

# **TAXATION (CROSS-BORDER TRADE) BILL**

## **Delegated Powers Note**

This note has been prepared to assist with scrutiny of the Taxation (Cross-border Trade) Bill (“the Bill”). It identifies the provisions of the Bill that confer powers to make delegated legislation and explains, in each case, why the power has been taken and the proposed parliamentary scrutiny procedure.

This note reflects the Bill as introduced to the House of Commons on 20 November 2017.

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## **SUMMARY OF THE BILL**

1. The government's approach is to ensure that legislation is in place to establish a standalone UK customs regime, which will include the facility to vary the amount of import duty, including provision as to how it may be varied in prescribed circumstances. The legislation will also provide for changes to the VAT and excise regimes so that they can operate as required upon exit from the EU.
2. The Bill makes legislative changes and provides sufficient powers to address a contingency scenario if the UK leaves the EU without a negotiated agreement, and contains powers (or amends existing ones) that will allow the government to give effect to a range of negotiated outcomes. This will give the government the ability to ensure that the UK withdraws from the EU in a smooth and orderly way.
3. To these ends, the Bill creates a new legislative framework for customs, and amends primary legislation for VAT and excise. It also contains powers to provide for the detail of the new customs regime, for changes to the domestic excise regime for goods, and for dealing with particular aspects of the VAT regime. Moreover, it contains a power to make appropriate provision in consequence of or otherwise in connection with withdrawal for all three regimes.
4. In particular, for customs, the Bill provides for (where appropriate):
  - a charge to import duty, which will be chargeable on the importation of non-domestic goods;
  - the rate of duty, the circumstances under which it might be increased or decreased (including in connection with trade remedies), and when it will become due;
  - the collection, administration and enforcement of import duty;
  - the UK to give effect to an arrangement establishing a customs union with other territories; and
  - a power to impose a charge to export duty on goods exported from the UK.
5. The Bill will also:
  - abolish acquisition VAT, extend the application of import VAT and amend the Value Added Tax Act 1994 (VATA) and other enactments in relation to VAT in consequence of or otherwise in connection with the UK's withdrawal from the EU and other changes made by the Bill;
  - amend enactments relating to excise duty on goods in consequence of or otherwise in connection with the UK's withdrawal from the EU and other changes made by the Bill;

- confer a new general regulation-making power upon HM Revenue and Customs (HMRC) in relation to excise duties on goods;
  - allow the Treasury to make appropriate provision relating to VAT, excise and customs in consequence of, or in connection with, the withdrawal of the UK from the EU;
  - include a standard power to make consequential provision including transitional, transitory provision and savings; and
  - amplify existing powers to make subordinate legislation to permit supplementary, incidental or consequential provision and transitional or transitory provision or savings to be made, and create a new power to commence subordinate legislation by commencement regulations. In both cases, the powers are exercisable where it is appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU.
6. For indirect tax matters, it is common to have framework primary legislation supplemented by secondary legislation. This is because indirect taxes are transaction or event based and therefore each regime needs to have the ability to cater for many different circumstances and respond quickly to administrative, technical and operational developments. The required level of technical detail can also make secondary legislation more appropriate.
  7. Specifically in relation to customs, it is necessary for the tax base (the “customs tariff”, which sets out the rates of duty applicable) to be set out in secondary legislation – not only because it is subject to regular change, but also because of its length and complexity. The EU tariff, for example, contains a list of more than 17,000 different goods and, when other variations are taken into account (e.g. preferences), approximately 500,000 different codes (which are required for Customs declarations). Making additional provision in relation to the collection, administration and enforcement of customs duty in secondary legislation will ensure that the regime is able to adapt in response to future developments, for example international agreements (including any withdrawal agreement), or changes in trader behaviour and compliance.
  8. The majority of the regulation-making powers in the Bill are in Part 1 (import duty) and, for the most part, deal with specific aspects of the standalone customs regime. The Bill has been drafted in such a way as to ensure that these powers are proportionate to the amount of secondary legislation required to establish this regime. They are intended to work together as a single set of arrangements to enable the Treasury, the Secretary of State and HMRC to effectively administer and, where appropriate, charge appropriate import duties. Accordingly, none of the powers should be seen in isolation; rather, each relates to specific areas of a single regime, and all are required to ensure that that regime can be operated effectively.
  9. The excise duty regimes are already substantially provided for in secondary legislation (for the same reasons as given above), and this includes much of the excise legislation that will need to be updated to take account of the UK’s exit from the EU. Therefore, in relation to excise the government

considers it to be necessary and appropriate for provision relating to the UK's exit from the EU to be made through amendments to existing secondary legislation and through supplementary secondary legislation. The new powers conferred by the Bill are necessary to supplement existing delegated powers in order to provide the government with the ability to cater for a range of options and to respond to potential excise matters arising from EU exit, including to give effect to agreements that relate to excise with both the EU and others.

10. In relation to VAT, the Bill primarily amends existing delegated powers to take account of the UK's exit from the EU and of other changes made by the Bill. To the extent that the Bill does make provision for new regulation-making powers, this is to supplement the powers in VATA to deal with circumstances where the application of existing rules may be inappropriate, and is in keeping with the approach that that Act takes towards delegated legislation. As with excise, it is necessary to ensure that the UK has the ability to make provision in relation to the UK's withdrawal from the EU, including to give effect to agreements that relate to VAT with both the EU and others.
11. The powers in this Bill relate to taxation and therefore all of the parliamentary procedures set out are for the House of Commons only. Where the Bill makes provision for new powers to be inserted into existing Acts, it is proposed that these powers will be subject to the procedure applicable to powers in those Acts and, where certain excise powers in other Acts are combined with excise powers in the Bill, the procedure in the Bill will apply to the regulations.
12. To illustrate how the powers in the Bill might be used, this letter includes examples. However, the content of these examples should not be treated or interpreted as settled government policy; in particular policy areas decisions might not yet have been taken as to how the powers will be exercised, given the unknown outcome of negotiations with the EU. The Bill has, nevertheless, been drafted in such a way that it avoids taking unnecessarily broad powers.

**Powers relating to the administration, collection and enforcement of customs duty, VAT and excise (Parts 1, 2, 3 and 4 and Schedules 1, 2, 3, 4, 5, 6, 7, 8 and 9)**

13. Customs duty: The powers in Parts 1 (import duty) and 2 (export duty) and Schedules 1, 2, 3, 4, 5, 6 and 7 of the Bill are necessary to establish a standalone UK customs regime. This includes:
  - establishing a customs tariff setting out the standard rate of duty;
  - provision concerned with customs administration, including quotas, reliefs and suspensive customs procedures;
  - preferential rates for developing countries, or required by specific trade arrangements; and

- additional import duty to address injury to domestic industry and respond to international disputes.
14. These powers will enable regulations and, in certain circumstances, public notices to set out any liability to import duty and allow for the administration, collection and enforcement of customs duty and reconsideration and appeals of trade remedy decisions. The government does not consider that it is appropriate to set out the detail which is to be contained in these regulations (or public notices) on the face of the Bill, for the following reasons:
- the provisions will be lengthy as they will need to cater for many different circumstances. For example, currently the Union Customs Code is supported by 843 pages of subordinate legislation and contains over 80 distinct regulation-making powers
  - the provisions will be technical and detailed in nature. For example, regulations in relation to the conversion of currency into sterling for the purpose of calculating the value of goods, or the stipulation of the precise requirements of a Customs declaration;
  - there will need to be frequent changes to adapt rules and processes to reflect future developments in international arrangements, or changes in trader behaviour and compliance – even when the overall framework remains the same. For example, the EU has found it necessary to amend its preference scheme for developing countries as often as twice a year through delegated acts;
  - the precise content of some of these provisions cannot be known until the terms of the UK's withdrawal from the EU are established; and
  - much of the detail within the secondary legislation will be administratively or operationally focused.
15. The powers in the Bill are exercisable, variously, by the Treasury (either unilaterally, or on or with regard to recommendation by the Secretary of State), the Secretary of State or HMRC. The office-holders upon whom the powers are conferred in all cases reflect the nature of the power. The conferral of powers to implement policy reflects ministerial priorities and the cross-Government approach required for the complex operation of producing a UK tariff regime in its entirety, whereas powers relating to the administration of customs, VAT and excise are reserved for HMRC.
16. Any power in Part 1 (import duty) for HMRC to make regulations may be exercised by the Treasury (clause 32(12)). This flexibility could be used to combine together in one statutory instrument provision made by the Treasury with provision that would otherwise have to be made by HMRC in a separate statutory instrument. It may be appropriate to do this when the provision relates to substantially the same thing or for early regulations setting out most or all of the detail of the new regime.

17. VAT: The Bill amends existing powers and introduces two new powers (in Schedule 8). These powers are required to enable HMRC and the Treasury to make the necessary provisions to ensure that the VAT regime functions effectively and HMRC is able to collect the tax due. It would not be appropriate to make this provision on the face of the Bill because the detail of what will be required cannot be known until the terms of the UK's withdrawal from the EU are established. Taking a power to make the appropriate rules in regulations and the amendment of existing powers will allow the relevant rules to be set out in legislation in an appropriate and timely way. In addition, this approach will give the UK the ability to respond to any future international arrangements.
18. Excise: The Bill introduces new powers that relate to excise duty on goods (in Part 4 and Schedule 9). Where possible, the government expects to use existing powers to make provision that will enable the excise regimes to function as required after the UK's withdrawal from the EU. However, the excise powers in the Bill are required to supplement these existing powers so as to ensure that HMRC has the ability to cater for a range of scenarios, and ensure the regime functions as required on EU exit. It would not be appropriate or proportionate to make this provision on the face of the Bill primarily because the affected areas of the excise regime are predominantly in secondary legislation, and this is consistent with the approach taken across the body of excise duty legislation. The reasons given above in relation to customs and VAT provisions also apply to excise, namely that the content of these regulations cannot be known in full until the terms of the UK's withdrawal from the EU are established, and that this approach will give the UK the ability to respond to any future international arrangements on excise. The powers are appropriately limited as they can only be used to make provision in relation to excise duty on goods (alcohol, tobacco and fuels), which is where excise is most affected by EU exit.

### **EU exit powers (clauses 42(2) and (5), 47, 51 and 52(2))**

19. The consequences of, or matters in connection with, the UK's withdrawal from the EU are, in several respects, unknown. This includes the outcome of the continuing negotiations between the UK and the EU over the terms of withdrawal – the nature, extent and timing of which cannot be predicted. These powers, which will allow the Treasury (or in some cases the Secretary of State) to amend the UK's domestic legislation for customs, VAT and excise, ensure that the UK has the ability to deal with a range of possible consequences in order to maintain fully functioning customs, VAT and excise regimes.
20. Retained direct EU legislation relating to customs, and EU regulations in the case of VAT and excise (preserved by clause 3 of the EU (Withdrawal) Bill (EUWB)), will cease to have effect by virtue of the Bill (clauses 42, 47 and Schedule 7 (Part 1)), and, in the case of customs, rights and obligations which were part of the law before exit (preserved by clause 4 of the EUWB) will also cease to have effect (Schedule 7 (Part 1)). However, depending on the arrangements for the UK's withdrawal from the EU, the UK may want to replicate or apply specific provisions with or without modifications. The

power in clause 51, as well as, in the case of excise, the power in clause 45, could be used for this purpose.

21. In relation to VAT and excise, other EU rights, such as directly effective Treaty rights and obligations (preserved in domestic law by clause 4 of the EUWB) continue to be recognised and available in domestic law after withdrawal. Some such rights and obligations will no longer be appropriate and an agreement with the EU may require modification of Treaty provisions. The powers in clause 42(2) and clause 47(2) will allow the Treasury to carve out or modify these provisions for VAT and excise respectively.
22. Similarly, in the case of VAT where the Principal VAT Directive will remain relevant for the interpretation of VAT legislation, the power in clause 42(5) will allow the Treasury to exclude provisions of an EU interpretive regulation which is used to interpret the Directive, as those may no longer be appropriate.
23. Finally in relation to EU exit, the Bill confers a power to commence subordinate legislation relating to customs, VAT or excise made in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU by commencement regulations, in cases where the subordinate legislation provides that it can come into force by regulations on such day as the Treasury may appoint. This is an appropriate approach given the large amount of subordinate legislation required.

#### **Amendments to existing powers (Schedules 7, 8, 9 and clause 52)**

24. The operability of the customs, VAT and excise regimes following EU exit will continue to be reliant on provision made in existing legislation, such as the Customs and Excise Management Act 1979 (CEMA) and VATA. This existing legislation needs to be amended to reflect changes made by the Bill and the withdrawal of the UK from the EU. These amendments are made in Schedules 7, 8 and 9 of the Bill. Existing legislation contains a large number of powers for the Treasury and HMRC to make subordinate legislation in relation to VAT, customs and excise, and therefore some of the amendments required are to those existing powers. For example, Schedule 8 makes numerous consequential changes to the VATA powers to reflect the fact that the UK will no longer be part of the EU Single Market and that the Bill abolishes acquisition VAT in consequence. It thus makes changes to the power in s24(5) VATA in relation to the recovery of input tax to remove references to acquisitions.
25. In addition, existing powers are amplified by clause 52(5). Some of the existing powers already contain standard provisions conferring the power to make supplementary, incidental, consequential, transitional, transitory provision or savings. Some, however, do not. This clause amplifies those existing powers to permit such provision to be made, if the person exercising the power considers it appropriate to do so, in consequence of, or otherwise in connection with, withdrawal of the UK from the EU. This amendment provides flexibility in the exercise of existing powers to deal with withdrawal

of the UK from the EU – for example, to make provision dealing with transactions or movements of goods that span exit day. An example is the power in section 39 VATA. This amplification of that power could be used to make transitional provisions in dealing with the transition for EU businesses from one system for reclaiming VAT incurred in the UK to another one, depending on the outcome of the negotiations with the EU.

### **Consequential, transitional, transitory, savings and commencement provisions (Part 6)**

26. Clause 54(1) contains a power for the Treasury (or, in the case of trade remedies, the Treasury or the Secretary of State) to make such consequential provisions (and transitional or transitory provision and savings) as they consider appropriate in consequence of the Bill. It is conventional for a Bill containing substantial changes to existing regimes – or an entirely new regime – to contain such a power. The need for one here is that much greater in the context of the UK's withdrawal from the EU. In particular, as negotiations between the UK and the EU over the terms of withdrawal are continuing, the nature, extent and timing of consequential and transitional changes cannot be predicted. It is necessary to allow other domestic legislation (including primary legislation) relating to customs, VAT and excise to be amended at a future date to reflect the consequential and transitional provisions that may be needed as a result of the terms of the UK's withdrawal from the EU. For example, authorisations for customs warehousing, granted prior to the UK's withdrawal from the EU, would need to be able to continue during any transitional period. Similarly clause 54(4) contains a power for the Treasury, or where appropriate the Secretary of State, to make transitional, transitory or saving provisions appropriate in connection with the coming into force of any provision of the Bill.
27. Clause 55 contains a conventional power for the Treasury or, when exercised in connection with certain specific areas, the Secretary of State, to bring provisions of the Bill into force by commencement regulations. Different provisions of the Bill may be brought into force on different days for different purposes or areas. This is necessary as negotiation outcomes will affect whether and when provisions may need to be commenced.

### **Parliamentary scrutiny procedures**

28. The government must be ready to respond to all eventualities as it negotiates the terms of the UK's withdrawal from the EU. Whatever agreements are reached, the government also recognises the importance of ensuring appropriate scrutiny by Parliament, as part of delivering functioning customs, VAT and excise regimes post-withdrawal.
29. The proposed scrutiny procedures for the powers in the Bill are set out in the following clauses:

Clause 32 and 52(3)	In relation to powers in Part 1 and Schedules 1, 2 and 6
Clause 40 and 52(3)	In relation to the power in clause 39 (Part 2)
Clause 42 and 52(3)	In relation to the powers in clause 42(2) and (5) (Part 3)
Clause 48 and 52(3)	In relation to the powers in clauses 44, 45, 46 and 47 (Part 4)
Clause 51 and 52(3)	In relation to the power in clause 51 (Part 5)
Clause 54 and 52(3)	In relation to the powers in clause 54(1) (Part 6)

30. In order to ensure that the scrutiny applied to the exercise of delegated powers is proportionate to the public interest and the challenges associated with implementing the terms of the UK's withdrawal from the EU (as far as they relate to customs, VAT and excise), the Bill provides, variously, for the application of the draft affirmative, made affirmative and negative procedures.
31. The **draft affirmative procedure** must be used before the power in clause 31(4) can be exercised to give effect to arrangements between HM Government and the government of country or territory outside the UK ("non-UK territory") for a customs union. It is right that Parliament should have the option to consider such an arrangement before it takes effect. While regulations to carry out a customs union arrangement (clause 31(5)) will be subject to the negative procedure, they cannot be made unless the arrangement has been given effect following the draft affirmative procedure.
32. The **made affirmative procedure** will be used in all but one case (see Schedule 3 paragraph 2(1)) where regulations amend an Act of Parliament (provision which could be made pursuant to clauses 45, 51 and 54(1)), for the first regulations containing the UK customs tariff (clause 8), the first regulations making provision in relation to export duty (clause 39), and any other regulations made pursuant to clauses 8 and 39 that would increase the amount of import/export duty payable. Any regulations made pursuant to clause 45 which restrict any rebate of or relief from excise duty, extend the descriptions of goods on which excise duty is chargeable, or extend the cases in which stamping or marking of goods is required would also be subject to the made affirmative procedure.
33. The House of Commons should be asked to expressly approve the first UK customs tariff and any introduction of export duty. The application of the made affirmative procedure will allow the government to give effect to legislation on these matters immediately in order to ensure that there is not a gap in UK legislative provision (for example if the customs tariff needed to be amended swiftly to reflect a change in international trade). However, such legislation will cease to apply after a short period of time in the event that it does not obtain the express approval of the House of Commons.

