdrawal Agreement no longer apply to them. The instrument also implements new relief arrangements for duty chargeable in NI and provides minor amendments to UK customs legislation, as it will apply alongside EU provisions in NI.

2.3 The instrument will also enable persons who are not established in the UK to be approved to defer paying duty liabilities in Great Britain (GB), if they secure the liabilities with a guarantee from a guarantor established in the UK. The instrument also provides full duty relief where goods return to the UK after alteration or repair in another country, where this relief is provided for in an international agreement made by the UK. Finally, the instrument modifies how TCTA should be read in relation to goods in NI to ensure the term 'vehicle' includes, ships, aircraft and trains.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument makes provision by reference to things to be specified in notices published by HMRC. The need for explicit vires to sub-delegate and the consideration that the Joint Committee on Statutory Instruments gave to the draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (in the 30th report of session of 2017 – 2019) are noted. TCTA includes the express power to sub-delegate and in making this provision this instrument relies on sections 32(8) and 40(7)(b) of TCTA, which provide 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. The notices that will be made under this instrument will be published at 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 The provisions in relation to deferment of duty liabilities come into effect the day after this instrument is made. Some other provisions in this instrument will come into force at the end of the transition period on 31 December 2020. These commencement dates are designed to ensure customs rules operate effectively at that the end of the transition period and to enable traders to plan for these new rules, for example by applying for appropriate approvals from HMRC. The duty deferment provisions are a response to recent stakeholder engagement and need to be in place by the end of the transition period to provide continuity for those non-UK traders who currently hold duty deferment accounts. Therefore, the convention of leaving 21 days between a statutory instrument being laid and coming into force will, unfortunately, be breached.

3.3 Laying this instrument earlier was not possible as certain provisions in this instrument could not be made until the Taxation (Post-transition Period) Act 2020 (TPTPA) received Royal Assent. In other cases, these changes respond to recent stakeholder engagement or finalised details of how various customs arrangements will apply in relation to NI. This instrument also includes measures reflecting late changes to the legislation which are designed to address business readiness for the end of the transition period.

3.4 The short notice between laying this instrument and commencement should not significantly affect businesses as for the most part, either the changes do not introduce any requirement beyond what has already been agreed, or are a necessary consequence of what has been agreed in the Protocol on Ireland/Northern Ireland (Northern Ireland Protocol); or are what will be necessary as part of a claim for relief or deferral of duty liability that a business chooses to apply for.

3.5 It is also proposed that certain aspects of the duty relief arrangements for NI provided for in this instrument will come into effect at a later date, once the appropriate operational arrangements are in place.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.6 As the instrument is subject to the negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

4.3 The provisions of this instrument apply to movements from GB into NI and into or out of GB and NI (where in accordance with the Northern Ireland Protocol).

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Currently the main provisions governing the import of goods into, and export of goods from, the UK are set out in directly applicable EU regulations. The Union Customs Code (Regulation (EU) No 952/2013) (UCC) is the overarching legislative framework for customs adhered to by all EU Member States and by the UK during the transition period. Sitting under the UCC are the implementing regulation (Regulation (EU) 2015/2447) and delegated regulation (Regulation (EU) 2015/2446), which are supplemented by many other regulations (for example Council Regulation (EEC) No 2658/87, setting out the nomenclature and the tariff). The implementing regulation is in place to ensure the existence of uniform conditions for the implementation of the UCC and a harmonised application of procedures by all EU Member States and by the UK during the transition period. The delegated regulation supplements certain non-essential elements of the UCC.

6.2 When paragraph 1 of Schedule 7 to TCTA is commenced these EU regulations, to the extent that they apply in relation to customs duty, will be replaced by provision made by and under TCTA (including this instrument). These will be supplemented by the Customs and Excise Management Act 1979 (CEMA), 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 will remain in force following the end of the transition period.

6.3 However, the EU Withdrawal Agreement sets out an exception to the position mentioned above – in which EU customs legislation will continue to apply in specified circumstances after the end of the transition period. The provisions of the Withdrawal Agreement are given effect by section 7A of the European Union (Withdrawal) Act 2018. This includes separation provisions that apply for the whole UK and the Northern Ireland Protocol, which provides for certain EU customs legislation to continue to apply in NI.

