EXPLANATORY MEMORANDUM TO

THE TAXATION (CROSS-BORDER TRADE) (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2021

2021 No. 697

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 extends the end date for the transitional Entry in Declarant's Records (EIDR) simplified customs declaration process ("delayed declarations"). Delayed declarations were introduced to ease Great Britain's business community into the new customs regime after the end of the transition period following the withdrawal of the United Kingdom (UK) from the European Union (EU).

2.2 Under delayed declarations, importers (or their agents) can make a simplified customs declaration in their commercial records at the time of, or before, import and delay providing the second part of the declaration (a transitional supplementary customs declaration) to HMRC no later than the end of a period specified by HMRC in a notice (currently 175 days from the date of importation). This facility may only be used to declare goods imported on or before 30 June 2021. This instrument extends the end date that this facility can be used from 30 June 2021 to 31 December 2021.

2.3 This instrument also extends the end date of mandatory postponed Value Added Tax (VAT) accounting, for VAT registered businesses making delayed declarations, from 30 June 2021 to 31 December 2021. Postponed VAT accounting requires import VAT to be accounted for on a VAT return for the accounting period in which the goods are imported.

2.4 This instrument also makes changes to the period in which operators or consignees, who import oil, gas and electricity through pipelines and cables (referred to as "fixed transport installations") must make a supplementary customs declaration in order to comply with the EIDR procedure. This is to provide additional time for these operators and consignees to become accustomed to the new customs processes for the goods imported through these installations.

2.5 This instrument also increases the value threshold above which goods exported outside the UK by post cannot be declared by conduct. "By conduct" in this regard means exporting goods outside the UK using the UK's postal service. The threshold has been increased from £900 to £1,000.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This instrument extends the use of delayed declarations and mandatory postponed VAT accounting in relation to non-controlled goods imported from the EU between 1 July 2021 and 31 December 2021. It makes no other changes to the delayed declarations process or postponed VAT accounting.

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)

3.2 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 United Kingdom.

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

4.3 The provisions of this instrument apply to movements into or out of Great Britain and Northern Ireland (where their application is 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 The legislative framework that allows traders and their agents to use delayed declarations is provided by the Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248).

6.2 The Customs (Transitional Arrangements) (EU Exit) Regulations 2020 (SI 2020/1088) ('transitional arrangements regulations') amended the Customs (Import Duty) (EU Exit) Regulations 2018 to introduce the transitional EIDR simplified customs declarations process. It is both these regulations which, together with the notices made under those regulations, allow traders (or their agent) to make a transitional simplified customs declaration in their internal commercial records and then submit a supplementary declaration to HMRC within 175 days from importation.

6.3 The transitional EIDR simplified customs declarations process applies to imports of non-controlled goods into free circulation within Great Britain (GB) from the EU.

6.4 The legislative framework for postponed VAT accounting is the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (SI 2019/60). The Value Added Tax (Miscellaneous and Transitional Provisions, Amendment and Revocation) (EU Exit) Regulations 2020 (SI 2020/1495) mandates the use of postponed VAT accounting where the transitional EIDR simplified customs declarations process is used.

6.5 The legislative framework for operators and consignees who import goods through fixed transport installations is at regulation 37B of the Customs (Import Duty) (EU

Exit) Regulations 2018. This provision was made by the Customs (Amendment) (EU Exit) Regulations 2020 (SI 2020/1552).

6.6 The legislative framework for goods exported by post to be declared by conduct is regulation 23 of the Customs (Export) (EU Exit) Regulations 2019 (SI 2019/108).

7. Policy background

What is being done and why?

7.1 Recognising the impact of coronavirus and the need to give businesses more time to prepare for the new customs regime after the UK's withdrawal from the EU, the government announced on 11 March 2021 that it was extending staged customs controls, which have been in place since 1 January 2021 and were due to end on 30 June 2021. As part of staged customs controls, traders importing non-controlled goods from the EU into GB can delay making a customs declaration for up to 175 days from import. This policy gives traders more time to prepare and the changes in this statutory instrument extend this facilitation to 31 December 2021. Delaying declarations remains optional for traders and no other changes are being made to the delayed declaration process.

7.2 This instrument gives importers more time to prepare for full customs declaration requirements from the beginning of 2022 onwards, allowing them to continue (if they so wish) delaying submitting supplementary declarations up to 175 days from importation for imports made until the end of 2021.

7.3 Traders will continue to be able to import goods under delayed declarations without being authorised but will need to be authorised (or hire an authorised agent) to submit their transitional supplementary declaration. This will continue to apply only to non-controlled goods (that is, goods that are not listed in a public notice on Gov.UK as controlled goods, such as alcohol or tobacco products or firearms) that are imported in the period from 1 January 2021 to the extended end date of 31 December 2021. The provisions of the instrument continue to relate to goods that were EU goods immediately before import. Deferring declarations for non-controlled EU goods gives importers who before the end of the transition period did not need to make a declaration, additional time to prepare for customs processes.