34. Subordinate legislation subject to the made affirmative procedure must be approved by the end of a period of:

- 60 days from the date when any of its provisions come into force where provision is made for them to be commenced by regulations in accordance with clause 52(2); and
- 28 days from the date of making in relation to all other regulations.

35. A longer, 60-day period to approve regulations is included in the Bill in recognition of the inevitable pressure that Parliament will be under to approve regulations in connection with the UK's withdrawal from the EU around the time of exit day.

36. It is proposed that the **negative procedure** would be used where regulations make provision generally in relation to the collection, administration and enforcement of customs, VAT and excise. It is used for reductions in the rate of import duty (including preferences, relief and suspensions) and, in some circumstances, when the duty is increased through the application of additional duties (such as under clause 15 following a trade dispute), or the withdrawal of a preference/quota. Negative procedure will also apply to the reconsideration and appeal process of decisions relating to trade remedies. The negative procedure would apply unless a different procedure is required, owing to the content of regulations – as in the cases summarised above and below. The government believes that this procedure provides a sufficient level of parliamentary scrutiny, having regard to the frequency with which these regulations may be updated and the speed with which regulations may need to be updated, ensuring that parliamentary time is not unduly consumed by the passage of lengthy and technical regulations about how these tax regimes will be administered. Adopting the affirmative procedure for these types of regulations would produce impractical results. Where amendments are made to existing powers – for example by Schedule 8 in making amendments to the VAT regime – the parliamentary scrutiny procedure will be that contained in the existing legislation.

37. The powers in Schedule 3, paragraph 2 to update the list of developing countries that are eligible for preferential tariffs pursuant to a unilateral preference scheme allow for the use of regulations to later amend the primary legislation, and will be subject to the negative procedure. It should be noted that the approach taken here, to place the list of eligible countries in a schedule to the Bill, as opposed to specifying them in secondary legislation, is to increase the transparency of the unilateral preferences policy. These powers are intended to update the list of eligible countries to reflect changes in their economic characteristics, or a change in name. The changes in economic characteristics are, almost always<sup>1</sup>, reflected by a change in World Bank or United Nations classifications.

38. The change in name of a country offers a parallel situation to an inflation uprating, where the amendment to primary legislation involves no fresh

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<sup>1</sup> There may be some exceptions, e.g. countries with a population of less than 30,000 are not classified by the World Bank.

policy consideration and the negative procedure for such a power would be justified. Where an amendment is made to reflect changes in economic circumstances, the government considers that this also constitutes the type of change where the policy is predetermined in primary legislation and new primary legislation or an affirmative debate would be inappropriate. The Secretary of State may only add or remove a country from the list in accordance with the tests set out in paragraph 2(1) of Schedule 3 and, in doing so, must have regard to international classifications by the World Bank and United Nations. The economic position and classification of developing countries do not remain static and therefore the list must be updated regularly to remain accurate. The EU typically updates its country list once per year<sup>2</sup>. There is a risk that use of the affirmative procedure could result in delays due to pressures on parliamentary time.

39. **No parliamentary procedure** is applicable where a public notice is issued by HMRC. Such notices make provision that is purely technical or administrative in nature, may be subject to regular updating, may be based on external sources, and/or may need to be made swiftly to counter tax avoidance. The following provisions may be made by public notice:

- currency conversion (clause 18(3)): this is purely technical and administrative in nature, may be subject to regular updating and will be based on external sources.
- the establishment of a system for advance rulings on the tariff classification and origin of goods (clause 24(1)): this relates to how HMRC will receive and determine applications for advance rulings and is therefore purely administrative in nature.
- the time in advance of importation that a declaration must be made (Schedule 1, para 3(3)(b): this is purely administrative in nature, it may need to be amended to tackle avoidance and needs to be flexible to respond to international arrangements.
- arrangements for the submission of Customs declarations (Schedule 1, paragraph 4): this is purely administrative in nature.
- form of Customs declarations and how they are made (Schedule 1, paragraphs 5 and 6 ): this is purely administrative in nature.
- contents of and documents to accompany a declaration (Schedule 1, paragraphs 7 and 8): this is purely administrative in nature.
- prescribing satisfactory payment arrangements (Schedule 1, paragraph 17): this is purely administrative in nature.
- amendment or withdrawal of Customs declaration (Schedule 1 paragraph 16: this is administrative in nature.
- the discharge of special Customs procedures<sup>3</sup> (Schedule 2, paragraph 18(5)(b)).

40. In addition, no parliamentary procedure is applicable to the publication of notices giving effect to recommendations in relation to the imposition of

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<sup>2</sup> Reference elsewhere in this note to the EU Preferences scheme being updated more frequently than this reflect the fact it is also necessary to update the scheme to reflect other changes, e.g. to product tariffs.

<sup>3</sup> Special Customs procedures are for the purposes of this document henceforth referred to as “special procedures”.

trade remedies, specifically either the imposition of an additional amount of import duty or where the remedy takes the form of a tariff rate quota (or the variation, revocation or suspension of the application of such additional amounts or quotas). Clause 13 provides for such notices to have effect where the Secretary of State accepts recommendations to impose trade remedy measures as a response to the dumping of goods on the UK market, the subsidisation of goods being imported into the UK, or in response to a surge of imports.

41. A notice under clause 13 is triggered by the following paragraphs of schedule 4:

- paragraph 20 (Secretary of State's power to accept or reject a recommendation of the Trade Remedies Authority (TRA)<sup>4</sup>)
- paragraph 21 (Review of continuing application of an anti-dumping amount or a countervailing amount)
- paragraph 22 (Variation or revocation following an international dispute decision)
- paragraph 26 (Suspension of anti-dumping or anti-subsidy remedies).

42. A notice under clause 13 is triggered by the following paragraphs of Schedule 5:

- paragraph 13 (Secretary of State's power to accept or reject a recommendation of the TRA)
- paragraph 17 (Secretary of State's power to apply a definitive safeguarding amount)
- paragraph 18 (Secretary of State's power to subject goods to a tariff rate quota)
- paragraph 19 (Review of the continuing application of a definitive safeguarding amount or of a tariff rate quota)
- paragraph 20 (Variation or revocation following an international dispute decision)
- paragraph 22 (Suspension of safeguarding remedies).

43. The use of public notices to implement such measures in this way is consistent with the approach taken in other World Trade Organization (WTO) countries, such as New Zealand and Australia, and is in line with good practice internationally. Where the Secretary of State accepts a recommendation to impose an additional rate of import duty then that will be pursuant to the fair processes of the TRA (involving stakeholders). The TRA

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<sup>4</sup> The Trade Remedies Authority is an arm's length body, being established by provisions in the Trade Bill, that will conduct trade remedies investigations on an independent basis in order to inform recommendations to the Secretary of State.

will have in place a process to reconsider its recommendation on application, which allows basic administrative errors to be captured and resolved more quickly and cost-effectively. The TRA's decision may also be challenged by way of an appeal, as may the Secretary of State's acceptance or rejection of the TRA's recommendation. The Secretary of State may only reject a recommendation to impose measures if it is in the public interest to do so, and in such cases is obliged to set out to the House of Commons the reasons for rejecting the TRA's recommendation.

44. Provision that may be made by way of public notice under Part 1 (import duty) of the Bill may alternatively be made by way of regulations subject to the negative procedure (see clause 32(9)). This will allow provision that could be made by public notice to be combined with provision that could be made by regulations. It may be appropriate to do this where provision that could be made by one means and the other relate to the same area of the customs, VAT or excise regimes – for example Customs declarations. This would also, for the reasons set out at paragraph 16 above, allow provision which could be made by public notice to be included in regulations made by either HMRC or the Treasury.
45. As is usual with commencement powers, regulations made by the Treasury or Secretary of State under the clause 55 (commencement) will not be subject to any parliamentary procedure. This enables the provisions, which have been approved in principle by Parliament through the enactment of the Bill, to be brought into force at the appropriate time. For the same reason, regulations made under clause 52 commencing subordinate legislation will not be subject to any parliamentary scrutiny procedure. Similarly, as is usual, the transitional, transitory and saving provision that may be made in connection with the coming into force of any provision of the Act (clause 54(4)) are not subject to any parliamentary procedure.
46. In order to maintain a functioning excise regime once the UK leaves the EU, it is anticipated that clause 45 (and the other new excise powers in the Bill) will be used in conjunction with existing excise powers. For the most part, use of existing excise powers is subject to scrutiny by both Houses of Parliament, although a number of recent Acts introducing new excise powers have required Commons-only scrutiny in line with the broader convention on tax legislation. The Bill therefore includes a **specific procedure provision** to allow existing excise powers to be used with the new excise powers in Part 4, as well as the powers in clause 51 (withdrawal from the EU) and clause 54 (consequential and transitional provision) in certain cases.
47. If a statutory instrument contains an excise duty provision made under any of the above mentioned clauses and also excise duty provision under any other enactment, if the other enactment requires approval of both Houses, the parliamentary procedure provided for in the Bill applies, not the procedure in the other enactment. This would mean that statutory instruments relating to excise duty made using a combination of the powers in these clauses and existing powers would be scrutinised by the House of Commons only. The procedure provision does not apply where the other enactment requires the affirmative procedure.

48. This provision ensures the streamlining of procedures for statutory instruments needed to ensure the excise regime continues to function as required once the UK has left the EU. Without the ability to combine powers the number of statutory instruments needed would be substantially increased and this more fragmented approach would make the legislation less accessible for users. Commons-only scrutiny is appropriate and in line with the convention on tax legislation as the powers will be used for purely tax purposes.
49. The government will not rely on the powers in the Bill which bring this specific procedure rule into effect to make nugatory provision incidental to the main provisions in the regulations concerned in order to make the regulations subject to scrutiny by the House of Commons only, where otherwise they would be subject to scrutiny by both Houses.

## ANALYSIS OF DELEGATED POWERS BY CLAUSE

### Clause 8(1): The customs tariff

**Power conferred on:** *the Treasury (with regard to any recommendation about the rate made by the Secretary of State)*

**Power exercised by:** *Regulation made by statutory instrument*

**Parliamentary Procedure:** *Affirmative procedure for: (i) first regulations; and (ii) regulations increasing import duty payable. Regulations subject to the affirmative procedure must be approved by the end of a period of: (a) 60 days when provision is made for them to be commenced by regulations in accordance with clause 52(2); and (b) 28 days in relation to other regulations. Otherwise, the negative procedure would apply. Both affirmative and negative procedures are House of Commons only.*

#### *Context and purpose*

50. Clause 8 sets out the framework in primary legislation for establishing a customs tariff in secondary legislation. Trade policy is a matter for the Secretary of State, so when exercising the power to establish a customs tariff, the Treasury must have regard to any recommendation made to it by the Secretary of State in relation to the rate of import duty that ought to apply to goods under the customs tariff.
51. It is essential that the UK establishes its own customs tariff once it leaves the EU in order to determine the duty applicable to goods imported to the UK. This clause contains a power to establish and maintain in force a UK customs tariff. This will be the tax base for import duty and will determine the rate of import duty that will be applicable to the importation of non-domestic goods.
52. The customs tariff is an extremely detailed system which classifies goods, gives them a code that can be used in a Customs declaration, specifies the rate of import duty applicable to those goods and sets out rules for determining the amount of duty applicable to the goods. Goods may be classified by reference to very specific characteristics meaning that there are likely to be thousands of goods listed. All goods will be classified within the UK commodity nomenclature, and a rate of duty prescribed. The UK commodity nomenclature will be based on the nomenclature annexed to the International Convention on the Harmonized Commodity Description and Coding System (HS) issued under the auspices of the World Customs Organization (WCO), to which the UK is a signatory. There are currently over 17,000 individual commodity codes in the EU schedule.
53. The customs tariff is likely to be subject to regular amendment in response to future events, including, but not limited to, changes in trader behaviour, international trade, the development of new products etc.

#### *Justification for power*

54. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

55. For the reasons set out in paragraphs 32 and 33 above, it is proposed that the affirmative procedure will be used for first regulations making provision in relation to the customs tariff and subsequent regulations increasing the standard amount of duty payable, under clause 8. For the reasons set out in paragraph 36 above, it is proposed that all other regulations made pursuant to this power will be subject to the negative procedure.

**Clause 9(1): Preferential rates: arrangements with countries or territories outside UK**

***Power conferred on:*** *the Treasury on the recommendation of the Secretary of State*

***Power exercised by:*** *Regulation made by statutory instrument*

***Parliamentary Procedure:*** *Negative procedure (House of Commons only)*

*Context and purpose*

56. The power in clause 9(1) enables the UK to grant a preferential tariff rate to a non-UK territory where they have entered into an arrangement to that effect. The power in this clause obliges the Treasury to make regulations giving effect to any arrangements entered into by the government by amending the customs tariff or otherwise. Trade policy is a matter for the Secretary of State and so this power can only be exercised on the recommendation of the Secretary of State.

57. Examples of the use of this power include giving effect to any future trade arrangement with a non-UK territory, such as free trade agreements, or facilitating any arrangements to provide tariff free access to overseas territories.

*Justification for power*

58. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

59. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 10: Preferential rates given unilaterally**

***Power conferred on:*** the Secretary of State

***Power exercisable by:*** Regulations made by statutory instrument

***Parliamentary procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

60. Clause 10(1) provides the power for the Secretary of State to establish a trade preference scheme by regulation. Trade preferences to developing countries are provided on a unilateral basis and are aimed at supporting developing countries to trade. WTO rules require that such schemes have objective eligibility criteria.
61. The UK currently provides trade preferences under the EU's Generalised Scheme of Preferences (GSP) which establishes the basis for UK goods trade arrangements with around 70 developing countries. GSP is set by EU Regulation 978/2012. Preferences are also important for the competitiveness of UK businesses that import over £8bn a year under the scheme. They support UK supply chains, and mean consumers benefit from cheaper prices on a wider range of products.
62. Outside the EU, the UK will continue to provide trade preferences to developing countries, which may have conditions attached. However, if powers to establish a scheme are exercised, least developed countries (listed in Part 2 of Schedule 3, as a subset of eligible developing countries) must pay no import duty on all goods imported to the UK except arms and ammunition. Granting such access to least developed countries meets the aspiration set by the international community in the UN Sustainable Development Goals.
63. Clause 10(4) contains a power to specify the meaning of the term "arms and ammunition" in secondary legislation. The power is likely to be exercised so as to cross refer to provision that will be made under clause 8(1) establishing the customs tariff<sup>5</sup>. However, it is not possible to pre-empt regulations yet to be made under clause 8 powers.

### *Justification for powers*

64. These powers are necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

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<sup>5</sup> The term "arms and ammunition" appears in the World Customs Organization Combined Nomenclature – chapter 93 - ([http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/nomenclature/instruments-and-tools/hs-nomenclature-2017/2017/1993\\_2017e.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/nomenclature/instruments-and-tools/hs-nomenclature-2017/2017/1993_2017e.pdf?la=en)).

65. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

### **Clause 11(1): Quotas**

**Power conferred on:** *the Secretary of State in relation to a licensing or allocation system and, in relation to any other provision, the Treasury (with regard to any recommendation made by the Secretary of State)*

**Power exercised by:** *Regulation made by statutory instrument*

**Parliamentary Procedure:** *Negative procedure (House of Commons only)*

#### *Context and purpose*

66. The power in clause 11 allows for provision to be made by the Treasury, having regard to a recommendation of the Secretary of State, specifying the criteria of the quota, imposing conditions relating to the quota, determining the amount of import duty that applies to goods that are subject to a quota and dealing with any other relevant matter. Provision may also be made by the Secretary of State for a licensing or allocation system.

67. A quota is a set amount of goods that can be imported at a preferential rate of import duty. Quotas may be imposed where the UK is party to an arrangement with the government of a country or territory as part of the UK's schedule of concessions at the WTO, or where the Treasury otherwise considers that it is appropriate (for example, for the purpose of protecting national producers). Goods in excess of a quota are subject to the rate of import duty set out in the customs tariff in its standard form. This enables a limit to be placed on the quantity of goods that can be imported at a preferential rate.

#### *Justification for power*

68. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

69. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 12: Tariff suspension**

**Power conferred on:** *the Treasury (with regard to any recommendation made by the Secretary of State)*

**Power exercised by:** *Regulations made by statutory instrument*

**Parliamentary Procedure:** *Negative procedure (House of Commons only)*

### *Context and purpose*

70. Clause 12 contains a power for the Treasury to make provision for a lower rate of import duty than the rate specified in the customs tariff to be applied to the import of specified goods for a specified period of time. This will allow the UK to be able to react to future events as they occur, in order to prevent wider impact on the UK. Where, for example, there is insufficient availability of materials, this power allows for the reduction of the rate of import duty and therefore reducing additional costs to businesses and helping to keep them operating. Any person has the right to request a suspension of duty on a particular good in circumstances that will be defined by regulation. Trade policy is a matter for the Secretary of State, who will also receive the requests, so when exercising the power to introduce tariff suspensions the Treasury must have regard to any recommendation made to them by the Secretary of State.

71. Currently, EU tariff suspensions are designed to allow manufacturing industries within the EU to compete on equal terms with non-EU producers of specified goods. This is achieved by permitting the complete or partial suspension of import duties on components or raw materials for further processing which are not available, or are available but not in sufficient quantity, within the EU. Duty suspensions can also be granted for parts of goods which, on importation, do not require major modification and could be classed as finished products provided the added value of the assembly operation is sufficiently high.

72. It will be necessary for the UK to be able to adopt similar features in its customs regime, once the UK leaves the EU, in order to support UK producers.

### *Justification for power*

73. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

74. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 13: Dumping of goods, foreign subsidies and increases in imports**

***Power conferred on:*** the Secretary of State

***Power exercisable by:*** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

***Parliamentary procedure:*** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

75. Clause 13 introduces Schedule 4 (dumping and foreign subsidies causing injury to UK industry) and Schedule 5 (increased imports causing serious injury to UK producers). Schedules 4 and 5 contain a number of delegated powers further discussed below in this document.

