EXPLANATORY MEMORANDUM TO

THE CUSTOMS (ORIGIN OF CHARGEABLE GOODS) (EU EXIT) REGULATIONS 2020

2020 No. 1433

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs 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 (the Act) to ensure that the United Kingdom (UK) has a customs regime in place at the end of the Implementation Period following the withdrawal of the UK from the European Union (EU). Legislation will be necessary to ensure the UK's customs, VAT and excise regimes function as intended and this instrument sets out the detailed rules about origin of goods equivalent to those which are currently in place under EU law.

2.2 This instrument provides for determining the origin of chargeable goods in all cases except where preferential rates under sections 9 and 10 of the Act apply ("non-preferential cases").

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments.

3.1 The Treasury regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force ("the 21-day rule"). This instrument needs to enter into force at the end of the Implementation Period to ensure that the UK continues to have a fully functioning customs regime in place from 31 December 2020 at 11:00pm. If this instrument was delayed to comply with the 21-day rule, a crucial part of our customs regime would not be in place, with significant economic, legal and reputational consequences. The Government had hoped to lay the full package once the outcome of negotiations with the EU was clear. However, while efforts to that end continue, the Government has decided that it is now necessary to finalise tariff preparations for 1 January.

3.2 This instrument incorporates rules other than those set out in section 17(2) and (3) of the Act for certain goods by reference to a document entitled the Rules of Origin: Special Rules for Determining Non-Preferential Origin, Version 1.0, dated 7 December 2020. It will be published here: https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021. If this document is updated or amended by a

supplemental document, a further statutory instrument will be made giving effect to the document as updated or amended.

3.3 Most of these rules are contained in a separate reference document to the regulations because the amount of technical and administrative detail would make it disproportionately complex to include on the face of the instrument. The other rules contained in the document are similar to those which currently have effect under EU law. Paragraph 1(3)(c) of Schedule 7 to the Act enables provisions to be made under Part 1 of the Act that correspond to those which could have been made by EU law.

3.4 Together with regulations made under section 9 and 10 of the Act, which form part of the same package of instruments being made at the same time mentioned below in paragraph 6.5, this is the first time that section 17(6) of the Act has been used.

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)

3.5 As the instrument is subject to 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 provisions of this instrument apply to movements into Great Britain and some movements into Northern Ireland (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 These regulations are made in exercise of powers conferred by the Act. They will be brought into force using the power in section 52 of the Act which enables subordinate legislation to be brought into force on a day appointed by the Treasury in regulations. This is on the basis that the Treasury is of the view that it is appropriate in consequence of, or otherwise in connection with, the UK's withdrawal from the EU.

6.2 This is the first time that the power in section 17(6) of the Act is being used. The power is being exercised on the recommendation made to the Treasury by the Secretary of State further to section 17(8) of the Act.

6.3 Currently the main provisions governing the rules of origin for chargeable goods in 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 Member States and the UK during the Implementation Period. Sitting under this regulation are the implementing regulation (Commission Implementing Regulation (EU) 2015/2447) and delegated regulation (Commission Delegated Regulation (EU) 2015/2446), which are supplemented by many other regulations (for example Council Regulation (EEC) No 2658/87, which sets out the nomenclature and the tariff). The delegated regulation supplements certain nonessential elements of the UCC and the implementing regulation is in place to

ensure the existence of uniform conditions for the implementation of the UCC and a harmonized application of procedures by all Member States and the UK during the Implementation Period.

6.4 At the end of the Implementation Period paragraph 1 of Schedule 7 to the Act will be commenced, to the extent that these EU Regulations (which will form part of the law of the United Kingdom as a result of section 3 of the European Union (Withdrawal) Act 2018) impose or otherwise apply in relation to any EU customs duty or import duty, they will cease to have effect unless otherwise provided for.

6.5 This statutory instrument is part of a package of instruments that establish the customs tariff of the UK and those variations from the rate of import duty in a standard case that will apply to imported goods following the end of the Implementation Period. This instrument sets out rules for determining the origin of chargeable goods when applying the customs tariff in non-preferential cases.

7. Policy background

What is being done and why?

7.1 This instrument, together with the Act, other regulations made under the Act, and any public notices made under that legislation, is designed to broadly reproduce the effect of EU legislation as it applies, in respect of customs matters, to the import and export of goods from third countries into the EU and, during the Implementation Period, the UK.

7.2 The origin of a good determines its economic origin for the purposes of claiming a preferential tariff rate under a particular trade agreement. This instrument provides for the how the rules of origin that are set out in each United Kingdom trade agreement are applied. This instrument provides for a common set of rules that underpin the rules in each trade agreement. These underpinning rules are consistent with the UK's international obligations, particularly those under the World Trade Organisation's Agreement on Rules of Origin.

7.3 This instrument, with the associated reference document and other UK customs legislation, ensures the establishment of a functioning customs regime at the end of the Implementation Period.

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 as it, and other legislation made under the Act, will ensure that the UK's customs regime operates as required after the end of the Implementation Period.

9. Consolidation

9.1 This is new legislation and therefore no consolidation is required.

10. Consultation outcome

10.1 No formal consultation on this instrument has taken place because this instrument broadly replicates, as far as practicable, EU customs regulations.

11. Guidance

11.1 Guidance will be issued at: https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021

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 This instrument is one of a group of instruments covered by an overarching Tax Information and Impact Note. The TIIN primarily focusses on the Customs Tariff (Establishment) (EU Exit) Regulations 2020 and will be available in due course 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.

13.3 The basis for the final decision on what action to take to assist small businesses is that small businesses should not be specifically disadvantaged by this regulation. The instrument introduces equivalent rules and obligations that currently apply to goods imported from or exported to countries outside the EU.

14. Monitoring & review

14.1 HM Revenue and Customs will keep the instrument under review to ensure that it meets the policy objectives set out above in section 7 of this explanatory memorandum, and to ensure burdens on business are carefully monitored.

14.2 The regulation does not include a statutory review clause 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.

15. Contact

15.1 Stephen Lamprell at HM Revenue and Customs, phone: 03000 592943 and email: steve.lamprell@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Julian Ainley, Deputy Director of Tariff Management and Duty Liability, at HM Revenue and Customs 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.