EXPLANATORY MEMORANDUM TO

THE CUSTOMS (TRANSITIONAL ARRANGEMENTS) (EU EXIT) REGULATIONS 2020

2020 No. 1088

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's 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) 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 United Kingdom from the European Union (EU).

2.2 The measures contained in this instrument will allow importers or their agents to make a simplified Customs declaration in their commercial records at the time of, or before, import and delay providing a declaration (a supplementary declaration) to HMRC for a period to be set out in a public notice. The instrument also makes a number of consequential amendments to related regulations to reflect this process.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The measures in this instrument will largely be brought into force using the power in section 52(2) of TCTA which allows 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 to do so in consequence of, or otherwise in connection with, the UK's withdrawal from the EU. However, certain provisions will come into force on 29 October 2020. This is primarily to give HMRC time before the end of the transition period to notify those businesses that are deemed to be high-risk traders that they will not be allowed to defer making supplementary declarations and that they will need to submit full declarations at the time of import.

3.2 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 2017-2019) are noted. TCTA includes the express power to sub-delegate and in making this provision this instrument relies on section 32(8) of 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.

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.

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)

3.3 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 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 (UCC) (Regulation (EU) No 952/2013) 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 UK regulations under TCTA (including this instrument). These will be supplemented by Customs and Excise Management Act 1979, 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 The provisions of the Protocol on Ireland/Northern Ireland in relation to customs are given effect through section 7A of the European Union (Withdrawal) Act 2018. The government's position on various issues, including those relating to customs, was set out in the policy paper "The UK's approach to the Northern Ireland Protocol" of 20 May 2020. Further legislation relating to the implementation and application of the Protocol on Ireland/Northern Ireland will be made and laid later this year.

7. Policy background

What is being done and why?

7.1 Recognising the impact of coronavirus on businesses' ability to prepare, the government announced on 12 June 2020 that border controls will be introduced in three stages up until 1 July 2021. This instrument concerns the first of those three stages which allows declarations which are submitted to HMRC to be deferred for a period to be set out in a public notice.

7.2 This instrument will allow importers or their agents to make a simplified Customs declaration in their commercial records and delay providing a declaration (a supplementary declaration) to HMRC for a period to be set out in a public notice. This will only apply to non-controlled goods (that is, goods that are not listed in a public notice as controlled goods, such as alcohol or tobacco products or firearms) that are imported in the period from 1 January 2021 to 30 June 2021.

7.3 The provisions of the instrument relating to this matter only apply to goods that were EU goods immediately before import. Deferring declarations for non-controlled EU goods gives importers who previously did not need to make a declaration additional time to prepare for customs processes.

7.4 The deferral of the supplementary declaration for these goods also defers any import duty payable until the supplementary declaration is made to HMRC. Ordinarily the deferment of import duties requires an importer or their agent to have a duty deferment account in place before declaring the goods or before the goods are released to the free-circulation procedure (allowing the goods to be moved from the port area and made available in the UK market). The effect of the provisions in this instrument is that where the declaration is made in accordance with the new process, there is no requirement for an importer to have such an account in place at that time. The importer will however need to have a duty deferment account in place before the supplementary declaration is due.

7.5 In order to submit a supplementary declaration this instrument requires the importer to be authorised for the simplified Customs declaration process or to appoint a Customs agent who is so authorised. The instrument makes changes to the circumstances in which a Customs agent can use the simplified Customs declaration process. Under existing provisions Customs agents will be able to use their own authorisation to use the process while acting as a direct agent even if the importer is not authorised (thereby the agent will not be automatically jointly liable for any import duty arising). This instrument amends the relevant provisions so that a Customs agent can only act in this way if the importer is UK-established.

7.6 Certain traders will not be allowed to defer declarations. This instrument allows HMRC to exclude any importers with a poor compliance history ("high risk traders") from being able to defer declarations. This instrument allows HMRC to write to these traders informing them that they will not be able to defer declarations and will need to submit full declarations at the time of import. The instrument also places an obligation on HMRC to publish a notice setting out the criteria for exclusion.

7.7 The instrument removes the provisions relating to the Transitional Simplified Procedures (TSP), which were inserted into the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248). TSP was designed to be a temporary measure enabling importers to make simplified Customs declarations in the event of the UK

leaving the EU without a negotiated deal. A provision of this instrument also enables the withdrawal of TSP authorisations by amending the eligibility criteria that allow importers to use the simplified Customs declaration process and Entry in Declarant's Records process (where the importer enters the details of the goods into their own records to clear goods into free circulation and then later makes a supplementary declaration) and allowing an approval to be revoked where a person does not satisfy amended eligibility criteria.

7.8 The instrument makes a number of consequential amendments to other regulations to reflect these processes. These include the Customs Traders (Accounts and Records) Regulations 1995 (SI 1995/1203), the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (SI 2018/1249), the Customs (Contravention of a Relevant Rule) (Amendment) (EU Exit) Regulations 2018 (SI 2018/1260), the Taxation (Cross-border Trade) (Miscellaneous Provisions) (EU Exit) Regulations (SI 2019/486), the Customs (Crown Dependencies Customs Union) (EU Exit) Regulations 2019 (SI 2019/385) and the Customs and Excise (Miscellaneous Provisions and Amendments) (EU Exit) Regulations 2019 (SI 2019/1215).

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 2018 but relates to the withdrawal of the UK from the EU 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 The provisions introducing a new (transitional) declaration process are inserted into the Customs (Import Duty) (EU Exit) Regulations 2018. However, it is not possible to consolidate this legislation at this time. The provisions relating to this process are temporary and may not be used to declare goods imported or to be imported, on or after 1 July 2021.

10. Consultation outcome

10.1 No formal consultation has been held on this instrument due to time constraints. A virtual reading room on the full draft instrument was conducted on 25 September 2020 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 There is already guidance on customs matters at https://www.gov.uk/starting-to-import and https://www.gov.uk/starting-to-export.

11.2 All guidance is currently being reviewed and where necessary will be updated prior to the end of the transition period.

12. Impact

12.1 The impact on businesses, charities and voluntary bodies is expected to be negligible. This is a temporary, optional facilitation that not all businesses may choose to use. It will allow businesses that are not ready to meet their customs obligations to defer submission of their supplementary declaration and continue to trade while they make preparations to be fully compliant from 1 July 2021 onwards.

12.2 The impact on the public sector is that HMRC will need to put certain processes and procedures in place to identify and exclude high risk traders from making a simplified Customs declaration in their commercial records at the time of import, with resource also being required to enforce this exclusion. This resource will mostly take the form of HMRC staff being re-directed from other work.

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 majority of business new to customs procedures, particularly small businesses that would otherwise would have had to make a full declaration, will now be able to make, or instruct their agents on their behalf to make, a simplified customs declaration in their commercial records at the time of import.

14. Monitoring & review

14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out above 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 Darryl Wall at HMRC Telephone: 03000 585977 or email: darryl.wall@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Matthew Sabourin, Deputy Director for Customs, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

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