76. Clause 13 empowers the Secretary of State to give effect to a recommendation of the TRA. Such a recommendation would be that a trade remedy should be put in place to address injury to domestic industry and balance the playing field between domestic industry and importers to the UK. Such a remedy would either be an increase to the import duty on goods or the creation of a tariff rate quota, under which some imports to the UK would be subject to a lower than standard rate of duty in relation to their goods, entitlement to that duty being determined by a quota calculated in accordance with Schedule 5.

77. The giving of a notice by the Secretary of State to apply a trade remedies measure is the last step in a process which involves detailed engagement with industry; which is undertaken by an independent, arm's length body, which conforms to international rules; which is subject to appeal; essential details of which will be notified to interested parties; and which accordingly involves the involvement of those affected in a transparent process subject to appeal. If, at the end of this process, the Secretary of State does not accept a recommendation of the TRA then they must present his reasoning to the House of Commons.

78. The process is independent, depends on facts, provides accountability for the decision makers, and allows participation from those affected and scrutiny by the House of Commons (and potential appellate scrutiny by a tribunal). Implementation through public notice is appropriate given the desirability of giving effect to approved recommendations immediately. The same logic applies to suspension, variation or revocation of such trade remedies by public notice (as provided for in clause 13 and in Schedules 4 and 5).

79. Clause 13(5) also contains a regulation-making power (subject to the negative resolution procedure) to make appropriate provision relating to the imposition of a quota as a trade remedy. The provision required is analogous to that sought by clause 11 above.

*Justification for power*

80. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

81. For the reasons set out in paragraph 43 above, it is proposed that regulations made pursuant to this power will not be subject to any parliamentary procedure.

## **Clause 14: Increases in imports or changes in price of agricultural goods**

**Power conferred on:** *the Treasury on recommendation of the Secretary of State*

**Power exercised by:** *Regulations made by statutory instrument*

**Parliamentary Procedure:** *Negative procedure (House of Commons only)*

### *Context and purpose*

82. Clause 14 would provide the Treasury with the power to make regulations applying an additional amount of import duty on agricultural goods. This power would only be exercisable on the recommendation of the Secretary of State. The regulations may, among other things, limit the duration and provide for the suspension of any increased import duty.
83. Article 5 of the WTO Agreement on Agriculture permits a WTO Member to invoke Special Agricultural Safeguards, in the form of additional import duty, to agricultural goods designated in the Member's WTO Goods Schedule where certain conditions are met.
84. Volume-based agricultural safeguards may be applied if the volume of imports of those goods exceeds a certain trigger level. Price-based agricultural safeguards may be applied if the import price of consignments of goods falls below a certain trigger price (price-based safeguards).
85. The regulations may also specify representative prices by formula and require an importer to provide a guarantee to cover potential liability for additional import duty if the representative price is below the applicable trigger price but the import price is higher than the representative price.

### *Justification for power*

86. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

87. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 15: International disputes etc**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative procedure (House of Commons only)*

### *Context and purpose*

88. The WTO dispute settlement mechanism is based on clearly defined rules contained in the Dispute Settlement Understanding. In the event of a trade dispute being determined by either an ad hoc independent panel or the Appellate Body, responding Member countries found to be in breach of their obligations under the WTO agreements must bring their measures into compliance with WTO law. If they do not do so within a reasonable period of time the parties can attempt to agree on compensation. Compensation may take the form of a reduction in the import duty on specified goods from the complaining country (although in practice any such reduction would have to be applied on a most-favoured nation basis). If the parties fail to agree compensation the complaining Member or Members may take retaliatory measures against the Member found to be in breach. These retaliatory measures typically involve imposing an additional rate of import duty on specified goods from that country to incentivise the respondent country to bring themselves into compliance.
89. Free trade agreements (FTAs) with third countries also frequently contain dispute settlement mechanisms of varying complexity, many of which follow similar procedures to those of the WTO. In particular, FTA dispute settlement mechanisms often result in a signatory being required to bring itself into compliance with the terms of the FTA, and often allow for retaliatory trade measures to be taken against the offending party if it does not do so and cannot agree appropriate compensation.
90. Authorisation to implement compensation or retaliation measures may also arise in a number of other specific contexts, including in relation to safeguard measures and modifications to WTO schedules.
91. The active administration of trade disputes and related enforcement measures are undertaken by the European Commission on behalf of the UK and its other Member States. Once the UK has left the EU it will need to be able to bring and defend WTO and FTA disputes and take action to enforce and respond to their rulings. This clause provides a power for the Secretary of State to make regulations imposing an additional rate of import duty on goods in accordance with international law in order to deal with a dispute or other issue between HM Government and the government of another territory.

### *Justification for power*

92. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the

detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

93. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

### **Clause 16(3): Value of chargeable goods**

***Power conferred on:*** *the Treasury*

***Power exercised by:*** *Regulation made by statutory instrument*

***Parliamentary Procedure:*** *Negative procedure (House of Commons only)*

#### *Context and purpose*

94. The WTO sets out international standards for the valuation of goods. The current EU regime also applies WTO principles, the UK will continue to do so. In most cases, the rate of import duty for goods entering the UK will be based on the transaction value of the goods. The transaction value is the amount paid (or payable) for the goods, including specified costs associated with importation. Importation costs include for example insurance and transport.

95. Clause 16 contains a power for the Treasury to make provision in regulations setting out the ways in which goods are to be valued, for the purposes of the calculation of import duty and the inclusion or exclusion of specific matters in the calculation.

96. In accordance with WTO principles this clause also allows for other methods or criteria for establishing value to be used in cases where a transaction value cannot be established, for example cases of suspected mis-declaration or sales between related parties.

#### *Justification for power*

97. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

98. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 17(6): Place of origin of chargeable goods**

***Power conferred on:*** *the Treasury on recommendation of the Secretary of State*

***Power exercised by:*** *Regulation made by statutory instrument*

***Parliamentary Procedure:*** *Negative procedure (House of Commons only)*

### *Context and purpose*

99. Clause 17 contains a power for the Treasury to make provision in regulations for determining the place of origin of goods and evidence required to show which territory goods have originated from. Trade policy, including preferences, is a matter for the Secretary of State and so this power can only be exercised on the recommendation of the Secretary of State.

100. It is necessary to determine the place of origin of imported goods for the purposes of international trade – for example, to ensure that preferential rates (as provided for in clauses 9 and 10) can only be applied to the goods that are intended to benefit from the preferential rate. When goods are imported under a preferential regime, they are deemed eligible for this regime only if they originate from the territory with which the preference arrangement exists. Goods obtained from more than one territory are considered to originate from the last territory where substantial processing takes place. This prevents the standard liability to import duty from being circumvented by, for example, imports made to the UK via a country with preferential status; there is consequently also a power for the Treasury to specify what constitutes processing.

101. Where the place of origin is subject to a preference, the Treasury may make regulations providing for the determination of the place of origin which differs from the general rules in the clause. The Treasury may also make regulations treating goods exported by or on behalf of approved persons as originating from a particular territory or allowing goods to be treated as from a particular territory only if they are exported by or on behalf of an approved person.

### *Justification for power*

102. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

103. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

### **Clause 18(3): Currency**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

#### *Context and purpose*

104. The nature of international trade means that values relevant to calculations of customs duties may be expressed in currencies other than sterling. In order to calculate import duty this clause provides that values in other currencies must be converted into its equivalent sterling value. Accordingly, clause 18(3) contains a power allowing HMRC to make provision for how conversions of currency to sterling is made.

#### *Justification for power*

105. This power is necessary to allow the standalone UK customs regime to have relevant values expressed in sterling. The conversion of sterling will have to be based on exchange rates which are constantly varying. It will therefore be necessary for HMRC to periodically publish exchange rates to be utilised for conversion and specify how conversions are to be made. As such it is considered that it would not be appropriate to set out this detail in primary legislation.

#### *Justification for procedure*

106. The matters that will be covered by a public notice provision including exchange rates will be administrative in nature and constantly varying and therefore public notice is appropriate. For the reasons set out at paragraph 40 above, it is proposed that this function is exercised by public notice.

## **Clause 19(1): Reliefs**

***Power conferred on:*** *the Treasury*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative procedure (House of Commons only)*

### *Context and purpose*

107. The customs tariff sets out the rate of import duty that applies to particular goods. There may, however, be circumstances where a liability to import duty is incurred but it is nevertheless appropriate that some or all of the duty liability be relieved – including if Parliament considers that it would not want to hinder certain activities (e.g. where certain goods are imported by charities).

108. Clause 19 contains a power for the Treasury to make provision in regulations for full or partial relief from a liability to import duty. The basis for a relief can be any factor but it is anticipated that a relief might be applied as a consequence of the nature or origin of the goods or any other factor included in the customs tariff, the purpose for which the goods are imported, the person importing or receiving the goods or the circumstances in which the goods are imported.

109. The special procedures of authorised use and temporary admission confer entitlement to a lower amount of duty. In the case of goods declared for one of these procedures, the power in this clause requires the Treasury to make provision securing a lower rate of import duty. As well as being able to achieve a lower rate of duty by making regulations providing for a relief for these procedures, the Treasury may also achieve the same result by making regulations amending the customs tariff.

110. Where regulations are made providing a partial relief for goods declared for the temporary admission procedure the regulations must provide that the partial relief operates by way of additional charges to import duty by reference to the period which the procedure has effect, however, the total amount of liability cannot exceed the amount of liability that would have been incurred in absence of the partial relief.

111. Reliefs may be introduced, reduced and removed from time to time.

### *Justification for power*

112. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

113. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 21(2): Customs agents**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

114. Customs agents act on behalf of the importers and exporters of goods including submitting Customs declarations on that person's behalf. The action of the agent affects the determination of liability for declarations, breaches and import duty. The power in clause 21(2) allows HMRC to specify in regulations the manner in which it is to be notified of the appointment and withdrawal of appointments of customs agents.

### *Justification for power*

115. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

116. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 21(7): Customs agents**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

117. Customs agents act on behalf of importers and exporters of goods, including submitting Customs declarations on such persons' behalf. Customs agents can either act directly using importers and/or exporters' names or in the agents' own names.

118. Customs agents' actions, and the different types of representation undertaken by customs agents, affects the determination of liability for declarations, breaches and import duty. Regulation of customs agents may therefore be necessary to ensure effective compliance with the import duty regime. The clause sets out the effect of actions done by the agent and when the agent may be liable for import duty.

119. The power in clause 21(7) allows HMRC to make regulations imposing further requirements on customs agents. For example it allows HMRC to require that an appointment of a customs agent must be approved by HMRC and any criteria for approving such appointment. In addition these regulations may impose penalties if conditions imposed upon customs agents are not complied with.

### *Justification for power*

120. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

121. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 22(1): Authorised economic operators**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Regulation made by statutory instrument

**Parliamentary Procedure:** Negative procedure (House of Commons only)

### *Context and purpose*

122. Clause 22 provides for a person to hold the status of 'authorised economic operator'. Authorised Economic Operator (AEO) is an established concept in international trade, which reflects a level of trust between the customs authority and the person holding that status. Holding AEO status can allow a person access to certain facilitations, dependent on the class, and the requirements of the procedure to which the facilitation applies. This facilitates trade by reducing burdens on trusted traders and creates greater efficiency for AEO traders bringing goods across the border.

123. Regulations made by HMRC under this clause may dis-apply or simplify specified requirements made by or under Part 1 (import duty) of the Bill in relation to things required or authorised to be done by an AEO. The regulations may also require HMRC to have regard to the status of a person as an AEO when considering how to exercise any power or function under Part 1 (import duty) of the Bill.

124. In order to conform to the standards of other countries, it may be necessary for the UK to legislate for changes in the manner in which applications to become an AEO are considered. For example, the European Union has set standards to be applied by all Member States when granting AEO status. The UK may wish to conform to the same standards and may need to adapt to this quickly. This power will allow HMRC to do so.

125. This power allows HMRC to (but is not limited to): specify the criteria to be applied in determining whether or not someone should be an AEO; specify those criteria by reference to meeting a specified qualification or other standard or by reference to anything else (including the judgement of any person as to suitability); make provision for someone's status as AEO to be subject to conditions specified in the regulations or the authorisation; and establish different classes of AEO.

126. AEO status may have more than one class. This power allows HMRC to establish different classes of AEO so that different requirements for authorisation as a particular class of AEO and different benefits a particular class confers can be provided for.

### *Justification for power*

127. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

128. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

### **Clause 23(3): Person authorised or approved under this part**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

#### *Context and purpose*

129. Clause 23 and the regulations made under it set out the rules that apply in relation to any approvals or authorisations granted as a result of regulations made under Part 1 (import duty) of the Bill unless the regulations in question make alternative provision.

130. Clause 23(3) clarifies the scope of powers given by the legislation to make provision concerning the manner, form and timing of an application for an approval or authorisation as well as the steps HMRC is required to take in respect of an application that has been submitted to it and provision concerning appeals against adverse considerations in particular circumstances.

#### *Justification for power*

131. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

132. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 23(6): Person authorised or approved under this part**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

133. Clause 23 and the regulations made under it set out the rules that apply in relation to any approvals or authorisations granted as a result of regulations made under Part 1 (import duty) of the Bill unless the regulations in question make alternative provision.

134. Clause 23(5) sets out what happens to an application which is not approved and circumstances where an approval may be treated as never having been granted. The power in clause 23(6) allows HMRC to make regulations amongst other things specifying the circumstances in which an approval is nevertheless to be treated as still being in force. This would allow HMRC to make provision remedying any adverse effects upon innocent third parties where an approval or authorisation is revoked.

### *Justification for power*

135. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

136. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 24: Rulings as to application of customs tariff or place of origin**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

137. The power in clause 24 requires HMRC to establish a system of rulings by public notice. It is limited to rulings in relation to determining any issue as to the application of the code in the customs tariff to any goods, or to determining the place of origin of any goods. Under the system it must be possible to make an application even if an HMRC officer considers the ruling is not, or may not be, required to resolve a doubt or issue being determined.

138. HMRC is responsible for the enforcement of customs duty and the collection of those duties. The decision of how the tariff is to be applied in any given case, or to the country of origin of a particular good will affect the calculation of duty. At present advanced decisions can be applied for by traders in order to determine the applicable tariff for particular goods (Binding Tariff Information) and the particular origin of the goods (Binding Origin Information). This is to give traders certainty as to how their goods will be treated when they import them. When the UK leaves the EU we will want the flexibility to offer similar advanced decisions to traders.

139. The system may make provision for: specifying cases where such rulings need not be given; setting out the manner, content and form of applications; the period within which a ruling must be given; the period for which a ruling will have effect; the form of the ruling; when rulings may be amended or withdrawn; the extent to which a ruling may be relied on by applicants; and requiring a person to disclose any previous rulings given under the system.

### *Justification for power*

140. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in public notices issued pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

141. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

**Clause 27(1): Fees for exercise of functions in connection with import duty**

***Power conferred on:*** *the Treasury*

***Power exercised by:*** *Regulation made by statutory instrument*

***Parliamentary Procedure:*** *Negative procedure (House of Commons only)*

*Context and purpose*

142. Authorities undertaking HMRC functions may in the future charge fees for the exercise of their functions in relation to import duty. Future agreements with other governments or international organisations may impact on the fees that can or should be charged.

143. Clause 27(1) allows the Treasury to make regulations authorising fees to be charged in respect of the exercise of functions for or connected to import duty. The power can only be exercised to the extent that the imposition of the charge is consistent with international agreements and where it is fair and reasonable for fees to be charged.

*Justification for power*

144. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

145. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

### **Clause 30: General provision for the purposes of import duty**

***Power conferred on:*** *the Treasury*

***Power exercised by:*** *Regulation made by statutory instrument*

***Parliamentary Procedure:*** *Negative procedure (House of Commons only)*

#### *Context and purpose*

146. Clause 30 contains a power for the Treasury to make further provision (supplementary or otherwise) in relation to import duty.

147. The power conferred by this clause is necessary to ensure that the UK customs regime will operate effectively. Supplementary provision can be made in regulations by the Treasury in relation to import duty by or under Part 1 (import duty) of the Bill or any other enactment. The power could, for example, be used to extend the circumstances in which HMRC is required to issue a binding ruling similar to that under clause 24, or to update terminology.

#### *Justification for power*

148. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

149. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 31(4): Territories forming part of a customs union with the UK**

***Power conferred on:*** the Crown

***Power exercised by:*** Order in Council

***Parliamentary Procedure:*** Order in Council may only be made if it has been approved by the House of Commons in accordance with the draft affirmative procedure pursuant to clause 32(10).

### *Context and purpose*

150. In the event that the government enters into an arrangement with the government of a non-UK territory, establishing a customs union, clause 31 allows Her Majesty by Order in Council to give effect to this. A territory outside the UK could include an international organisation or authority such as the EU.

151. An arrangement which establishes a customs union between the UK and a non-UK territory, as defined by subsection (2), is an arrangement which provides that no duty is chargeable for goods moving between the UK and the non-UK territory, and that the same rules for charging duty apply for goods imported from places outside the UK and the non-UK territory.

152. The UK may enter into an arrangement with the government of a territory outside the UK, establishing a customs union. Establishing a customs union with the EU may form part of the arrangements for an implementation period, during which customs arrangements for UK-EU trade would largely be the same as they are today. A customs union arrangement with the Crown Dependencies may be established. The UK's existing customs arrangement with the Crown Dependencies is underpinned by the UK's membership of the EU customs union. The making of an Order in Council is a precondition for the exercise of the power to make regulations under clause 31(5).

### *Justification for power*

153. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

154. An Order in Council is appropriate where the legislation is intended to produce legal effects in respect of territories (or the UK's relationship with territories) outside the UK. Clause 31(4) makes provision for this and, consequently, an Order in Council is the appropriate form of instrument.