6.4 The UK's approach to the agreement in principle between the UK and the EU on various issues in the Northern Ireland Protocol, including those relating to customs, was set out in the policy paper 'Northern Ireland Protocol – Command Paper' of 10 December 2020. Further legislation relating to the implementation and application of the Northern Ireland Protocol is set out in and under TPTPA. This includes the Customs (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1605) which this instrument amends.

6.5 The instrument also makes a number of amendments to other EU Exit regulations on customs matters, which have been laid previously under powers in TCTA.

7. Policy background

What is being done and why?

Reliefs in NI

7.1 The instrument provides for new relief arrangements in relation to duty that is chargeable in NI under TPTPA. Traders involved in commercial activity bringing goods into NI which may be required to pay the EU duty because they are 'at risk' of moving into the EU may claim a relief in relation to that duty when they make a customs declaration for goods in NI. These provisions let HMRC set out how a claim is to be made, record keeping requirements upon persons claiming a relief, and

include rules concerning eligibility for reliefs, the granting of claims by HMRC, cases in which a claim which was not due has been paid by HMRC, and penalties for breaches of the rules. These relief arrangements deal with circumstances where traders seek relief on duty for 'at risk' goods within EU state aid 'de minimis' rules. This means the reliefs are subject to a quantitative upper limit for all 'de minimis aid' received by a trader, typically €200,000 over 3 fiscal years for most businesses, with lower limits for certain sectors.

7.2 From 1 January 2021 a trader will be able to apply for a waiver of the customs duty charged, for domestic UK goods that are moved from GB to NI where these goods are 'at risk'. HMRC will provide further guidance in 2021 in relation to claiming a relief on duty for goods incurring 'at risk' duties when entering NI from countries outside the EU and the UK, or where duty has been paid and repayment may be possible under 'de minimis' rules.

EU Withdrawal Agreement and separation provisions

7.3 The EU Withdrawal Agreement provides for EU customs legislation to continue to apply, on a temporary basis, for goods in the UK that are under an EU customs procedure or an arrangement for the temporary storage of goods at the end of the transition period. This EU customs legislation will continue to apply until a specified event takes place in relation to the goods (such as the EU procedure ending or the goods being exported), subject to various ending dates set out in the Withdrawal Agreement.

7.4 The instrument amends the Customs (Transitional) (EU Exit) Regulations 2020 (SI 2020/1449) to include provision for how goods located in NI are to be treated when the separation provisions set out in the EU Withdrawal Agreement cease to apply. These separation provisions are designed to provide for an orderly withdrawal, and to prevent disruption, where goods in the UK are subject to an EU customs procedure or EU temporary storage at the end of the transition period. The instrument includes measures to ensure that goods that are located in NI when these separation provisions cease to apply will be subject to the general customs rules that will apply in NI.

Duty Deferment

7.5 This instrument amends the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248) so that it will be possible for persons not established in the UK to hold a duty deferment account to delay paying duty, subject to becoming authorised and providing a financial guarantee from a guarantor established in the UK. This will extend the opportunity to defer duty liability, so that overseas persons may also be eligible - providing their duty liability is secured by a guarantor who is established in the UK.

Relief available under the UK's International Agreements

7.6 This instrument also amends provisions in relation to the outward processing procedure set out in the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (SI 2018/1249). The effect of this is that goods declared for an outward processing procedure in the UK can benefit from full duty relief when they return to the UK after a repair or alteration process outside the UK – providing that such relief is provided for in an international agreement made by the UK.

Other changes

7.7 This instrument also includes minor changes that will:

- ensure that the references to 'vehicle' in CEMA includes ships, aircraft and trains, as well as motor vehicles; and
- update and clarify the application of the 'Tariff of the United Kingdom' (as given effect by the Customs Tariff (Establishment) (EU Exit) Regulations 2020 (SI 2020/1430)), so that it can apply alongside the EU customs legislation that will continue to have effect in NI, under the terms of the Northern Ireland Protocol.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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, and other legislation made under TCTA, will ensure that the UK's customs regime operates as required following the end of the transition period.