7.4 Under the transitional EIDR simplified customs declaration process a person will continue to be notified of their duty to pay any import duty owing (and any import VAT owing if they are not VAT registered) after they have submitted a supplementary declaration to HMRC. This includes during the extended period. Ordinarily, under customs simplified processes, 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 this facilitation is that where the declaration is made under the transitional EIDR simplified customs declaration process, there is no requirement for an importer to have such an account in place at that time. This instrument has extended this facilitation to the end of 2021. The importer will however need to ensure they (or an agent on their behalf) are authorised for simplified customs processes and have a duty deferment account in place before the supplementary declaration is due.

7.5 Certain traders are not allowed to use transitional EIDR simplified customs declaration process and are therefore unable to delay making supplementary declarations under this facility. HMRC can exclude any importers with a poor compliance history ("high risk traders") from being able to defer declarations. The statutory process for doing so is that HMRC writes 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. HMRC has a duty to publish a notice setting out the criteria for exclusion. High risk traders which have been notified of their exclusion will continue to be excluded from the transitional EIDR simplified declaration process during the extended period the facilitation applies.

7.6 In consequence of the extension of the transitional EIDR simplified declaration facilitation, the instrument also extends mandatory postponed VAT accounting, for VAT registered businesses using the facilitation, to 31 December 2021.

7.7 This instrument will also give traders who import goods through fixed transport installations more time to get used to the new customs processes that were introduced on 1 January 2021. This brings this change in line with the extension to delayed declarations.

7.8 This instrument will also increase the value threshold for "conduct" export declarations made by the Royal Mail Group (RMG). The previous threshold was £873, as the sterling equivalent to the EU's EUR 1,000 threshold. Legislation was laid in 2019 that set this to round up to £900. This measure will further raise the threshold to £1,000. This will provide a simpler figure for RMG to communicate to customers preparing to send goods abroad and enable more exports to benefit from reduced customs procedures. The increase will also better align with other UK trading rules. For example, it will mirror the UK's proof-of-origin de-minimis threshold under which imported goods are exempt from origin documentation requirements, used to determine the economic nationality of a good and resulting tariff rates.

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 relates to imports from the EU and extends an easement period which was introduced following the end of the transition period on 1 January 2021. Legislation relating to the new import and export regime between the EU and GB has been in force since the end of the transition period.

9. Consolidation

9.1 The provisions of this instrument amend the Customs (Import Duty) (EU Exit) Regulations 2018 and the Customs (Export Duty) (EU Exit) Regulations 2019 by extending a temporary easement period and increasing the value threshold above which goods exported by post cannot be declared by conduct. It is not possible to consolidate this legislation at this time as the pace of change following the end of the transition period has not sufficiently slowed to make this reasonably practicable.

10. Consultation outcome

10.1 No formal consultation has been held on this instrument due to time constraints. A virtual reading room on the draft instrument was conducted on 19 April 2021 with

members of the Joint Customs Consultative Committee, who expressed support for the proposals when discussing 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. A further reading room (including the VAT provision) was held on 4 June 2021.

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. Guidance on postponed VAT accounting can be found here: Check when you can account for import VAT on your VAT Return - GOV.UK (www.gov.uk)

11.2 All guidance is currently being reviewed and where necessary will be updated prior to the extension of the delayed declarations period.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies, some of whom may need more time to prepare to meet full customs requirements from 1 January 2022 onwards. Delayed declarations is also a temporary, optional facilitation that not all businesses may choose to use. The changes to the value threshold for goods exported by post will be simpler to understand and reduce some of the admin burden of exporting on trade. However, this is not expected to be a significant benefit as the majority of goods exported overseas by post or in a parcel have a value less than the existing threshold.

12.2 There is no, or no significant, impact on the public sector as much of the work to put certain processes and procedures in place to identify and exclude high risk traders from making simplified custom declaration and to end staged customs controls has been carried out. Resource will continue to be required to enforce this exclusion. This includes HMRC taking proactive steps to monitor and take action against non-compliance, including ensuring the accuracy of submitted declarations. 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 have had to make a full declaration, can now continue to make, or instruct their agents on their behalf to make, a simplified customs declaration in their commercial records at the time of import. Any that use fixed transport installations to import goods will also have a longer period to make a supplementary declaration for their goods.

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 Umar Hanif at HMRC Telephone: 03000 055 7228 or email: umar.hanif@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Phil Bower, Deputy Director for Customs, 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.