## **Clause 31(5): Territories forming part of a customs union with UK**

**Power conferred on:** HMRC Commissioners on the event of an Order in Council made by Her Majesty

**Power exercised by:** Regulation made by statutory instrument

**Parliamentary Procedure:** Negative procedure (House of Commons only)

### *Context and purpose*

155. The making of an Order in Council is a precondition for the exercise of the power to make regulations under clause 31(5). An arrangement establishing a customs union which the UK and a non-UK territory enter into will need to be given effect in domestic legislation, and if the arrangement is incompatible with other domestic legislation, the arrangement will need to have effect despite the domestic legislation.
156. The power in clause 31(5) allows HMRC to make necessary changes to the UK import duty regime to reflect such an arrangement which the UK government enters into with any overseas government to establish a customs union between the two territories, and which has effect in accordance with an Order in Council made by Her Majesty.
157. Changes to the rules for import duty will be needed to ensure that they properly reflect such an arrangement. This will include ensuring that there is no import duty charged on goods which move between the two territories and that a common tariff is in place in both territories. The power in subsection (5) allows such changes to be made.
158. In addition, domestic legislation on customs may need to be disapplied. For example, customs requirements imposed by this Bill on chargeable goods may need to be disapplied with respect to goods imported from the non-UK territory with which the UK is in a customs union.
159. The UK may also need to treat actions done by the government of the non-UK territory as if they were done by the UK. For example, if the government in question has released certain goods into free circulation, it would undermine the benefits of a customs union if the UK had to perform the same administrative process again. In this case, this provision may treat those goods as having been released to free circulation by the UK.
160. It may be part of the terms of the arrangement that customs legislation between the UK and the non-UK territory in question should be harmonised. If the non-UK territory makes a change to its legislation which is not catered for by the secondary powers in the Bill, it may be impractical to put forward new primary legislation in time for ensuring that the two regimes are always aligned. Under this provision, the UK government will have the power to apply or replicate the non-UK territory's customs regime and keep pace with any changes.

*Justification for power*

161. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

162. For the reasons set out above in paragraph 36, it is proposed that the power is under the negative procedure. However, as stated it is only exercisable following the making of an Order in Council pursuant to clause 31(4).

### **Clause 33(4): Meaning of “domestic goods”**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

#### *Context and purpose*

163. Clause 33 defines the term 'domestic goods' as it is used in the Bill. Under clauses 1 and 2, import duty is chargeable on any goods which are imported into the UK, other than those which are domestic goods.

164. Clause 33(3) provides that goods cease to be domestic goods if they are exported from the UK and it is an export which is required to be made in accordance with export procedures set out in regulations made under clause 35.

165. Clause 33(4) establishes the general rule that every export must be made in accordance with export procedures. It also however provides a power to specify in regulations circumstances where, as an exception to the general rule, the export procedure does not have to be used with the result that goods would not lose their status as domestic goods upon removal from the UK. This would avoid anomalous charges to import duty arising in cases where, for example, goods are only removed from the UK for a temporary period.

#### *Justification for power*

166. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

167. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 33(5): Meaning of “domestic goods”**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

168. Clause 33 defines the term 'domestic goods' as it is used in the Bill. Under clauses 1 and 2, import duty is chargeable on any goods which are imported into the UK, other than those which are domestic goods.

169. When domestic goods are exported from the UK, they generally lose their status as domestic goods which means that if they are later imported to the UK import duty will be charged on them. However, it is intended that in some circumstances goods will retain their status as domestic goods where they only travel through another territory temporarily on their way to a place in the UK or where they remain outside the UK temporarily.

170. Clause 33(5) provides a power enabling HMRC to make regulations to specify situations in which domestic goods can retain their status as domestic goods even though they are temporarily removed from the UK. The regulations can require conditions to be met whilst the goods are outside the UK and can require a declaration to be made when they are subsequently imported back into the UK.

### *Justification for power*

171. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

172. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 33(8): Meaning of “domestic goods”**

***Power conferred on:*** the Treasury

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

173. Clause 33 defines the term 'domestic goods' as it is used in the Bill. Under clauses 1 and 2, import duty is chargeable on any goods which are imported into the UK, other than those which are domestic goods.

174. Clause 33(7) provides that goods within the UK are presumed to be domestic goods. Clause 33(8) provides a power to treat goods as either domestic goods or not, to determine the level of evidence that is required to show that goods are domestic goods, and to specify circumstances in which the presumption that goods in the UK are domestic goods is reversed.

175. Examples of what the power may be used for include:

- goods in a port
- goods under special procedures
- goods that are subject to verification.

### *Justification for power*

176. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

177. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 34 (1) (b) and (5): Presentation of goods to Customs on import or export**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

178. Schedule 1 paragraph 1(1) imposes an obligation to present goods to Customs on import and to make a Customs declaration within 90 days from the day on which the goods in question are presented to Customs. Clause 34(1) defines the conditions under which goods are presented to Customs on import.

179. There is a requirement for presentation because HMRC needs to know when goods have arrived in the country. Notification to HMRC that goods have been imported, together with the importation of the goods itself, constitute presentation to Customs.

180. Clause 34(1)(b) allows HMRC to make regulations to specify the way in which notification must be given. The power may be used to require documents to accompany a notification, provide for the form and contents of a notification including the location of goods, and provide for or allow notification to be made before the time at which goods are imported to allow for more time to risk-assess goods for fiscal purposes (e.g. to prevent duty avoidance).

181. Provision may also be made to deem that a notification has been given in some cases, for example, at locations where it would be impractical to stop vehicles for any amount of time to give notification or in certain instances where a passenger brings in goods to the UK and makes a declaration by going through the green channel.

### *Justification for power*

182. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

183. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 34(3), (4) and (5): Presentation of goods to Customs on import or export**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

184. Clause 35 requires goods being exported in accordance with applicable export provisions to be presented to Customs on export. Clause 34(3) defines the conditions under which goods are presented to Customs on export.

185. Notification of export to HMRC constitutes presentation to Customs on export. Unlike imports, the notification alone, not the actual exportation of the goods, is sufficient for presentation to Customs on export. The general rule is that notification is required to be given before the goods are exported.

186. As with imports, more detailed provisions need to be made to specify how notification of import can be given and the powers in clauses 34(3), (4) and (5) allow HMRC to make regulations to provide for the way in which notification must be given. The powers may be used to require documents to accompany a notification, and provide for the form and contents of a notification including the location of goods. The powers can also be used to specify circumstances in which a notification can be given at a time after the export of the goods.

187. Provision may also be made to deem that a notification has been given in some cases, for example where it would be impractical to stop vehicles for any amount of time to give notification.

### *Justification for power*

188. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

189. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Clause 35(2)(b): Exports made in accordance with applicable export provisions**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

190. Clause 35 provides that goods are exported in accordance with the applicable export provisions if they are presented to customs on export and exported in accordance with a procedure provided for by HMRC in regulations. Goods which have been exported in accordance with such export provisions are no longer considered domestic goods for the purposes of clause 33, and so become chargeable goods under clause 2. Completion of an export procedure may also be necessary in order to meet the conditions of one of the special procedures set out in clause 3 and Schedule 2, for instance, or a relief for which provision has been made in regulations under clause 19.

191. This power allows HMRC to set down in regulations the procedure that must be followed in order to export goods in accordance with the Bill. This power allows HMRC to apply or mirror the provisions relating to declarations required for import and impose requirements on the person or persons responsible for the goods whilst the goods are subject to the export procedure.

*Justification for power*

192. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

193. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 36(2)(c): Outward Processing Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

194. The outward processing procedure allows goods to be exported for a temporary period to undergo processing outside of the UK. Under this procedure where goods are exported for the purpose of undergoing repair free of charge such a declaration allows the goods to maintain their domestic status. Where goods are exported for any other reason, then such a declaration allows the goods to be charged a rate of duty on their return where the value of the goods is reduced to take into account so much of the value as can be attributed to the goods as they stood before being exported.

195. The power in clause 36(2)(c) allows HMRC to make regulations that impose requirements on any person in regards to the processing which is carried out under the procedure.

### *Justification for power*

196. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

197. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 36(5)(b): Outward Processing Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

198. The applicable export provisions do not apply to the outward processing procedure. However in some cases aspects of export requirements may be necessary to ensure compliance. This power allows HMRC to make regulations imposing such requirements.

199. The power in clause 36(5)(b) allows HMRC to make regulations which correspond to any provision which can be made by regulations made under clause 35 in order to regulate effectively the export of goods from the UK which are subject to the outward processing procedure.

### *Justification for power*

200. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

201. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 36(8): Outward Processing Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

202. The power in clause 36(8) allows HMRC to make regulations for the purposes of the outward processing procedure. This power works in conjunction with the other powers in clause 36 to ensure that there is compliance with the procedure and that the procedure will be able to operate as intended.

203. The types of provision which HMRC may make under this power includes imposing requirements on any person carrying out the procedure; specifying cases where goods cannot be declared for the procedure; and determining how the reduction in value is to be calculated.

204. As this is a procedure which operates to reduce the amount of duty payable HMRC may also make regulations which replicate any other provision that applies in respect of the special procedures provided for under this legislation.

### *Justification for power*

205. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

206. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

### **Clause 37(3)(b): Minor Definitions**

***Power conferred on:*** *the Treasury*

***Power exercised by:*** *Regulation made by statutory instrument*

***Parliamentary Procedure:*** *Negative procedure (House of Commons only)*

#### *Context and purpose*

207. Clause 37 provides that, for the purpose of determining the place of origin of goods, goods are to be regarded as originating from a country or territory if they are wholly obtained in that country or territory. The country or territory from which goods originate is used to determine whether goods are “domestic goods” and can also determine whether those goods are subject to a preferential customs rate under clauses 9 and 10.

208. Clause 37(3)(a) provides that goods are wholly obtained in a country or territory where they are grown, produced or manufactured only in that country or territory. Clause 37(3)(b) provides that the Treasury may make regulations which specify other cases in which goods should be treated as being wholly obtained in any country or territory.

209. Detailed rules for determining where goods are obtained are required particularly where products are sourced, processed, assembled, and packaged in different countries or territories.

#### *Justification for power*

210. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

211. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 39(1): Charge to export duty**

**Power conferred on:** *the Treasury (with regard to any recommendation made by the Secretary of State about the rate of export duty).*

**Power exercised by:** *Regulation made by statutory instrument*

**Parliamentary Procedure:** *Affirmative procedure for: (i) first regulations; and (ii) regulations increasing export duty payable. Regulations subject to the affirmative procedure must be approved by the end of a period of: (a) 60 days when provision is made for them to be commenced by regulations in accordance with clause 52(2); and (b) 28 days in relation to all other regulations. Otherwise, the negative procedure would apply. Both affirmative and negative procedures are House of Commons only.*

### *Context and purpose*

212. The power in clause 39 allows the Treasury to make provision to enable the UK to introduce export duty. Trade policy is a matter for the Secretary of State, so when exercising the power to impose export duty the Treasury must have regard to any recommendation made to them by the Secretary of State in relation to the rate of export duty. Export duty is a charge to tax on goods when they are exported from the UK. It is one of a number of tools by which the government might achieve an intended outcome for UK businesses or consumers.
213. There are safeguards contained in this provision which provide that, in addition to any recommendation of the Secretary of State, the Treasury must also have regard to the interests of consumers in the UK, the desirability of maintaining and promoting external trade, the desirability of maintaining and promoting productivity and the extent to which goods concerned are subject to competition.
214. The power also allows Treasury to make further provision in relation to export duty, including introducing an export tariff, provision about how export duty should be charged and provision about how the value of goods should be determined. The power allows the Treasury to apply (with or without modification) any provision made by or under Part 1 (import duty) or any other enactment relating to import duty.
215. There is no charge to tax on exports under the common external tariff at present and so the Bill does not establish a charge to tax on exports from the UK (either outside the EU or within the EU) from the date of exit from the EU. However the EU has retained the ability to introduce a charge in the future as part of the Union Customs Code and could implement this charge quickly. It is appropriate to put powers in place that will allow us to facilitate any agreement that the UK and the EU might come to which may include mirroring the EU duty tariffs. This clause replicates the current EU legislation as closely as possible in relation to export duty and the power provides the ability for the UK to mirror any export duty that the EU could impose during any negotiated interim period.

*Justification for power*

216. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 15 above.

*Justification for procedure*

217. For the reasons set out in paragraphs 32-35 above, it is proposed that the affirmative procedure will be used for first regulations and subsequent regulations increasing the amount of duty payable. For the reasons set out in paragraph 36 above, it is proposed that all other regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 42(2): EU law relating to VAT**

***Power conferred on:*** *the Treasury*

***Power exercised by:*** *Regulation made by statutory instrument*

***Parliamentary procedure:*** *Negative procedure (House of Commons only)*

### *Context and purpose*

218. Clause 42(2) contains a power for the Treasury to make exclusions or modifications in the application of section 4(1) of the European Union (Withdrawal) Act 2018 in relation to VAT. Section 4(1) ensures that certain rights, powers, liabilities, obligations, restrictions, remedies and procedures such as directly effective rights contained in EU treaties continue to be recognised and available in domestic law after exit. Some such rights, powers, liabilities, obligations, restrictions, remedies and procedures will no longer be appropriate, or their effect may need to be modified as a result of agreement, and this power will allow the Treasury to carve out, or modify, such provisions. Further, a new agreement with the EU may require modification of such provisions in relation to VAT.

### *Justification for power*

219. This power is necessary to ensure that the Treasury has the ability to deal with the outcome of the continuing negotiations between the UK and the EU over the terms of withdrawal, and to make other appropriate exclusions or modifications of the rights, powers, liabilities, obligations, restrictions, remedies and procedures preserved by s4(1) of the EUWB. Moreover, the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraphs 19-23 above.

### *Justification for procedure*

220. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 42(5): EU law relating to VAT**

***Power conferred on:*** the Treasury

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

221. Clause 42(5) confers a power on the Treasury to exclude provisions of the implementing VAT regulation in light of which the principal VAT directive must be read.

222. UK VAT law implements the Principal VAT Directive (Council Directive 2006/112/EC; “PVD”). The PVD will remain relevant for interpreting UK VAT law after exit. Subsection (5) requires the PVD to be read for that purpose in light of provisions of the EU VAT implementing regulation (Implementing Regulation (EU) no 282/2011). Some provisions of that EU regulation will no longer be appropriate to retain following EU withdrawal – for example where they relate to services carried out only within the EU or are otherwise no longer desirable—and this power permits the Treasury to exclude such provisions.

### *Justification for power*

223. This power is necessary to ensure that the Treasury has the flexibility to make appropriate exclusions of the implementation regulation in the interpretation of the PVD, whether as a result of negotiations or otherwise. The government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraphs 19-23 above.

### *Justification for procedure*

224. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 44(1): Excise duties: postal packets sent from overseas**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

225. Clause 44 confers a power to transfer liability to account for and pay excise duty due on parcels under the customs value threshold to the overseas sender rather than the UK recipient.

226. In the absence of an agreement with the EU, the UK needs the ability to amend the rules in relation to how excise duty (and import VAT) is collected on goods imported as small parcels. In particular, extending the existing rules for non-EU parcels to those from the EU would increase the number of UK consumers having to pay duties and tax when their goods are delivered, and the associated burdens on fast parcel operators and Royal Mail would increase. The transfer of liability to pay the excise duty on lower value parcels from the UK recipient to the overseas sender is intended to minimise disruption to the parcels service for customers.

227. It also permits HMRC to prescribe the necessary administrative framework, reflecting the development of the relevant systems and processes and necessary compliance measures such as joint and several liability and disclosure of information to HMRC.

### *Justification for power*

228. This power is necessary to enable the excise regimes to function as required after the UK's withdrawal from the EU and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 18 above.

### *Justification for procedure*

229. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 45: General regulation making power for excise duty purposes etc.**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Regulation made by statutory instrument

**Parliamentary Procedure:** *If regulations amend or repeal an Act of Parliament, restrict any rebate of or relief from excise duty, extend the descriptions of goods on which excise duty is chargeable, or extend the cases in which stamping or marking of goods is required, the made affirmative procedure applies. The regulation must be approved within 28 days of being made, or, if any part of it is to come into force on a day appointed by the Treasury (pursuant to clause 52(2)), within 60 days of the first date on which any part of it comes into force. Negative procedure in all other cases. Both affirmative and negative procedures are House of Commons only.*

### *Context and purpose*

230. Clause 45 confers a power on HMRC to make regulations generally for the purposes of excise duty on alcohol, tobacco and fuels. The power has been limited in this way as these are the excise duties that are most affected by the UK's withdrawal from the EU. Air Passenger Duty and betting and gaming duties are not within the scope of the power.

231. The clause gives a non-exhaustive list of areas which regulations can cover. The list includes the key administrative features of the excise duty regime such as when excise duty becomes due, who will be liable for excise duty, reliefs and the rules around the holding and movement of excise goods. It includes the ability to make provision for the purposes of excise duty as a result of any territories forming part of a customs union with the UK that has effect under clause 31. It does not enable HMRC to set excise duty rates.

232. The excise regime is largely set out in secondary legislation using a complex mix of powers, including section 2(2) of the European Communities Act 1972. As not all of the excise regime is set out in secondary legislation, the power extends to amending or repealing any Act of Parliament whenever passed, but it cannot be used to amend the Bill itself.

233. This power ensures that HMRC has the flexibility to provide for and maintain a functioning and legally operable excise regime following the UK's withdrawal from the EU. Part of the purpose of this provision is to ensure there are no gaps in HMRC's powers to deliver necessary amendments to the excise regime after the European Communities Act 1972 has been repealed. It is not yet known what will be agreed with the EU as regards excise and therefore the power needs to be sufficiently broad to deal with a range of possible negotiated outcomes, as well as the contingency outcome. The power is intended to be used, for example, to make provisions or amendments to ensure that the regime for holding and movement of excise goods will continue to function effectively in a contingency scenario. This will include, for instance, making amendments to the existing Holding and Movement Regulations to reflect the fact that the UK will no longer be a Member State of the EU.

*Justification for power*

234. This power is necessary to enable the excise regimes to function as required after the UK's withdrawal from the EU and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 18 above.

