EXPLANATORY MEMORANDUM TO

THE TAXATION (CROSS-BORDER TRADE) (MISCELLANEOUS PROVISIONS) (EU EXIT) (NO. 2) REGULATIONS 2019

2019 No. 1346

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 ensure that, in the event of the United Kingdom (UK) leaving the European Union (EU) without a negotiated deal, the UK has a customs regime in place before exit day.

2.2 This instrument makes changes to legislation that has already been laid before the House of Commons. Matters covered in this instrument include: customs rules that apply for goods sent by post or where goods are imported but not unloaded from a vessel or aircraft; the requirements of international agreements concerning the temporary admission of goods and the use of certain documents (carnets) for customs purposes; the treatment of unaccompanied goods imported or exported by rail through St Pancras station; rules around the granting of certain customs approvals and the import duty measures available for the purposes of UK trade policy. This instrument also amends certain customs rules that relate to excise duty to ensure these operate as intended. Finally, this instrument also includes various minor and consequential updates to customs and Value Added Tax (VAT) legislation, in order that this legislation can apply as intended if the UK leaves the EU without a deal.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 Certain provisions in this instrument are to be made using the powers in sections 51 and 52 of the Taxation Cross-Border Trade Act 2018 (TCTA). Section 51 provides that the Treasury may make regulations they consider appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU and section 52 provides that a day may be appointed for such regulations to come into force. 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.

3.2 Although most provisions in this instrument come into force on a date to be appointed by regulations, provisions at regulation 2(1) and 2(16) to (18) in relation to authorisations and approvals granted by HMRC will come into force on the day after this instrument is laid. In addition, regulations 2(9), 9, 10 (1) and (3) make corrections to other legislation and will come into force on 31 October 2019.

3.3 The instrument is therefore being laid before the House of Commons fewer than 21 days before its provisions come into effect. The government considers that it is necessary to have these measures in place in time for the UK's exit from the EU, in order to ensure a comprehensive customs, VAT and excise legislative framework applies from exit day. In addition, early commencement of provisions concerning the granting of customs authorisations and approvals is appropriate to assist businesses in developing readiness to apply new customs rules from exit day. In other cases, the changes included within this instrument are a response to reviews of the existing no deal legislation and recent stakeholder engagement, and could not therefore have been made in earlier instruments.

3.4 TCTA includes the express power to sub-delegate, and in making provision for matters to be dealt with by reference to notices this instrument relies on section 32(8) of TCTA. This section 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. The section also includes a power to make provision by reference to things specified in a notice or other document published in accordance with the regulations.

3.5 As noted above, section 32(8) relates to regulations made under Part 1 of TCTA. Some provisions in the instrument are made under section 51 of TCTA which is in Part 5 of that Act. Section 51(3)(a) provides that regulations made under section 51 may include any such provision as might be made by Act of Parliament; this includes the powers of legislative sub-delegation.

3.6 Powers of sub-delegation are being used to set out by notice further detail in relation to some of the changes made in the instrument. This will include matters such as: details of payment arrangements or evidence requirements relevant to these changes; details of how information is to be provided to HMRC in certain circumstances and exceptions to certain requirements and obligations specified in the instrument. The notices and related reference documents will be published at https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal no later than the date on which the relevant provisions of the instrument come into force.

3.7 This instrument also corrects defects in the Customs (Import Duty) (EU Exit) Regulations 2018 (S.I. 2018/1248), the Customs (Special Procedures and Outward Processing) (EU Exit) Regulations 2018 (S.I. 2018/1249), the Customs Transit Procedures (EU Exit) Regulations 2018 (S.I. 2018/1258), the Wharves and Temporary Storage Facilities (Approval Condition and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1264), the Customs (Export) (EU Exit) Regulations 2019 (S.I. 2019/108), the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2049 (S.I. 2019/450) and the Taxation Cross-border Trade) (Miscellaneous Provisions) (EU Exit) Regulations 2019 (S.I. 2019/486) Consequently, it is being issued free of charge to all known recipients of those regulations.

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)

3.8 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 territorial application of this instrument is the whole of the United Kingdom.

