

## EXPLANATORY MEMORANDUM TO

### THE CUSTOMS (AMENDMENT) (EU EXIT) REGULATIONS 2022

2022 No. 109

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) 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 amends customs legislation applying to the movement of goods and vehicles from Northern Ireland to Great Britain and from Great Britain to Northern Ireland to:
  - ensure that HMRC can exercise enforcement powers when goods are removed from Northern Ireland to Great Britain.
  - remove a customs procedure from applying in the case of goods that are removed from Great Britain to Northern Ireland.
- 2.2 The instrument clarifies and updates legislation which enables HMRC to require a security (including a guarantee) to be given as a condition of releasing imported goods from customs control in cases where:
  - HMRC suspects that the information on a customs declaration may be incorrect, and this has resulted in less import or excise duty being paid than is properly due, including as a result of suspected fraud, and
  - HMRC needs time to fully verify the facts and the true amount of duty payable.
- 2.3 The instrument also provides for new review and appeal rights to apply in such cases.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 The instrument amends the Customs and Excise Management Act 1979 (CEMA), Finance Act 1994 (FA 1994), Finance Act 1981 (FA 1981) and the Taxation (Cross-Border Trade) Act 2018 (TCTA). The power used for this instrument is at section 51(1) of TCTA. Section 51(3)(a) of TCTA provides the power for regulations made under section 51(1) to make any such provision as might be made by an Act of Parliament (including amendment to primary legislation).

#### 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.

## **5. European Convention on Human Rights**

5.1 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of the Customs (Amendment) (EU Exit) Regulations 2022 are compatible with the Convention rights.”

## **6. Legislative Context**

6.1 The Finance Act 2016, Section 126 (Appointed Day), the Taxation (Cross-border Trade) Act 2018 (Appointed Day No. 8, Transition and Saving Provisions) and the Taxation (Post-transition Period) Act 2020 (Appointed Day No. 1) (EU Exit) Regulations 2020 (SI 2020/1642) (the commencement regulations) commenced the majority of the provisions in TCTA and the Taxation (Post-transition Period) Act 2020 (TPPA) at the end of the transition period.

6.2 The commencement of TPPA introduced new duties of customs in sections 30A (importation of goods: Northern Ireland), 30C (duty on potentially imported goods) and 40A (removal to Northern Ireland of ‘at risk’ goods etc) of TCTA. TPPA also introduced a new Part 4 of Schedule 7 to TCTA – which included provision to ensure that, where appropriate, CEMA provisions could apply to the movement of goods, people and vehicles between Great Britain and Northern Ireland.

6.3 The commencement regulations commenced Schedule 7 to TCTA excluding paragraph 90 (repeal of section 119 of CEMA).

6.4 Paragraph 1 of Schedule 7 disapplied direct European Union (EU) legislation (EU legislation saved by the European Union (Withdrawal) Act 2018) which imposed or otherwise applies in relation to any EU customs duty. In relation to customs duty matters, direct EU legislation has been replaced by provisions made by and under TCTA.

6.5 These TCTA provisions are supplemented by other domestic legislation, which previously applied alongside direct EU legislation, but have now been modified and amended by the remaining paragraphs of Schedule 7 to be consistent with the operation of TCTA. This includes CEMA (concerning requirements in relation to the import and export of goods) and FA 1994 (concerning reviews and appeals), which are amended by this instrument.

6.6 Paragraph 90 of Schedule 7 to TCTA was not commenced in order to retain section 119 of CEMA so that HMRC could continue to allow goods to enter free circulation on the provision of security while investigations are being conducted in relation to the correct amount of duty owed. This section had fallen into disuse as direct EU legislation provided an equivalent power in Article 244 of Commission Implementing Regulation No 2015/2447. However, paragraph 1 of Schedule 7 to TCTA would disapply Article 244 from the end of the transition period, and in the absence of EU provision, section 119 would continue to be needed.

## 7. Policy background

### *What is being done and why?*

#### *Movement of goods and vehicles from Northern Ireland to Great Britain and from Great Britain to Northern Ireland*

- 7.1 This instrument amends section 63 and modifies the application of sections 36 and 67 of CEMA (by amending paragraph 158 of Schedule 7 to TCTA) to address further cases where CEMA provisions are required to apply to the movement of goods and vehicles from Northern Ireland to Great Britain which were identified after the end of the transition period.
- 7.2 The amendment to section 63 of CEMA removes a potential information requirement in the case of goods being transported by ship from Great Britain to Northern Ireland. The change ensures that the legislation reflects current customs processes. The modification of sections 36 and 67 of CEMA ensures that enforcement powers that apply to goods imported into the United Kingdom (UK) can also apply to goods removed from Northern Ireland to Great Britain. The changes made in this instrument do not impact on the unfettered access of qualifying Northern Ireland goods that move to the rest of the UK.

#### *Securities for additional duty that may be due*

- 7.3 The legislation also amends section 119 of CEMA so that the terminology in that section is consistent with the terminology in TCTA and removes sub-sections which are no longer required following previous amendments to CEMA (in particular, those made by Part III of Schedule 26 to FA 1994).
- 7.4 Section 119 of CEMA enables HMRC to require security (including a guarantee) as a condition of releasing imported goods from customs control in circumstances where the facts on a customs declaration cannot be verified at the time the declaration is accepted.
- 7.5 The process of verifying the facts can take a significant period, and if HMRC retain the goods for this long they may become commercially worthless to the trader and create storage capacity problems for HMRC and associated costs. It is therefore in both parties' interest to instead allow release of the goods from customs control on provision of a security to cover any additional duty amount that may be due in respect of the goods.
- 7.6 This instrument also updates section 119 of CEMA to take account of broader legislative changes in relation to customs duty, but these changes do not change the scope of how and when a security may be required by HMRC.
- 7.7 The instrument amends FA 1994 to ensure that there are appropriate review and appeal rights available in relation to any HMRC decision to require a security under section 119 of CEMA.
- 7.8 The instrument also omits previous amendments intended to be made to section 119 of CEMA by FA 1981 and TCTA, which have not been given effect. The changes to section of 119 CEMA made by this instrument supersede these earlier proposed amendments.

## **8. European Union Withdrawal and Future Relationship**

- 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 concerns the continuation of a policy that applied prior to the United Kingdom's exit from the EU, and the end of the transition period following that exit.

## **9. Consolidation**

- 9.1 The instrument only amends primary legislation. Therefore, consolidation is not appropriate.

## **10. Consultation outcome**

- 10.1 As the purpose of this instrument is broadly to clarify and update rules that currently apply in the UK, without introducing any new burdens or requirements for businesses, no formal consultation was carried out.
- 10.2 A virtual reading room on the full draft instrument was conducted on 4 February 2022 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. The attending stakeholders supported the changes introduced by this instrument.

## **11. Guidance**

- 11.1 There is already guidance on appealing a HMRC decision at <https://www.gov.uk/tax-appeals>. Guidance related to the CEMA changes will be updated.

## **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 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 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 this instrument is not expected to impose any new burdens or requirements for small businesses.

## **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 The instrument 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 Pete Robinson at HMRC, [peter.w.robinson@hmrc.gov.uk](mailto:peter.w.robinson@hmrc.gov.uk), can be contacted with any queries regarding the changes instrument relating to securities for additional duties.

15.2 Carol Dicker at HMRC, [carol.dicker@hmrc.gov.uk](mailto:carol.dicker@hmrc.gov.uk), can be contacted with any queries regarding the other changes made by this instrument.

15.3 Sally Beggs, Deputy Director Customs Policy, Customs & Border Design at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.