*Justification for procedure*

235. For the reasons set out in paragraphs 32-35 above, it is proposed that the made affirmative procedure will be used for regulations which amend or repeal any Act of Parliament, restrict any rebate of or relief from excise duty, extend the descriptions of goods on which excise duty is chargeable, or extend the cases in which stamping or marking of goods is required. The regulations must be approved within 28 days of being made, or, if any part of it is to come into force on a day appointed by the Treasury (pursuant to clause 52(2)), within 60 days of the first date on which any part of it comes into force. In other cases the negative procedure will apply. This is consistent with the approach to scrutiny for existing delegated powers in the excise regime.

236. For the reasons set out in paragraphs 46-49 above, when the power is used in conjunction with a power in another enactment to make an excise duty provision, provided the other enactment does not require approval of the House of Commons, the parliamentary procedure provided for in the Bill shall apply, not the procedure in the other enactment.

**Clause 46(1): Exercise of information powers in connection with excise duty**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

237. The power in clause 46 allows HMRC to impose obligations on revenue traders in relation to the provision of information for the purpose of fulfilling any international excise arrangements between the UK and other countries, thereby facilitating the administration, collection or enforcement of excise in the UK. “International excise arrangements” are defined by subsection (9) to mean arrangements which have effect by virtue of an Order in Council under section 173 of the Finance Act 2006 and which relate to any excise duty. The power in subsection 1 can only be exercised in relation to those excise duties defined in clause 49 which are the excise duties most affected by the UK’s withdrawal from the EU.

238. This power will allow the UK to fulfil its obligations under any international agreements (including with the EU) on excise that require the supply of information from revenue traders for onward supply to the other parties to the agreement. However, the power may only be exercised if HMRC consider its exercise would facilitate the administration, collection or enforcement of any UK excise duty (any excise duty under the Alcoholic Liquor Duties Act 1979, the Hydrocarbon Oil Duties Act 1979 and the Tobacco Products Duty Act 1979) .

*Justification for power*

239. This power is necessary to enable the excise regimes to function as required after the UK’s withdrawal from the EU and the government considers that it would not be possible or appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 18 above.

*Justification for procedure*

240. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 47(2): EU law relating to excise duty**

***Power conferred on:*** the Treasury

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

241. Clause 47 contains a power for the Treasury to make exclusions or modifications in the application of section 4(1) of the European Union (Withdrawal) Act 2018 in relation to the excise duties most affected by EU Exit (any excise duty under the Alcoholic Liquor Duties Act 1979, the Hydrocarbon Oil Duties Act 1979 and the Tobacco Products Duty Act 1979). Section 4(1) ensures that certain rights, liabilities, obligations, restrictions, remedies and procedures, such as directly effective rights contained in EU treaties continue to be recognised and available in domestic law after exit. Some such rights, liabilities, obligations, restrictions, remedies and procedures will no longer be appropriate, or their effect may need to be modified as a result of agreement, and this power will allow the Treasury to carve out, or modify, such provisions. For example, a new agreement with the EU may require modification of such provisions in relation to excise duties.

### *Justification for power*

242. This power is necessary to ensure that the Treasury has the flexibility to deal with this in order to maintain fully functioning and legally operable customs, VAT and excise regimes in a range of scenarios and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraphs 19-23 above.

### *Justification for procedure*

243. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 51(1): Power to make provision in relation to VAT or duties of customs or excise**

**Power conferred on:** *the Treasury or, when exercised in connection with certain specific areas (e.g. unilateral preferences and trade remedies), the Treasury or the Secretary of State. In relation to trade remedies, after the establishment of the TRA, the Treasury or the Secretary of State must consult with the TRA before exercising the power.*

**Power exercised by:** *Regulation made by statutory instrument*

**Parliamentary Procedure:** *Regulations that amend or repeal an Act of Parliament will be subject to the made affirmative procedure of 28 days unless the regulations provide for any of its provisions to come into force on such day as the Treasury may appoint under clause 52(2). In such a case the regulations will be subject to the made affirmative procedure of 60 days from the first day on which any of it comes into force. Negative procedure in all other cases. House of Commons only in all circumstances.*

### *Context and purpose*

244. The EUWB converts existing direct EU law into domestic law so far as it is operative immediately before exit day and provides that rights, powers, liabilities, obligations, restrictions, remedies and procedures recognised before exit continue to be available in domestic law. Clause 42 and clause 47 provide that EU regulations (and ancillary provisions) will not apply in relation to VAT and excise respectively and, for customs, Schedule 7, Part 1 provides that a large proportion of this converted law and rights, powers, liabilities, obligations, restrictions, remedies and procedures otherwise preserved by the EUWB be disapplied. Provisions are being made in the Bill which alter the existing domestic legislation or, in the case of customs, introduce alternative regimes to fill the gap which is left once converted EU law no longer applies.

245. There are a number of areas where it is expected that provisions or amendments will need to be made but their content is, as yet, unknown. The changes required are dealt with as far as possible in the provisions of the Bill itself, but because of the need to legislate now to ensure that the UK has customs, VAT and excise regimes which function as required on the UK's withdrawal from the EU and because negotiations will continue with the EU after the point that the Bill is introduced and given Royal Assent, it is not possible to provide for all of these in the Bill. This power will allow those provisions or amendments to be made.

246. Clause 51(1) enables the Treasury (or, in connection with certain specific areas, such as trade remedies, the Treasury or the Secretary of State) to make regulations relating to VAT, customs or excise duties where they consider appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU. Where these regulations contain provisions relating to anything dealt with by Schedule 4 (Dumping of goods or foreign subsidies causing injury to UK industry) or 5 (Increase in imports causing serious injury to UK producers) the Treasury or Secretary of State must consult the TRA (if it has been established) before making the regulations.

247. This power extends to making amendments to any primary (including the Act/Bill itself) and secondary legislation relating to those taxes and duties but expressly prohibits the ability to make retrospective provision.
248. Clause 53 limits the breadth of the power in clause 51(1) in respect of excise duties to those excise duties provided for, by or under the Alcoholic Liquor Duties Act 1979, the Hydrocarbon Oil Duties Act 1979 and the Tobacco Products Duties Act 1979, excluding for example Air Passenger Duty and the betting and gaming excise duties. This limitation ensures that the power in clause 51(1) can only be exercised in relation to those excise duties that are most regulated by EU law and most affected by the UK's withdrawal from the EU.
249. Examples of provisions and amendments which may be made under this power include:
- provisions or amendments to address deficiencies of a similar nature to those which are dealt with by clause 7 of the EUWB which arise as a consequence of leaving the EU.
  - provisions or amendments arising from the introduction of replacement domestic legislation or from the alterations made to domestic legislation. This includes amending existing legislation to ensure that it dovetails with the new/amended legislation.
  - provisions or amendments that are required to implement or facilitate any arrangements that the UK and the EU agree in their negotiations which may include replicating or applying EU law for a limited period.
  - provisions or amendments that are required to implement or facilitate policy decisions made in the future which are connected to EU withdrawal and which may impact on VAT, customs or excise and which may involve replicating or applying the law disapplied by the provisions in the Bill.
  - provisions or amendments to transition existing EU trade remedy measures. This might involve converting existing EU measures – for example, measures whose complete removal upon the UK's withdrawal from the EU could damage UK producers – into new UK measures. This in turn might involve making provision for relevant processes such as applications by UK producers to determine which measures should be considered for transition and reviews: to ensure, for example, that keeping a measure in place as a UK measure post-exit was justified.
  - provisions or amendments that are required to deal with developments arising after the enactment of this Bill in connection with the UK's withdrawal from the EU but which have not been foreseen. The government expects that after this Bill the opportunities to legislate to accommodate unforeseen developments may be limited. This power is drafted widely to cover legislation that is required to deal with such situations to ensure that the UK has VAT, Customs and excise regimes which function as required on its withdrawal from the EU.

*Justification for power*

250. This power is necessary to ensure that the Treasury and Secretary of State have the ability to deal with the consequences of withdrawal from the EU and to maintain fully functioning and legally operable customs, VAT and excise regimes in a range of scenarios. The government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraphs 20-24 above.

251. The TRA has a number of functions under Schedule 4 and Schedule 5. As such, the TRA must be consulted about any regulations that relate to anything dealt with in these schedules.

*Justification for procedure*

252. For the reasons set out in paragraphs 32-35 above, it is proposed that the made affirmative procedure will be used where regulations amend or repeal primary legislation. Otherwise the negative procedure will apply.

253. For the reasons set out in paragraphs 46-49 above, when the power is used in conjunction with a power in another enactment to make an excise duty provision, provided the other enactment does not require approval of the House of Commons, the parliamentary procedure provided for in the Bill shall apply, not the procedure in the other enactment.

**Clause 52(2): subordinate legislation relating to VAT or duties of customs or excise**

***Power conferred on:*** *the Treasury*

***Power exercised by:*** *Regulation made by statutory instrument*

***Parliamentary Procedure:*** *None*

*Context and purpose*

254. Clause 52(2) confers a power on the Treasury to appoint a day on which subordinate legislation relating to VAT, customs and excise comes into force, if the person making it considers it appropriate to do so in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU. This can include bringing the regulations into force on different days for specific purposes or geographical areas, and at specific times of day where appropriate.

255. Subordinate legislation, even when it reflects policy which is subject to change due to ongoing negotiations, can be laid before Parliament and considered by the House some months prior to exit day. When it becomes clear which instruments are required, the Treasury may appoint a day on which the right legislation comes into effect, and the legislation which reflects the outcome that did not eventuate can be revoked.

*Justification for power*

256. The government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation because the precise arrangements of the new customs regime and the changes to the VAT and excise regimes which arise as in consequence of, or in connection with, the UK's withdrawal from the EU are not yet fully known. It is therefore not possible to set out which pieces of subordinate legislation are to be commenced on which day at this stage.

*Justification for procedure*

257. There is no parliamentary procedure specified. As the relevant subordinate legislation to be commenced will have received parliamentary scrutiny and the regulations made by the Treasury merely bring them into effect, it is appropriate that no further parliamentary procedure is required.

**Clause 52(5): subordinate legislation relating to VAT or duties of customs or excise**

**Power conferred on:** *the person making subordinate legislation relating to VAT, customs or excise*

**Power exercised by:** *Various, depending on the power being exercised which is amplified by this clause*

**Parliamentary Procedure:** *Various, depending on the power being exercised which is amplified by this clause*

*Context and purpose*

258. Clause 52(5) amplifies existing powers to make subordinate legislation to permit supplementary, incidental or consequential provision and transitional or transitory provision or savings to be made, if the person exercising those existing powers considers it appropriate to make such provision in consequence of or otherwise in connection with withdrawal of the UK from the EU.

259. HMRC and the Treasury have a large number of powers under which they can make subordinate legislation in relation to VAT, customs and excise duty. Some of those powers contain standard provisions conferring the power to make supplementary, incidental, consequential, transitional or transitory provision or savings. Some, however, do not.

260. This amendment provides flexibility in the exercise of existing powers to deal with withdrawal of the UK from the EU – for example, to make provision dealing with transactions or movements of goods that span exit day.

*Justification for power*

261. This power is necessary to amend existing legislation so that the UK can ensure a smooth and orderly exit from the EU by making appropriate provision for the changes being made to the customs, VAT and excise regimes by the Bill and as a result of withdrawal. The government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 25 above.

*Justification for procedure*

262. The procedure is that relevant to the power in the other enactment which this provision amplifies. Accordingly, the procedure will be that which is warranted by the provisions that can be made under that power.

## **Clause 54(1) and (4): Consequential and transitional provision**

**Power conferred on:** *the Treasury or, when exercised in connection with certain specific areas (e.g. unilateral preferences and trade remedies), the Treasury or the Secretary of State. In relation to trade remedies, after the establishment of the TRA, the Treasury or the Secretary of State must consult with the TRA before exercising the power*

**Power exercised by:** *Regulation made by statutory instrument*

**Parliamentary Procedure:** *Regulations that amend or repeal an Act of Parliament will be subject to the made affirmative procedure of 28 days unless the regulations provide for any of its provisions to come into force on such day as the Treasury may appoint under clause 52(2). In such a case the regulations will be subject to the made affirmative procedure of 60 days of the first day on which any of it comes into force otherwise made affirmative procedure of 28 days. Where they do not amend or repeal an Act of Parliament the negative procedure will apply. House of Commons only.*

### *Context and purpose*

263. Clause 54(1) contains a conventional power for the Treasury (or, in connection with certain specific areas, such as trade remedies, the Treasury or the Secretary of State) to make such consequential provision (and transitional or transitory provision and savings) as they consider appropriate in consequence of this Act and a further power, 54(4), for the Treasury (or, in connection with certain specific areas, such as trade remedies, the Treasury or the Secretary of State) to make such transitional, transitory or saving provision as they consider appropriate in connection with the coming into force of any provision of the Act. Where these contain provisions relating to anything dealt with by Schedule 4 (Dumping of goods or foreign subsidies causing injury to UK industry) or 5 (Increase in imports causing serious injury to UK producers) the Treasury or Secretary of State must consult the TRA (if it has been established) before making the regulation.

### *Justification for power*

264. These powers are necessary because the precise timing of and manner in which the new customs regime and the changes to the VAT and excise regimes will be commenced is not yet known. The government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 26 above.

### *Justification for procedure*

265. For the reasons set out in paragraph 32-35 above, regulations made using this power which amend or repeal any Act of Parliament will require the made affirmative procedure. Where they do not amend or repeal an Act of Parliament, the negative procedure will apply.

266. For the reasons set out in paragraphs 46-49 above, when the power in clause 54(1) is used in conjunction with a power in another enactment to make an excise duty provision, provided the other enactment does not require approval of the House of Commons, the parliamentary procedure provided for in the Bill shall apply, not the procedure in the other enactment.

### **Clause 55(2), (3) and (4): Commencement**

**Power conferred on:** *the Treasury or, when exercised in connection with certain specific areas (e.g. unilateral preferences and trade remedies), the Secretary of State.*

**Power exercised by:** *Regulation made by statutory instrument*

**Parliamentary Procedure:** *None*

#### *Context and purpose*

267. Clause 55 deals with the commencement of the provisions in the Bill.

268. Clause 55(2) and (3) provide that the provisions in the Bill that do not come into force on Royal Assent will come into force on such day as the Treasury (or, in the case of unilateral preferential tariffs and trade remedies, the Secretary of State) may appoint in regulations. This includes appointing different days for different purposes or areas and appointing a time on a day if it is considered appropriate.

#### *Justification for power*

269. This power is necessary to bring provisions of the Bill into force. The government considers that this flexibility, which is conventional in primary legislation, is particularly necessary here where the Bill seeks to deal with a number of contingencies.

#### *Justification for procedure*

270. There is no parliamentary procedure specified for this power, which is the usual practice for commencement provisions.

## **Schedule 1, paragraph 1(7) Presentation of goods to Customs and period for making Customs declaration etc**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

271. Goods which are imported into the UK must be presented to Customs on import. Beginning on the day of presentation, there is a period of 90 days within which a Customs declaration must be made, unless the goods are re-exported within this period.

272. The goods in question are subject to the control of HMRC from the time of importation, which may include requiring that they are moved to certain locations which have been approved for the temporary storage of these goods.

273. Paragraph 1(7) provides a power to enable HMRC to make further provision in regulations with respect to goods imported into the UK but for which a Customs declaration has not yet been made. This includes provision for the person who must present goods and provision for cases where goods are not required to be presented. It also includes provision for the making of a separate declaration relating to the storage of such goods (allowing HMRC to obtain information to exercise control of the goods in advance of a Customs declaration).

274. Another provision which may be made under this delegated power relates to the extent to which goods may be handled under storage. Traders may wish to perform simple operations such as repackaging even when goods have not yet been declared to customs, enabling goods to be fit to be sold immediately after release to free circulation. However, substantial handling would undermine the UK's customs regime, by, for example, allowing goods to change tariff classification by the time they are declared to Customs, potentially circumventing a higher tariff. Thus, detailed rules must be set out to determine what level of handling is allowed.

### *Justification for power*

275. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

276. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 1, Paragraph 2(2): Eligibility of persons to make Customs declarations**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

277. Schedule 1 Paragraph 2(1) provides that a person may make a Customs declaration if they are able to present (or secure the presentation of) the goods in question to customs on import. Paragraph 2(2) allows for regulations to specify that, in addition to satisfying the requirements of paragraph 2(1), a declaration may only be made by persons established in a specified place.

278. This power enables HMRC to specify who is entitled to make a Customs declaration and therefore ensures that HMRC are in a position to enforce any liability to import duty arising from the making of that declaration.

### *Justification for power*

279. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

280. For the reasons set out in paragraphs 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 1, paragraph 3(1): Time at which Customs declarations required or authorised to be made**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

281. Schedule 1, paragraph 3(1) permits Customs to require, in certain circumstances, declarations to be submitted prior to the goods' arrival in the UK. There will be some situations in which advance information is provided to the Customs to aid the flow of trade across the border. For example, we are aware that space is extremely constrained at many ro-ro ports. In these situations, it would be unhelpful for goods to arrive unannounced and sit on the dockside until customs formalities are completed. The Bill will enable Customs to insist, in cases such as these, that information is provided in advance. This will allow all the necessary risk-assessments to take place before the ferry docks, which in turn will allow the vast majority of vehicles to drive off unimpeded from the port upon arrival.

*Justification for power*

282. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

283. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 1, paragraph 3(3)(b): Time at which Customs declarations may be made**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

*Context and purpose*

284. Schedule 1, paragraph 3(3)(a) permits declarations to be lodged 30 days prior to the arrival of the goods in the UK. If the goods are not presented to customs within those 30 days, the declaration is considered to have been withdrawn.

285. Schedule 1, paragraph 3(3)(b) permits HMRC to stipulate shorter or longer periods within which a declaration can be lodged.