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, Regulation (EU) No 952/2013 (UCC) is the overarching legislative framework for customs adhered to by all EU Member States. 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 themselves 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 Member States. The delegated regulation supplements certain 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; 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 after EU exit. Further details in relation to penalties are provided in the Customs (Contravention of a Relevant Rule) (Amendment) (EU Exit) Regulations 2003 (S.I. 2003/3113), as amended by this and other instruments.

6.3 The instrument makes a change to one VAT statutory instrument, the Value Added Tax (Section 55A) (Specified Services) Order 2019 (S.I. 2019/1015).This change is consequential on the change made by paragraph 55 of Schedule 8 to TCTA to section 55A of the Value Added Tax Act 1994 and is made under section 56(1) of TCTA.

7. Policy background

What is being done and why?

Goods sent by post

7.1 This instrument make changes to the customs requirements in relation to goods delivered by post. In particular, the instrument:

- Clarifies that special customs rules concerning customs declarations for postal items apply only to goods delivered by, or submitted to, a postal operator acting in accordance with the rules of the Universal Postal Convention (a 'universal service provider'). In the UK this postal operator will be Royal Mail.
- Establishes a 'postal transit procedure' for items posted outside the UK and transported through the UK by Royal Mail, for final delivery in another country.

The effect of these changes will be that no written or electronic declaration, or import duty, will be required for these items. The instrument also includes provision that will allow conditions of this postal transit procedure to be set out by public notice.

- Ensures that goods posted in the UK which pass through another country in the course of a delivery to a UK address can do so without being subject to export requirements that would usually apply for customs purposes.

International agreements concerning the temporary admission of goods

7.2 This instrument includes various changes to customs rules that implement arrangements set out in the Customs Convention on the ATA Carnet for the temporary admission of goods, and the Convention on Temporary Admission (Istanbul Convention). The ATA carnet is a document accepted for various customs purposes (for example, as a customs declaration) in all countries which are signatories to these Conventions.

7.3 In particular, the instrument:

- Makes provision for the use of carnets (as specified in the Conventions), as customs documents for the import or export of goods.
- Establishes arrangements under which non-postal goods moving across the UK accompanied by such a carnet will not be subject to import duty, under the UK transit procedure (a customs arrangement under which imported goods can be transported across the UK without import duty being chargeable).
- Sets out rules for the ending of these transit arrangements and the subsequent export of goods.

Presentation and goods that are not unloaded in the UK

7.4 This instrument provides that goods imported on vessels or aircraft but not unloaded in the UK will not be subject to the general requirement that imported goods must be presented to HMRC.

Amended import and export process for unaccompanied goods on trains at St Pancras Station

7.5 The instrument sets out special import and export arrangements for unaccompanied goods that are imported at or exported from St Pancras International train station by rail. For this purpose, 'unaccompanied goods' are, broadly, goods which are not accompanied by an individual during the train journey. Under these arrangements, importers of these goods will be required to submit a declaration to HMRC in respect of the goods, in advance of those goods being loaded on the train.

7.6 The instrument provides for a penalty if a train operator is not able to provide evidence on request that the advance declaration requirements have been complied with.

7.7 As these goods are usually time-sensitive goods and there is limited physical infrastructure at St Pancras station, this legislation will also allow traders until the end of the working day following the importation of goods to notify HMRC of the arrival of the goods in the UK.

7.8 This instrument also provides that where unaccompanied goods are exported on a train from St Pancras International train station there will be no requirement for these goods to be made available for examination by HMRC, and a notification of the

export of the goods will be deemed to have been given. These provisions do not apply in cases specified in a notice; or where an HMRC officer requires the goods to be made available for examination, or requires a notification of export to be given.

Approvals and authorisations

7.9 The instrument amends the general rules concerning the grant by HMRC of various authorisations and approvals available under customs legislation, including approval to use certain customs easements and facilitations. The change will allow HMRC to grant an approval (as specified in a notice) to any person, without requiring a formal application to be made by that person. The provision also includes consequential updates to reflect this change. The purpose is to provide flexibility for HMRC to make various customs simplifications and easements more accessible to businesses which could benefit from these arrangements.