9. Consolidation

9.1 These regulations form part of the significant programme of secondary legislation to be delivered by HMRC by the end of 2020 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 29 March 2019. This legislation has been required to be amended in light of issues arising following extensions which took place in order for an agreement to be reached with the EU. Following the ratification of the EU Withdrawal Agreement, and preparations for the end of the transition period, it is now necessary to again update this legislation before 31 December 2020. Consequently, it is not possible to deliver this legislation by consolidation at this time.

10. Consultation outcome

10.1 No formal consultation regarding this instrument has taken place. However, consultation on the practical implications of the Northern Ireland Protocol has taken place with businesses. Throughout the transition period, HMRC's NI Stakeholder Engagement Team (NISET) have consulted with a wide range of businesses and representative bodies who would be impacted. The NISET were keen to include in the conversation, businesses who would be new to customs activity and involvement with HMRC.

10.2 In the early part of the transition period, despite COVID-19 restrictions, the NISET ran a number of data gathering exercises engaging with both large businesses and small and medium sized enterprises in key sectors of the NI economy. The aim was to identify how their supply chains worked and subsequent trade flows. The NISET also ran projects in areas such as tariffs and goods 'at risk' of being moved to the EU.

10.3 In particular, the NISET set up a Northern Ireland Protocol Joint Customs Consultative Committee (JCCC) sub-group to provide a forum for NI businesses specifically. This involved regular meetings set up in advance of public release of new guidance. This group includes business representation bodies and associations across the agri-food, retail, manufacturing, and logistics and transport sectors; accountancy bodies in both NI and Ireland. This has given these bodies a voice to present key

concerns within their industry and allowed HMRC to understand their industry and the problems that the implementation of the Northern Ireland Protocol may present for them. Some 1-2-1 meetings were also accommodated with representative bodies to discuss papers they presented in support of their key issues.

10.4 Whilst these main JCCC forums highlighted varying issues from sector to sector, some sector-based fora were also supported to allow areas, for example agri-food, to be discussed more comprehensively. The NISET further supported individual representative body events as organised for their members. Separate conversations have also been accommodated with utility providers.

10.5 The NISET has acted as a conduit in feeding all issues raised across stakeholder engagement to policy colleagues, wider government, and ultimately discussions with the EU to ensure that they were considered in the formulating of decisions made in relation to the Northern Ireland Protocol.

10.6 The duty deferment measure in this instrument responds to an issue raised recently by stakeholders, including the retail sector. The stakeholders have been consulted informally on the policy response. In relation to other customs matters arising from the end of the transition period, HMRC remains in regular discussions with a wide range of businesses and representative groups.

10.7 This consultation will continue both before and after the implementation of the changes in this instrument.

11. Guidance

11.1 There is already guidance on customs matters at: https://www.gov.uk/starting-to-import and https://www.gov.uk/starting-to-export. There is specific NI tariff guidance at https://www.gov.uk/guidance/check-if-you-can-declare-goods-you-bring-into-northern-ireland-not-at-risk-of-moving-to-the-eu-from-1-january-2021.There is also guidance on the new duty relief arrangements that will apply in NI, as provided for in this instrument here https://www.gov.uk/guidance/claim-a-waiver-for-duty-on-goods-that-you-bring-to-northern-ireland-from-great-britain.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The provisions either support the implementation of the Northern Ireland Protocol, which has already been agreed, or ensure that existing facilitations continue to be accessible and operate as intended should businesses choose to apply for them.

12.2 The impact on the public sector is not anticipated to include any additional costs as a result of this instrument.

12.3 A Tax Information and Impact Note covering this instrument will be published 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 additional action is proposed to minimise the impact of the requirements 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 will be able to access the Trader Support Service (TSS).

The TSS has been set up by the UK government to help all traders, regardless of size and at no additional cost, to move their goods between GB and NI, and to import goods into NI from the rest of the world.

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

15. Contact

15.1 Holly West at HMRC Telephone: 07741835049 or email: holly.west@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alex Pienaar, Deputy Director for Customs EU Exit Negotiations, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.