*Justification for power*

286. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in public notices issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

*Justification for procedure*

287. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

## **Schedule 1, paragraph 3(5): Time at which Customs declarations may be made**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Regulation made by statutory instrument

**Parliamentary Procedure:** Negative procedure (House of Commons only)

### *Context and purpose*

288. Schedule 1, paragraph 3(1) provides that HMRC can require declarations to be made prior to the goods' arrival in the UK in specified cases. Schedule 1, paragraph 3(5) provides the power for HMRC to make regulations for further provisions to be made for the purposes of enforcing that requirement.

289. Examples of this kind of provision may require the person who is in possession or control of goods (typically the haulier) to have evidence of the making of a Customs declaration, and produce it on request to an HMRC officer. Provisions may also specify the form this evidence must take, and to require notification about the goods to be given in a specific way to HMRC officers. This may be needed in cases where HMRC officers need to verify that customs formalities have been completed when commercial electronic systems are unavailable.

290. HMRC may also make provision to treat a Customs declaration made after importation as if it were made before the time of importation, in cases where the provisions made under paragraph 3(1) apply. This gives HMRC the flexibility to allow traders to meet requirements if they have been unable to comply with them due to unforeseen circumstances such as force majeure.

### *Justification for power*

291. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

292. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 1, paragraph 4: Form of Customs declarations and how they are made**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

293. Schedule 1, paragraph 4 provides that the general rule is that a Customs declaration must be made in an electronic form and the power in this paragraph allows HMRC to specify, in a public notice, the electronic form that must be used and the method for lodging this electronic form. This will allow HMRC to ensure that the Customs declarations received are compatible with their systems and that the method of entering data can be easily analysed.

### *Justification for power*

294. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

### *Justification for procedure*

295. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

## **Schedule 1, paragraph 5: Form of Customs declarations and how they are made**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

296. Schedule 1, paragraph 5(1) provides a power to specify an exception to the general rule that a Customs declaration is required to be made electronically. This power allows HMRC to specify the circumstances in which a Customs declaration can be made in writing other than in electronic form and specify the form that the declaration should take. Paragraph 5(2) provides the power to lay down provisions concerning how such a declaration should be lodged. These provisions will ensure that such declarations contain the information required in the manner which enables HMRC to collect import duty. This could be used in cases where for example, declarations are lodged infrequently and so it would not be reasonable to require operators to obtain the necessary IT systems or in cases where there is a failure in trade or customs IT systems.

### *Justification for power*

297. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

### *Justification for procedure*

298. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

## **Schedule 1, paragraph 6(1): Form of Customs declarations and how they are made**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

299. The general rule under paragraph 4 is that Customs declarations must be made electronically. Schedule 1, paragraph 6(1) provides the power for HMRC to provide for exceptions to this rule by specifying the circumstances in which a Customs declaration can be made orally or by conduct.

300. This power may be used to allow oral declarations for release to free circulation for a limited range of goods including, for example, goods of non-commercial nature, low value commercial goods contained in traveller's personal baggage and a limited range of goods being declared to temporary admission including pallets, containers, personal sports equipment and medical equipment. This power may also be used to allow declarations by conduct when using the green/nothing to declare channel at a port/airport or by placing a "nothing to declare" sticker in the windscreen of the vehicle and for a limited number of temporary admission operations.

### *Justification for power*

301. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

### *Justification for procedure*

302. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

## **Schedule 1, paragraph 6 (2): Form of Customs declarations and how they are made**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

303. Schedule 1, paragraph 6(1) provides a power to specify circumstances where a declaration can be made orally or by conduct, where a declaration is made in this manner the provisions in the Bill may not be appropriate for this type of declaration and so 6(2) provides a power under which HMRC can alter or supplement the provisions of the customs regime in these circumstances.

304. This power will be used to specify any additional requirements that are necessary when a declaration is given orally or by conduct or to alter a provision which will not work if a declaration is made orally or by conduct.

305. For example this power may be used to require an inventory document to be completed and presented to Border Force at importation where an oral declaration is permitted. This inventory will provide details of the goods being imported, their intended use and if appropriate, the time the goods will remain in the customs territory. In addition, where a declaration is made by conduct using the green channel, the power would enable HMRC to disapply the requirements that the goods must be individually presented to customs.

### *Justification for power*

306. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

307. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 1, paragraph 7(1): Contents of Customs declarations**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

308. Schedule 1, paragraph 7(1) provides the power for HMRC to specify in a public notice the information that is required to be included on a Customs declaration and the documents (such as invoices and preference certificates) that must be provided with the declaration. HMRC must be able to specify the contents of Customs declarations because the information given to HMRC is necessary to calculate and collect the duty due. Further evidence in support of the information stated on a Customs declaration may be necessary in order for HMRC to establish that the information provided in the declaration is correct.

### *Justification for power*

309. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

### *Justification for procedure*

310. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

## **Schedule 1, paragraph 7(2): Form of Customs declarations and how they are made**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

311. Schedule 1, paragraph 7(1) provides that there may be some cases where certain documents must accompany the Customs declaration. Paragraph 7(2) allows HMRC to specify in a public notice cases in which the requirement to provide documents can be satisfied by making documents available for inspection.

### *Justification for power*

312. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

### *Justification for procedure*

313. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

## **Schedule 1, paragraph 7(3): Form of Customs declarations and how they are made**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

314. Schedule 1, paragraph 7(1) provides that there may be some cases where certain documents must accompany the Customs declaration. Paragraph 7(3) provides that a public notice may specify cases where the documents must be made available before the declaration is made.

### *Justification for power*

315. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

### *Justification for procedure*

316. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

## **Schedule 1, paragraph 8: Contents of Customs declarations**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

317. Generally a separate declaration is required for each import of goods of a particular description. However it may be beneficial for declarations to cover a number of different goods. For example, because of the volumes fast parcel operators handle, it may be beneficial for them to bulk declare goods under a certain value.

318. Schedule 1, paragraph 8 provides the power for HMRC to specify in a public notice the circumstances in which a single declaration can be made for different goods. Paragraph 8 also provides the power to specify cases where separate declarations must be made in relation to goods of the same description.

### *Justification for power*

319. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

### *Justification for procedure*

320. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

## **Schedule 1, Paragraph 9(1): Simplified Customs declarations etc**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

321. Schedule 1 sets out various general rules that apply to Customs declarations on the importation of goods. However, in some circumstances it is appropriate for simplifications to this process to be put in place in order to facilitate trade. The power in paragraph 9(1) allows HMRC to make regulations for the customs procedures to be simplified where operators satisfy specified requirements which mitigate the risks surrounding simplifications.

322. These simplifications include: making a simplified declaration; calculating duty across different goods; using an entry recording system; and allowing declarations to cover a number of imports over a specified period.

### *Justification for power*

323. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

324. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 1, paragraph 16: Amendment or withdrawal of Customs declaration**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

325. Schedule 1, paragraph 16 allows a declaration to be withdrawn at any time before a relevant event occurs. Once the relevant event occurs a person may only amend or withdraw a declaration if notification has been given to HMRC before the end of a period specified in a public notice made by HMRC.

### *Justification for power*

326. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

### *Justification for procedure*

327. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

## **Schedule 1, paragraph 17(3): Contents of Customs declarations**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

### *Context and purpose*

328. Schedule 1, paragraph 17 (2) sets out the way in which goods are declared and released to the free circulation procedure. It provides that goods can be released to the free circulation procedure if satisfactory payment arrangements are in place. Paragraph 17(3) provides that an approved guarantee is a satisfactory payment arrangement and also provides the power for the HMRC to specify by public notice cases in which alternative satisfactory payment arrangements can be given.

### *Justification for power*

329. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

### *Justification for procedure*

330. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

**Schedule 1, paragraph 19(2): Notifications given by HMRC or HMRC officers**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

331. Schedule 1, paragraph 19 (1) sets out the way in which notifications by HMRC required under Schedule 1 can be given. Paragraph 19(2) provides that HMRC can make regulations specifying cases where it is presumed that the person has been notified under Schedule 1. These regulations can specify circumstances in which that presumption cannot be rebutted.

*Justification for power*

332. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

333. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 2, paragraph 1(1): Entitlement to declare goods for a special customs procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

334. The purpose of the power in Schedule 2, paragraph 1 is to allow HMRC to establish the conditions that must be met before goods can be declared for a special procedure. When goods are imported, as opposed to being declared for free circulation, they may be declared for a special procedure. Special procedures operate to suspend import duty liability or to reduce the import duty due. Goods entered into a special procedure are subject to specified requirements.

335. This power ensures that goods can only enter a special procedure in appropriate circumstances, and assists in ensuring compliance with the procedure. In particular the power envisages that provision may be made requiring a person to be authorised in order to declare goods for a special procedure.

336. Schedule 2, paragraph 1 provides that HMRC may make regulations setting out the criteria a person must meet in order to be granted authorisation to use a special procedure – setting out how long someone may be authorised to use a special procedure, making an authorisation subject to particular specified conditions, and setting out the manner in which an application for authorisation is to be made. The power also provides that HMRC may make regulations when directed to do so by the Treasury, restricting the use of these procedures where it would adversely affect the interests of UK producers.

*Justification for power*

337. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

338. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraphs 2(1) and (3): Storage Procedure**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Regulation made by statutory instrument

**Parliamentary Procedure:** Negative procedure (House of Commons only)

### *Context and purpose*

339. The storage procedure is a type of special procedure which allows goods to be stored in the UK within premises approved by HMRC or a free zone without payment of import duty. The powers in Schedule 2, paragraphs 2 (1) and (3) allow HMRC to make regulations setting out the requirements for persons to have premises approved by HMRC and the requirements and restrictions that goods are subject to while being held in a HMRC approved premise or a free zone.

340. The powers in Schedule 2, paragraphs 2(1) and (3) allow HMRC to make regulations imposing requirements with respect to, for example, the conditions and security of the storage premises, keeping of records by the operators of the premises, or the suitability of a person to operate a facility, as well as specifying what activities may be carried out while goods are kept in storage.

### *Justification for power*

341. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

342. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 2(4): Storage Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

343. The power in Schedule 2, paragraph 2(4) allows HMRC to make by regulations any other provision that they consider appropriate for the purposes of import duty in relation to goods kept in free zones. This could include, for example, imposing a requirement that goods be presented to customs when entering or leaving free zones.

### *Justification for power*

344. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

345. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 5(1) (b): Transit Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

346. Part 3 of Schedule 2 sets out the transit procedure which is a type of special procedure that allows chargeable goods to move between locations in a customs territory without incurring liability to import duty. The power in Schedule 2, paragraph 5(1)(b) allows HMRC to make regulations setting out the requirements of a transit procedure.

347. The power to make regulations setting out the requirements of a transit procedure includes: requiring that goods be presented at a specified place with specified documents, where presentation is required to do so at or before such time as specified, requiring goods to be moved by a specified route, or by a specified means of transport, and imposing requirements on any person who is in possession or control of the goods where they know, or ought reasonably have known that the goods are subject to a transit procedure.

### *Justification for power*

348. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

349. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 6(1): Transit Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

350. The power in Schedule 2, paragraph 6(1) allows HMRC to make regulations which make provision imposing any other requirements in relation to the transit procedure.

351. The power includes the ability to impose detailed requirements concerning the movement and handling of goods subject to the transit procedure on any person including: requiring the goods to be in a specified condition at a specified time, requiring specific documents accompany the goods, requiring that the goods be identified by reference to specific documents, and requiring that the inspection of goods be permitted.

### *Justification for power*

352. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

353. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 7(1): Transit Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

354. The power in Schedule 2, paragraph 7(1) allows HMRC to make regulations which make provision in specified cases for treating a person as having declared goods for a transit procedure, and, subsequently, for treating the procedure as having been discharged.

355. Transit is subject to a number of different international arrangements. This power would, for example, allow HMRC to treat a person using documentation prescribed by an international arrangement to have made a declaration for transit and treat the procedure as discharged when the goods leave the United Kingdom in accordance with that international arrangement.

### *Justification for power*

356. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

357. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 9(1)(d): Inward Processing**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

358. The inward processing procedure in the standard form is a type of special procedure which allows imported goods to undergo certain types of processing during a temporary period without duty being payable.

359. The power in Schedule 2, paragraph 9(1)(d) allows HMRC to make regulations concerning the conditions for approval to use the inward processing procedure in the standard form, and the requirements someone is subject to while that procedure has effect. Such requirements may include provision concerning the use, storage, handling and movement of goods subject to the procedure, and the quantity of processed goods required to be produced as a result of the processing.

### *Justification for power*

360. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

361. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, Paragraph 9 (6)(c): Inward processing**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

362. Goods may also be exported for a temporary period while subject to the inward processing procedure to undergo further processing outside of the United Kingdom. This power enables HMRC to make regulations imposing requirements and specifying conditions on any person processing goods subject to an inward processing procedure outside of the United Kingdom.

### *Justification for power*

363. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

364. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 10: Inward Processing**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

365. The power in Schedule 2, paragraph 10 will allow HMRC by regulations to make provision imposing any other requirements on a person in relation to an inward processing procedure made in the standard form.

### *Justification for power*

366. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

367. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 12(1): Inward Processing**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

368. The power in Schedule 2, paragraph 12 allows HMRC to make regulations setting out the requirements of the inward processing procedure in the supplementary form. The supplementary form of the inward processing procedure allows imported goods to undergo operations designed either to secure that goods comply with requirements that must be met before the goods can lawfully be released for free circulation in the UK, or an operation to preserve goods, improve their appearance or marketable quality or otherwise prepare them for distribution or resale.

369. This provision will permit HMRC to replicate, for the purposes of this specific form of the inward processing procedure, provision made for the purpose of inward processing in the standard form (see powers in relation to paragraph 9 and 10). This would include, for example, requiring the operation to result in the production or manufacture of an approved quantity of goods.

### *Justification for power*

370. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

371. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 13: Authorised Use Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

372. An authorised use procedure is a type of special procedure which allows goods to be imported for a specified use at a lower or zero duty rate.

373. The power in Schedule 2, paragraph 13 allows HMRC to make regulations which specify the particular uses where the authorised use procedure can be declared.

### *Justification for power*

374. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

375. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 14: Authorised Use Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

376. The power in Schedule 2, paragraph 14 allows HMRC to make regulations imposing requirements on any person in relation to the authorised use procedure. Such requirements are necessary for the operation of the procedure, for example imposing adequate supervision on persons to ensure that the goods are indeed being used for the purpose for which they were declared.

### *Justification for power*

377. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

378. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 15: Temporary Admission Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

379. Temporary admission is a type of special procedure which allows particular types of goods which are imported for a temporary period to be subject to a lower or zero duty rate.

380. The power in Schedule 2, paragraph 15 allows HMRC to specify the goods which can be declared for temporary admission and to specify the time period in which goods can be used before being exported.

381. For example the power could be used to allow works of art which are coming into the UK to be exhibited to be declared for temporary admission.

### *Justification for power*

382. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

383. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 16: Temporary Admission Procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

384. As set out above, temporary admission is a type of special procedure which allows particular types of goods to be imported for a temporary period and subject to a lower or zero duty rate.

385. The power in Schedule 2, paragraph 16 allows HMRC to make regulations imposing requirements on any person in relation to a temporary admission procedure in respect of goods declared for the procedure. For example, the power could be used to impose requirements to ensure adequate supervision of the goods while they are in the UK.

### *Justification for power*

386. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

387. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 17(1): Records**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Regulation made by statutory instrument

**Parliamentary Procedure:** Negative procedure (House of Commons only)

### *Context and purpose*

388. Schedule 2, paragraph 17(1) gives HMRC the power to make regulations concerning the keeping of records in respect of goods which are subject to a special procedure.

389. Goods declared for special procedures are subject to particular requirements imposed by or under Schedule 2. Where a requirement of a special procedure is breached then liability to import duty is incurred. Records assist HMRC in determining if requirements have been followed or if there has been a breach.

390. This power can be used to specify the types of records that must be kept, and impose a record keeping requirement on: any person who has been granted authorisation to use a special procedure, any person who is granted any type of authorisation under Schedule 2 (e.g. an authorisation to have a customs warehouse for storage under a storage procedure), any person who is involved to any extent in handling, processing, disposing of or otherwise dealing with the goods while the procedure has effect, or any other person.

### *Justification for power*

391. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

392. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 2, Paragraph 18 (5) (b): Discharge of special customs procedures: rules applicable to all procedures**

**Power conferred on:** HMRC Commissioners

**Power exercised by:** Public notice or regulation made by statutory instrument pursuant to clause 32(9)

**Parliamentary Procedure:** Not applicable; unless the provision made under this power is included in regulations in accordance with clause 32(9) in which case the negative procedure (House of Commons only) applies.

*Context and purpose*

393. Schedule 2, paragraph 18(3) gives HMRC the power to issue directions requiring a special procedure to be discharged before a specified date. Where directions are given generally paragraph 18(5)(b) gives HMRC the power to do this by way of public notice.

394. Special procedures operate in specific circumstances to either suspend liability to duty or allow a lower tariff rate than if the goods had been declared for free circulation. If a special procedure were able to continue indefinitely it could then be a means of avoiding paying duty that would be incurred on declaration for free circulation.

395. The appropriate time in which a special procedure should be discharged will depend on the type of procedure, and the specific circumstances in which the procedure is being used. For example, the appropriate time to allow goods to transit through the UK will depend on the mode of transport that is going to be used and route which will be taken. In the case of temporary admission, the duration of the procedure will depend upon the purpose for which the goods are brought into the UK.

396. Given the wide range of circumstances in which special procedures may be used, paragraph 18(5)(b) gives HMRC the power to give general directions by public notice, as well as being able to give directions on a case-by-case basis in accordance with paragraph 18(3).

*Justification for power*

397. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with this power in primary legislation for the reasons outlined in paragraph 39 above.

*Justification for procedure*

398. For the reasons set out at paragraph 39 above, it is proposed that this function is exercised by public notice.

**Schedule 2, paragraph 18(6): Discharge of special customs procedures: rules applicable to all procedures**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

399. Schedule 2, paragraph 18(6) further clarifies the scope of powers given by Schedule 2 which relate to particular special procedures. Regulations made under another part of Schedule 2 relating to a particular special procedure may require a procedure to be discharged by a specified date. Such regulations may also, with or without modification, replicate or apply the provision made by paragraph 18(4) and (5). Such provision includes providing that, where the procedure is not discharged by that specified date, the goods are to be treated as if they had been declared for free circulation.