Suspension of Anti-dumping Amount or Countervailing Amount

7.10 This instrument amends the Trade Remedies (Dumping and Subsidisation) (EU Exit) (Regulations) 2019 (S.I. 2019/450) to address the scenario where both a safeguard measure (measure put in place to protect UK industries from unforeseen surges in imports) and an anti-dumping and/or a countervailing (anti-subsidy) measure apply to the same goods. In that situation the Secretary of State for International Trade will issue a notice suspending the application of some or all of the anti-dumping and/or countervailing measure.

7.11 Where the safeguarding amount is equal to, or greater than, the anti-dumping and/or countervailing amount the whole of the anti-dumping and/or countervailing amount will be suspended. Where the safeguarding amount is smaller than the anti-dumping and/or countervailing amount a portion of the anti-dumping and/or countervailing amount equal to the safeguarding amount will be suspended. At the time that the goods are no longer subject to both a safeguard measure and an anti-dumping and/or a countervailing measure, the Secretary of State must revoke the suspension.

Approvals of premises as temporary storage facilities or wharves

7.12 HMRC approval is required before premises can be used as a temporary storage facility or a wharf for customs purposes. Certain approvals of these facilities that are in place on exit day were to automatically expire two years after that day. The instrument removes the automatic expiry of these authorisations. This automatic expiry is unnecessarily burdensome for operators of these facilities and HMRC, especially given that any such approval remains subject to the satisfaction of ongoing conditions and requirements, which can be reviewed and varied as necessary by HMRC.

Other miscellaneous amendments

7.13 This instrument makes other minor and technical amendments to customs and VAT legislation to provide additional clarity, address avoidance risks, correct errors or fix gaps, or make consequential amendments due to changes elsewhere. For example, this instrument:

- Provides for exceptions to the general requirement that HMRC should be notified by the exporter or another person when goods have been exported. These exceptions will be specified in a notice.

- Makes provision relevant to the control of goods by HMRC during consideration of a claim for remission or repayment of import duty in relation to those goods.
- Ensures certain simplified customs arrangements cannot be used to declare excise goods in cases where excise duty will be suspended on import.
- Clarifies that duty free excise goods bought in UK export shops that are exported by travellers in their personal baggage will be treated as chargeable goods for import duty purposes if those goods are brought back into the UK.
- Simplifies requirements concerning the travel document required so that domestic goods moving between two locations in the UK can retain their customs status, even if they pass through another country during the journey.
- Makes the use of the simplified declaration process for goods subject to excise duty conditional on a person having an appropriate excise duty payment arrangement in place, details of which will be specified in a notice.
- Makes a consequential amendment to the Value Added Tax (Section 55A) (Specified Services) Order 2019, which imposes an obligation on the recipient of certain supplies to account for the VAT on them.

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 is part of the legislation necessary to ensure that, in the event of the UK leaving the EU without a deal, the UK has a customs regime in place before the date of departure.

9. Consolidation

9.1 There are no plans to consolidate the amendments at this time.

10. Consultation outcome

10.1 As the purpose of this instrument is to ensure that customs rules and other legislation operates as required on exit day, no formal consultation has been carried out.

11. Guidance

11.1 The guidance available at https://www.gov.uk/government/collections/trading-with-the-eu-if-the-uk-leaves-without-a-deal will be updated no later than the dates on which the changes covered in this instrument come into force.

12. Impact

12.1 The impact on business, charities and voluntary bodies is that it introduces a number of administrative easements to customs obligations introduced through previously laid EU Exit legislation. It also clarifies rules to ensure these operate as intended if the UK leaves the EU without a deal.

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

12.3 This instrument will be covered by an overarching HMRC impact assessment (third edition) which will be published and available on the website at

https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal.

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 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 no specific action is proposed to minimise impacts where legislation introduces equivalent rules and obligations to those which currently apply to goods imported from outside the EU.

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 clause is not included within this instrument because to the extent that it makes or amends regulatory provision in relation to any qualifying activity it does so in connection with a duty or tax. It 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 Stephanie Canonier at HMRC, telephone: 03000 558586 or email: stephanie.canonier@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Charlotte Axson, Deputy Director for Customs EU Exit Policy HMRC, can confirm that this Explanatory Memorandum meets the required standard.

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