*Justification for power*

400. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

401. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 2, paragraph 18(7): Discharge of special customs procedures: rules applicable to all procedures**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

402. Schedule 2, paragraph 18(7) further clarifies the scope of powers given by Schedule 2 which relate to a particular special procedure. Such regulations may make provision for a requirement that goods be presented at a given place, in accordance with the regulations, before the special procedure is regarded as discharged.

*Justification for power*

403. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

404. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 2, paragraph 19(2): Discharge of special customs procedures: rules applicable to particular procedures**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

405. Schedule 2, paragraph 19(2) gives HMRC a power to make regulations specifying the circumstances in which a transit procedure is to be treated as discharged. The specific conditions which will have to be satisfied in order for a transit procedure to be discharged will vary according to the method – or methods – of transport used as well as whether the movement is carried out pursuant to one of the various international transit arrangements to which the UK is a party.

*Justification for power*

406. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

407. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 2, paragraph 20(3): Discharge of special customs procedures: other provision**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

408. Schedule 2, paragraph 20(3) gives HMRC the power to make regulations specifying the evidence that is required to establish that a special procedure has been discharged. If a special procedure is not discharged in some circumstances, liability, or additional liability, to import duty may incur.

409. The evidence that will be required in order to show that a special procedure has been properly discharged will depend upon a range of factors such as: the type of special procedure used; the specific circumstances in which goods were declared for that procedure; and the nature of the commodity or commodities in question. This power will permit HMRC to make more detailed provision to accommodate a range of different circumstances.

*Justification for power*

410. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

411. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 2, paragraph 21: Liability to import duty imposed on persons other than declarant etc**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

412. The power in Schedule 2, paragraph 21 gives HMRC a power to make regulations which impose liability to import duty on any person who breaches a requirement imposed on them under Schedule 2.

413. Special procedures result in the non-imposition (or imposition at a lower rate) of a liability for import duty which would otherwise have been incurred, provided that specified conditions relating to the goods are met. Those conditions may impose obligations on a number of individuals. For example, where goods are to be handled, transported, or processed, a number of different parties may be involved in performing that acts which are required to be done as a condition of using the procedure. The specific obligations which may be imposed will depend upon the circumstances in which the procedure is to be used. Paragraph 21 allows HMRC to make regulations specifying where a breach of a condition of a special procedure will result in a liability to import duty being incurred by the person breaching the requirement.

*Justification for power*

414. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

415. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 2, paragraph 22(1): Changes in nature of goods while subject to a special Customs procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

416. Paragraph 22(1) gives HMRC the power to make regulations specifying how a liability to import duty is to be determined where the goods are subject to a special procedure and there has been a change in the nature of the goods while the procedure has been in effect. Such regulations may also limit their application to circumstances where an HMRC Officer considers that they should apply.

417. This power allows HMRC to make provision addressing situations where, for example, a commodity has been processed and therefore changed in some way (for instance during the inward processing procedure) and a condition of the procedure is subsequently breached. The general rule established by clause 4(3)(b) is that the liability is treated as having been incurred at the time of the breach. However, depending on the nature of the processing and the point of the processing when the breach occurred, the commodity could now be different in nature from when it was originally imported and declared. Provisions made under this power would allow for the liability to duty to be determined based on the good as it stood at the time of declaration.

418. Provisions of this kind are necessary to prevent a person seeking to avoid the application of a particular tariff rate, or trade policy measure, by declaring goods for a special procedure in order to avoid the imposition of a liability to import duty and then transforming the goods into a different commodity having a lower liability to import duty while that special procedure is in effect.

*Justification for power*

419. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

420. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 2, paragraph 22(3): Changes in nature of goods while subject to a special Customs procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

421. Schedule 2, paragraph 22(3) gives HMRC a power to make regulations which alter the value of the goods for the purposes of import duty to take into account things done before or while a special procedure has effect. For example, this would allow HMRC to take into account processing costs which had been incurred during the inward processing procedure, where there is a subsequent breach and import liability is incurred.

*Justification for power*

422. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

423. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 2, Paragraph 22(5)(b): Changes in the nature of goods while subject to a special Customs procedure**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

424. Paragraph 22(5) establishes the general rule that if there has been a change in the nature of goods while they are subject to a special procedure, the goods are nevertheless to be regarded as the same goods for the purposes of Part 1 (import duty).

425. Paragraph 22(5)(b) gives HMRC a power to make regulations specifying exceptions to the general rule in paragraph 22(5).

*Justification for power*

426. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

427. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 23(1): Use of equivalent domestic goods**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

428. Schedule 2, paragraph 23(1) gives HMRC a power to make regulations concerning the prior use of equivalent domestic goods in a special procedure. Equivalent domestic goods are UK goods (domestic goods) which are (depending on the special procedure in question) stored, used or processed for the purpose of the special procedures instead of the imported goods.

429. This power enables orders to be fulfilled from an operator's domestic stock whilst waiting for the non UK goods to arrive without delaying production. Such use is currently subject to strict rules.

430. This power will allow HMRC to place restrictions on the use of equivalent domestic goods. For example, it will allow HMRC to specify the circumstances in which equivalent domestic goods may be used in a customs procedure, or, in certain circumstances, to require that a person obtain authorisation from HMRC before using equivalent domestic goods.

### *Justification for power*

431. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

432. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 2, paragraph 23(5): Use of equivalent domestic goods**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

433. Schedule 2, paragraph 23(5) gives HMRC the power to make regulations specifying the circumstances in which goods are, or are not, to be regarded as equivalent domestic goods.

434. As noted above, it is intended that the use of equivalent goods will be subject to strict rules. These may include, for example, restricting the use of equivalent domestic goods where the commodity in question would be subject to trade defence measures. The power would also be used to specify what constitutes “equivalent” goods in certain circumstances, for example in some cases where the inward processing procedure is used for the purposes of repair of goods, it may be possible to authorise a person to use a new domestic item for the purpose of the procedure.

### *Justification for power*

435. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

436. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

### **Schedule 3, paragraphs 2(1) and (4): Powers to amend list of eligible countries**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

#### *Context and purpose*

437. The powers in Schedule 3 enable amendment of the list of developing countries that might receive a preference. The economic and development position of countries does not remain static. In addition, WTO law requires special and differential treatment of any developing country to be extended to other developing countries which are 'similarly-situated'. Therefore, since the objective of the policy is to target countries in the greatest need and since WTO compatibility requires preferential tariffs to reflect the actual, rather than historical, economic position of countries, it is important the schedule of eligible countries can be updated.

438. The power also allows the Secretary of State to amend the list to reflect a change of name of a country or territory. A list of those developing countries eligible for a preference has been specified on the face of primary legislation.

#### *Justification for power*

439. It is necessary to designate the countries that are eligible for unilateral tariff preferences. This power provides a framework to do this, ensuring that only the poorest countries will be eligible to receive them.

#### *Justification for procedure*

440. For the reasons set out in paragraphs 37 and 38 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 4, paragraphs 1, 3, 4, 5, 6, 7: Key Definitions**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

### *Context and purpose*

441. Part 1 of Schedule 4 identifies the key concepts which are used in establishing whether there is a case for trade remedies. Those remedies would be to address injury to UK industry from either dumped or subsidised goods in accordance with WTO rules.

442. The terms and ideas established by Part 1 of Schedule 4 equate to corresponding terms and ideas established under the WTO Anti-Dumping Agreement or the WTO Agreement on Subsidies and Countervailing Measures. The Anti-Dumping Agreement establishes that a measure can only be applied where the investigating authority has established that goods are being “dumped” and causing injury to domestic producers of like goods.

443. An associated but different circumstance in which trade remedies (e.g. increased duties) may be imposed on imported goods is where those goods are being subsidised by a foreign authority. Each of these concepts, “dumping” and “subsidy”, are defined in Schedule 4 (paragraphs 1 and 3). But as abstract economic terms these definitions in turn rest on concepts such as “comparable price”, “the ordinary course of trade”, or “benefit” which have different meanings in different circumstances.

444. In some circumstances, there will be an accepted, internationally agreed understanding of the meaning of these terms – although this may change over time. In other cases, the WTO Dispute Settlement Body (which hears disputes arising under WTO Agreements) may make a ruling relevant to such interpretation in its determination of a particular case.

445. Regulations under paragraph 1(3)(b) to (d) (in addition to providing further detail about definitions relevant to interpreting “dumped”) may also make provision about how to ensure a fair comparison between the export price and normal value of goods, and provisions around the use of sampling when determining export price or normal value.

### *Justification for power*

446. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

447. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 9 (3): Initiation of a dumping or a subsidisation investigation**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

448. The Bill sets out the circumstances in which the TRA may initiate an investigation into alleged dumping or subsidisation. This will normally be on the basis of an application by or on behalf of the relevant UK industry or, in exceptional cases, by the Secretary of State. This delegated power provides that regulations may set out in more detail the requirements the application will be considered against, such as what constitutes an application made by or on behalf of the UK industry, the information to be included in such an application, the time-frame within which an application will be decided, and how to determine whether the volume of dumped goods is more than negligible. This includes the determination of the relevant UK market and the UK industry's share of that market for the purposes of determining whether the market share threshold has been met.

*Justification for power*

449. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

450. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 10 and Schedule 5, paragraph 8: Conduct of a dumping or a subsidisation investigation and Conduct of a safeguarding investigation**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

451. Once an investigation has been initiated, WTO rules require the investigating authority to ensure that:

- public notices are given to allow interested parties to come forward and present evidence and views, which could be through oral hearings;
- interested parties are able to respond to the evidence submitted by other parties, which could be through oral hearings;
- interested parties are able to make submissions as to whether or not remedies are in the public interest of the UK; and
- confidential information is treated appropriately and with due regard.

452. This delegated power allows for regulations to set out the detail of the investigation process, such as the timings of the various stages and the precise mechanisms for interested parties to be involved in the investigation process, as well as the treatment of information.

*Justification for power*

453. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

454. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 14: Power for the Secretary of State to make provision for determining the amount necessary to remove injury for the purposes of determining an appropriate level of guarantee**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

455. This power is analogous to other powers in Schedules 4 and 5 intended to ensure that trade remedies do not seek to overcompensate the injury intended to be avoided. Under paragraph 14, the TRA may make a recommendation to the Secretary of State as to an amount of guarantee that should be required in relation to imported goods having regard to an estimation of a future trade remedy amount. This enabling provisions allow for further and detailed methodology to be put into secondary legislation so as to establish the methodology or techniques which the TRA must adopt to establish whether an estimated trade remedy amount would adequately remove the injury in consideration.

*Justification for power*

456. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

457. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4 paragraphs 14(1)(b), 15(5)(b) and 18(6) and Schedule 5 paragraphs 12(6), 15(6) and 16(3)(b): Secretary of State's power to specify the content of the TRA's recommendations**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure

*Context and purpose*

458. This allows the Secretary of State to specify in secondary legislation the content of the TRA's recommendation.

*Justification*

459. This power is necessary to ensure that the recommendation contains all of the necessary information in order for the Secretary of State to consider the recommendation and reach a decision. It is appropriate for this to be specified in secondary legislation because the same information will not be required in every case.

*Justification for the procedure*

460. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraphs 20, 21, 22, 23, 26, and Schedule 5, paragraphs 13, 17, 18, 19, 20, 22: Secretary of State's power issue public notices and**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Public notice

***Parliamentary procedure:*** None

*Context and purpose*

461. These delegated powers trigger the publication of a public notice by the Secretary of State under clause 13 which impose trade remedies to the goods specified in the notice. Importers of the goods specified will be required to pay an additional rate of import duty in accordance with the terms of the notice.

*Justification for power*

462. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in a public notice issued in accordance with these powers in primary legislation for the reasons outlined in paragraph 39 above.

*Justification for procedure*

463. Trade remedies will only be imposed following an investigation by the independent TRA and after a full investigation. It is therefore appropriate for trade remedies to be implemented using public notices. The use of public notices to implement such measures in this way is consistent with the approach taken in other WTO countries, such as New Zealand and Australia, and is in line with good practice internationally.

**Schedule 4, paragraph 16: Extension of the period of a provisional remedy in a dumping investigation**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

464. The Bill follows the provisions of the WTO Anti-dumping Agreement by providing that provisional remedies (i.e. guarantees required in response to provisionally established dumping) may be extended to apply for a maximum of nine months. This delegated power enables the Secretary of State to set out more detail of this process in regulations.

*Justification for power*

465. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

466. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 18: Recommendations about an anti-dumping amount or a countervailing amount**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

467. This power enables further and detailed methodology to be put into legislation so as to establish the methodology or techniques which the TRA must adopt to established whether a trade remedy adequately removes (but no more) the injury which it is trying to address.

*Justification for power*

468. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

469. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 19: Recommendations about an anti-dumping amount or a countervailing amount**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

470. This is a power to make regulations authorising the TRA, in the circumstances allowed for by the regulations, to recommend to the Secretary of State that an additional amount of import duty should apply for a period before the public notice giving effect to the measures was published.

471. The general rule under the WTO Agreements on Anti-dumping and Subsidies and Countervailing Measures is that provisional and definitive measures may only be applied to products after the date of the decision to apply those measures. However, limited exceptions are permitted under WTO law.

472. The first exception is to the effect that when definitive measures are applied, then duties may be levied in relation to the period for which provisional measures, if any, had been applied. In practice, this means that provisional measures need not be refunded or released. There are checks on this, however. If the definitive duty is higher than the amount of the provisional measures, the difference is not to be collected.

473. In certain circumstances, and provided certain conditions are met, WTO law also permits definitive duties to be levied on products for the period *prior* to the application of provisional measures. That period must not begin more than 90 days before the date of the application of the provisional measures, and measures may only apply for that period when a public notice to register the goods has been published. The power to register goods is described below in relation to Schedule 4, paragraph 29.

*Justification for power*

474. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

475. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 21: Reviews of continuing application of an anti-dumping amount or a countervailing amount**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

476. WTO rules set out a number of instances in which trade remedies measures must or may be reviewed, such as prior to the expiry of the measures to determine whether they should be maintained or not. The Bill makes provision for these WTO reviews, and also provides for circumvention and absorption reviews, under which the TRA would assess whether the intended effect of the measures is being undermining by circumvention activity or by exporters reducing their prices still further to mitigate the impact of duties put in place.

477. This regulation-making power enables the Secretary of State to make regulations providing for expiry reviews, interim reviews, circumvention reviews and absorption reviews (i.e. reviews as to whether the remedy is removing the relevant injury to industry). Regulations would include detail as to who may apply for a review, the time limit for applications and other details of the review procedure. Certain parameters are prescribed e.g. regulations relying on these powers must ensure that notices are published where a review leads to the variation or revocation of duties.

*Justification for power*

478. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

479. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 21(4)(c) and 22(2)(c) and Schedule 5 paragraph 20(2)(c)**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure

*Context and purpose*

480. This allows the Secretary of State to set out in secondary legislation that trade remedies may be suspended by public notices in certain circumstances when a review is ongoing or whilst the trade remedy is the subject of an international dispute.

*Justification for power*

481. This power is necessary to provide for the suspension of a trade remedy whilst there is a review or an international dispute into whether it has been correctly applied.

*Justification for procedure*

482. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 22: Variation or revocation following an international dispute decision**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

483. This power enables the Secretary of State to make regulations concerning the investigation by the TRA as to whether to revoke or vary any affected measures in light of international dispute decisions so as to allow for consistency with international law. Regulations would include detail as to the conduct of that investigation and the subsequent recommendation to the Secretary of State.

*Justification for power*

484. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

485. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 4, paragraph 23: Acceptance of undertakings**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

### *Context and purpose*

486. Undertakings can be an alternative to the application of an anti-dumping amount or a countervailing amount (definitive or provisional). In the case of dumped imports, these are generally price undertakings, whereby an exporter enters into a voluntary agreement to revise the export price of their product or cease exporting at dumped prices so as to eliminate the injury caused. In the case of subsidised imports, an exporter or the exporter's government enters into a voluntary agreement to: (a) eliminate or limit the subsidy or take other measures concerning its effects; or (b) raise the export price of their product so as to eliminate the injury caused. Undertakings do not apply in relation to safeguards under Schedule 5.

487. Article 8 of the WTO Anti-dumping Agreement and Article 18 of the WTO Subsidies and Countervailing Measures Agreement allow a Member to seek or accept undertakings from exporters or, in the case of subsidies, from the exporters' governments. Similarly, exporters and, in the case of subsidies, overseas governments may offer or give undertakings in a market where they are being investigated for dumped or subsidised imports.

488. This delegated power allows the Secretary of State to set out the conditions under which the TRA may seek an undertaking, or accept an offer of an undertaking.

### *Justification for power*

489. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

490. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

#### **Schedule 4, paragraph 24: Reviews of undertakings etc**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

##### *Context and purpose*

491. This is a power to make further provision in connection with undertakings – including monitoring compliance with undertakings and reviews of undertakings.

492. Where undertakings are breached, the WTO Agreements provide that an alternative trade remedy measure (in the form of increased duties) can be applied. This delegated power allows for regulations to set out the detail of the process which the TRA would follow in cases of alleged breaches.

493. WTO rules set out a number of instances in which trade remedies measures must or may be reviewed, such as prior to the expiry of the measures to determine whether they should be maintained or not. The delegated power encompasses provision for such reviews. Regulations would include detail on who may apply for a review, the time limit for applications and other details of the review procedure.

##### *Justification for power*

494. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

##### *Justification for procedure*

495. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 26 and Schedule 5, paragraph 22: Suspension of anti-dumping or anti-subsidy remedies**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

496. The TRA may recommend to the Secretary of State that provisional or definitive anti-dumping or countervailing measures are temporarily suspended if market conditions change to the extent that injury would be unlikely to recur. The government intends that suspensions would take place in limited circumstances where conditions change suddenly and drastically, such that measures are temporarily not in UK's interest – for example if the production facilities of UK producers were to become suddenly inoperable to the extent that market needs could not be met without the trade remedies in place being temporarily suspended. This power allows Secretary of State to provide for investigations by the TRA into whether to suspend measures, as well as the period for which measures may be suspended.

*Justification for power*

497. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

498. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 27: Not subject to both application of anti-dumping amount and a countervailing amount**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

499. Goods should not be subject to both an anti-dumping amount and a countervailing amount to address the same situation. This power allows the Secretary of State to make regulations to make provision about what constitutes “export subsidisation” for these purposes.

*Justification for power*

500. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

501. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 28: Investigations regarding repayments and discharge of a guarantee**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

*Context and purpose*

502. This power provides for the TRA to investigate whether an amount of dumping or countervailing duty should be repaid or whether a guarantee taken as a provisional measure should be released. There will be circumstances in which additional amounts of import duty will need to be repaid – for instance, if an affected importer can show that for the period (or part of the period) for which the additional amount of import duty was paid, the dumping or subsidies on which the additional amount of import duty was based was reduced or eliminated – and in such circumstances provision will need to be made for the payment of interest on such sums in effect wrongly collected. There will also be circumstances in which security provided as a provisional measure will need to be released (for instance, because the period of the provisional remedy ceases). Regulations under paragraph 10 of Schedule 6 will set out details of the repayment of additional amounts of import duty and the repayment of interest paid in respect of the additional amount of import duty.

*Justification for power*

503. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

504. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

#### **Schedule 4, paragraph 29: Registration etc**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

#### *Context and purpose*

505. In certain circumstances, trade remedies measures may apply for a period before the public notice issued by the Secretary of State giving effect to the measures is published. For this to work, the goods need to be identified at importation and importers need to be aware that the imposition of trade remedies is a possibility, pending the outcome of a TRA investigation and the adoption of the recommendation by the Secretary of State.

506. This provision allows the Secretary of State to notify HMRC that relevant goods subject to investigation need to be registered upon importation as well as notifying importers of the potential for trade remedies to be applied at a later date following the conclusion of a TRA investigation.

#### *Justification for power*

507. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

508. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 4, paragraph 30 and Schedule 5, paragraph 27:  
Reconsideration, reviews and appeals**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

509. The trade remedies framework provides for reconsideration of and appeal against decisions made by the TRA, and for appeals against the Secretary of State's acceptance or rejection of recommendations made by the TRA. This power will allow the Secretary of State to set out the details of the reconsideration and appeal processes using secondary legislation.

*Justification for power*

510. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

511. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 4, paragraph 31 and Schedule 5, paragraph 28: Notices**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

### *Context and purpose*

512. Part 1 requires the TRA, and in some cases the Secretary of State, to provide a notice in certain circumstances. This includes the requirement for the TRA to provide a notice upon initiating an investigation, setting out the reasons for the decision to initiate the investigation and the factual basis for that decision. It also includes requirements, such as for the TRA to publish notice of the termination of an investigation. The purpose of this delegated power is to enable the Secretary of State to make regulations to specify the scope, content and mechanics of the notice.

### *Justification for power*

513. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

514. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

#### **Schedule 4, paragraph 32: Interpretation**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

#### *Context and purpose*

515. The trade remedies framework provides for the involvement of “interested parties”. There are, for instance, clauses providing for “interested parties” to be notified of various matters (for example, the TRA’s determinations that goods are being dumped into the UK and recommendations to the Secretary of State that additional amounts of import duty should be applied). These persons (who may include foreign governments and natural and legal persons) are not defined on the face of the Bill. This power will allow the Secretary of State to define such persons using secondary legislation.

#### *Justification for power*

516. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

517. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 5, paragraphs 1, 2, 3, 4, 5: Key Definitions**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

### *Context and purpose*

518. This Schedule identifies the key concepts which are used in establishing whether there is a case that safeguarding remedies should be recommended by the TRA. Those remedies would address injury to UK industry caused by a significant increase in imports.

519. The terms and ideas established by Part 1 equate to corresponding terms and ideas established under the WTO Agreement on Safeguards. That Agreement establishes that a safeguard measure can only be applied where the investigating authority has established that a significant increase in imports has caused serious injury or threat thereof to domestic producers of like or directly competitive goods. Although the paradigm examples of those concepts are often clearly recognisable (e.g. “serious injury” or “significant increase in imports”) there will be areas and instances of ambiguity. In some circumstances there will be an accepted, internationally agreed understanding of the meaning of these terms – although this may change over time. In other cases, the WTO Dispute Settlement Body may make a ruling relevant to such interpretation in its determination of a particular case.

### *Justification for power*

520. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

521. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 5, paragraph 7(4): Initiation of a safeguarding investigation**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

### *Context and purpose*

522. The Bill sets out the circumstances in which the TRA may initiate a safeguarding investigation. This will normally be on the basis of an application by or on behalf of the relevant UK producers or by the Secretary of State. This delegated power provides that regulations may set out in more detail the requirements the application will be considered against, such as what constitutes an application made by or on behalf of the UK industry, the information to be included in such an application, and the time-frame within which an application will be decided. This includes the determination of the relevant UK market and the UK industry's share of that market for the purposes of determining whether the market share threshold has been met. In addition, the application will need to be accompanied by adjustment plans, which set out proposals from UK producers around how they would adjust to the increase in imports asserted.

### *Justification for power*

523. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

524. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 5, paragraph 12(5): TRA's recommendations about a provisional safeguarding amount**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

525. This power is analogous to provision in paragraph 18 of Schedule 4 which enables rules about how to establish what scale of trade remedy is needed to prevent injury to producers. The enabling provision allows for further and detailed methodology to be put into subordinate legislation, so as to establish the methodology or techniques which the TRA must adopt to established whether a trade remedy adequately to prevent (but no more) the injury which it is trying to address.

*Justification for power*

526. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

527. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 5, paragraph 14(6): TRA's duty to recommend a definitive safeguarding amount or tariff rate quota**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

528. Before the TRA can recommend measures, UK producers must submit final adjustment plans setting out their proposals for responding to increased imports and improving their competitiveness during the period in which they would be protected by safeguarding measures. This ensures that there will be a response from UK industry, so that measures do not simply provide a temporary solution. This delegated power enables clear requirements and parameters of what industry should put forward to be set out in secondary legislation.

*Justification for power*

529. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraphs 14 above.

*Justification for procedure*

530. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 5, paragraph 15(5) and 16(6): TRA's recommendations about a definitive safeguarding amount / tariff rate quotas**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

531. This power is analogous to provision in paragraph 18 of Schedule 4 and paragraph 12(5) of Schedule 5 which enable rules about how to establish what scale of trade remedy is needed to remove the injury to producers. The enabling provision allows for further and detailed methodology to be put into legislation so as to establish the methodology or techniques which the TRA must adopt to established whether a trade remedy adequately to prevent (but no more) the injury which it is trying to address.

*Justification for power*

532. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

533. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 5, paragraph 19: Reviews**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

### *Context and purpose*

534. WTO rules set out a number of instances in which trade remedies measures must or may be reviewed. As an example, where a safeguarding measure is imposed for more than three years, WTO rules require that it must be reviewed no later than at its proposed mid-point. The Bill makes provision for reviews, under which the TRA would assess whether measures are having their intended effect and to vary or extend the measure if that would better meet the objective of removing serious injury and facilitating adjustment. In line with WTO rules, amended measures must be no more restrictive than they previously were. This regulation-making power enables the Secretary of State to make regulations providing for extension reviews and interim reviews. Regulations would include detail as to who may apply for a review, the time limit for applications and other details of the review procedure.

535. Regulations will also make provision regarding the recommendations the TRA may make to the Secretary of State following such reviews, and the actions the Secretary of State may take following the recommendation. Certain parameters are prescribed, for example regulations relying on these powers must ensure that notices are published where a review leads to the variation or revocation of measures.

### *Justification for power*

536. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

537. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 5 paragraph 20(1): Variation or revocation following an international dispute decision**

***Power conferred on:*** the Secretary of State

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative Procedure (House of Commons only)

*Context and purpose*

538. This power enables the Secretary of State to make regulations concerning investigation by the TRA into whether to revoke or vary any affected measures in light of international dispute decisions to bring them into compliance with international law. Regulations would include detail as to the conduct of that investigation and the subsequent recommendation to the Secretary of State.

*Justification for power*

539. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

540. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 5, paragraph 23: Exceptions**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

### *Context and purpose*

541. This paragraph contains two separate powers.

542. The first power enables the Secretary of State to make regulations concerning exceptions from Schedule 5, or from identified provisions or regulations made under it. The government intends for this to give effect to provisions in existing Free Trade Agreements, in order to replicate protections for countries that are trading partners under those agreements.

543. The second power enables the Secretary of State to make regulations concerning the exemption of imports of specific countries from the TRA's recommendations. This is in line with WTO rules which set out that safeguarding measures cannot be applied to imports from developing countries where those countries' share of relevant imports is within de minimis levels.

### *Justification for power*

544. These powers are necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

545. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to these powers will be subject to the negative procedure.

## **Schedule 5, paragraph 26: Investigations regarding repayments**

***Power conferred on:*** *the Secretary of State*

***Power exercised by:*** *Regulations made by statutory instrument*

***Parliamentary Procedure:*** *Negative Procedure (House of Commons only)*

### *Context and purpose*

546. There will be circumstances in which safeguarding duties will need to be repaid. For example, where importers have paid additional amounts of import duty under provisional safeguard measures, but the subsequent investigation does not result in a final affirmative determination, then the additional amount of import duty would need to be refunded and provision will need to be made for the payment of interest on such sums in effect wrongly collected.

### *Justification for power*

547. This power is necessary to establish a standalone UK trade remedies regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

548. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

### **Schedule 6, paragraph 3(1): Notification of liability to pay import duty**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

#### *Context and purpose*

549. Part 1 of Schedule 6 sets out the rules surrounding the notification by HMRC to a person of liability to pay import duty. Such a notification must specify how much duty is liable, describe how the liability arose and provide a time limit for when it must be paid.

550. There may, however, be circumstances where the duty to notify is not necessary. This may occur if for example future operational activity amalgamates acceptance of declarations and notifications of liability for certain customs procedures. The power in paragraph 3(1) of Schedule 6 caters for such instances and provides that HMRC may, by regulations, make provision specifying cases where any duty of notification is taken to be met by some other act or specifying cases where the duty to notify liability does not apply.

551. Regulations made pursuant to this power must ensure that the existence of the liability is acknowledged in some way.

#### *Justification for power*

552. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

553. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 6, paragraph 5(1): Payment of import duty**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

554. The power in Schedule 6, paragraph 5(1) obliges HMRC to make regulations about the payment of import duty. This will allow regulations to set out when and how import duty must be paid, what rate interest will be payable in respect of that debt, and when liability for import duty can be considered to be discharged.

### *Justification for power*

555. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

556. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 6, Paragraph 6(1): Guarantees in respect of import duty**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

557. The power in Schedule 6, paragraph 6(1) obliges HMRC to make regulations about the giving of guarantees in respect of any liability to pay import duty. The provision of guarantees to cover liability for import duty will affect how import duty is charged and paid and how customs procedures are entered into and discharged. The making of regulations about guarantees will set out how the guarantee regime is to operate and thus ensure effective compliance of the customs regime.

558. The regulations may set out the form a guarantee must take, the customs procedure that the guarantee can relate to, the level of liability that the guarantee must cover, conditions that the person giving the guarantee must satisfy, the procedures for enforcing a guarantee, and when a guarantee is considered to be discharged.

559. In the case of goods declared for free circulation the regulations must provide that if a guarantee satisfies the prescribed conditions the liability for duty is deferred until a specified time.

### *Justification for power*

560. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

561. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 6, paragraph 10: Repayment of import duty**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

562. Situations could arise in which a person pays import duty which they are not required to pay, or pays an amount of import duty greater than they are liable to pay. This could result in cases where a person is due a repayment of duty and, where appropriate, interest. Provisions are needed to cater for such situations.

563. The power in Schedule 6, paragraph 10 enables HMRC to make regulations about cases in which import duty and interest can be repaid following a claim satisfying the conditions in the regulations. The regulations may specify who is entitled to claim, the form and timing of a claim, and the evidence required in support of a claim (which can include requiring goods to be presented to HMRC). The power also allows HMRC to specify how a repayment may be made, how interest should be calculated, and to provide for the recovery of amounts wrongly repaid.

### *Justification for power*

564. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

565. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 6, paragraph 11: Remission of import duty**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulations made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and Purpose*

566. This clause provides that HMRC may also make regulations about the remission of import duty. Remission refers to the cancellation, in appropriate circumstances, of a debt which has arisen but not yet been paid. The need for this may arise, for example, where goods are exported because they are defective and whilst initially a liability to import duty was incurred the export means that the liability is no longer to be enforced.

### *Justification for power*

567. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

568. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Clause 29 and Schedule 7, Part 2: Amendments of the Customs and Excise Management Act 1979 (“CEMA”)**

### **Paragraphs 7, 37, 84, 96, and 99**

569. The above paragraphs, respectively, amend the following sections in CEMA which give HMRC power to make regulations or issue directions: 10, 44, 93, 129, and 133. These amendments ensure that those sections, including the regulation-making power for which each section provides, do not apply in areas covered by the Taxation (Cross-border Trade) Bill. These sections are concerned with the imposition or administration of duty, and their retention for the purposes of import duty would therefore have unnecessarily replicated provision which is contained within the Taxation (Cross-border) Trade Bill. Equally, however, these CEMA sections continue to be relevant for other areas of taxation, such as excise duty, and therefore it would not be appropriate to repeal them entirely.

570. None of these amendments alter the nature of the parliamentary scrutiny procedure, (specified in section 172 CEMA as the negative procedure), to which these provisions are currently subject.

### **Paragraphs 6, 13, 21-23, 26, 35, 59, 61, 64, 65, 67, 77, 83, 106, and 112**

571. The above paragraphs, respectively, amend the following sections in CEMA which give HMRC power to make regulations or issue directions: 9, 23, 30, 31, 33, 35, 42, 59, 60A, 63, 64, 66, 78, 92, 159, and 166. The majority of these amendments make minor changes to the terminology used in CEMA in order to remove redundant cross-references to EU customs duty (including references to EU legislation, institutions, or functions and powers of HMRC concerned with the administration of the EU customs union), insert cross-references to the Taxation (Cross-border Trade) Bill, and ensure that CEMA continues to reflect internationally-recognised customs terminology. Other amendments extend the categories of vehicle in respect of which existing CEMA regulation-making powers may be exercised to include rail-movements into Northern Ireland which may, following EU withdrawal, result in goods crossing a customs frontier.

572. None of these amendments alter the nature of the parliamentary scrutiny procedure, (specified by section 172 CEMA as the negative procedure), to which these provisions are currently subject.

## **Schedule 7, paragraph 5 amending section 5 CEMA**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

573. CEMA section 5 establishes the general rule for determining the time at which goods are to be considered to have been imported into, or exported from, the UK.

574. Schedule 7, paragraph 6 amends section 5 CEMA to insert a new power for HMRC to make regulations varying the effect of section 5 CEMA in certain circumstances so as to specify an earlier time at which goods are to be treated as having been imported into, or exported from, the UK. This regulation-making power can only be exercised if the UK has entered into an international arrangement to that effect. This regulation-making power could be used to give effect to certain customs-cooperation elements of international arrangements which the UK may wish to enter with, for example, the EU or the Crown Dependencies.

### *Justification for power*

575. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

576. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 7, paragraphs 8(3), 9(3), 11(3), 12(3), 15(3) and 16(3), amending sections 20, 20A, 22, 22A, 25 and 25A CEMA respectively**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

577. The powers in paragraphs 8(3), 9(3), 11(3), 12(3), 15(3), 16(3) and 17(3) of Schedule 7 have been grouped together as they all amend sections of CEMA relating to the approval of customs and excise control areas. Sections 20 and 22A relate to approval of wharves; sections 22 and 22A relate to approval of examination stations at customs and excise airports; and sections 25 and 25A relates to approval of temporary storage facilities (formerly known as transit sheds).

578. The powers in these paragraphs each introduce a power for HMRC to impose conditions to be satisfied in order for an approval to be granted. These powers permit HMRC to specify conditions which must be satisfied in the case of every approval and additional conditions in specified cases. This is to ensure that tailored requirements can be imposed which are reasonable and proportionate to the nature and scale of the operator and facility in question.

579. These powers are not unfettered. The conditions must be set out in secondary legislation and the powers can only be exercised in situations in which HMRC considers that the conditions imposed are appropriate for the administration, collection and enforcement of import duty.

580. A person who fails to comply with a condition of an approval shall be liable upon summary conviction to a fine of an amount not exceeding £20,000 or, in cases of repeated non-compliance, an amount not exceeding the sum of £20,000 and the enhanced amount produced by multiplying £20,000 by the number of notices in respect of which the failure to comply has not been remedied.

*Justification for power*

581. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

*Justification for procedure*

582. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 7, paragraph 17 amending section 26 CEMA**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

583. This paragraph amends section 26 CEMA by inserting new sub-sections 26(1ZA) to 26(1ZC). Section 26 as currently drafted gives HMRC the power to make regulations appointing places for the carrying out of import formalities in respect of goods imported into or exported out of Northern Ireland by land for the purposes of safeguarding revenue. New sub-section 26(1ZA) gives HMRC the further power to make regulations applying such provisions in a specified manner in respect of road or rail vehicles in Northern Ireland as well as a power to designate areas as “railway customs areas” for the performance of customs controls. Section 26 as originally enacted envisaged the use of border checkpoints in order to carry out customs formalities. The new sub-section 26(1ZA) is intended to enable alternative provision to be made for the completion of import formalities at sites located away from the frontier.

### *Justification for power*

584. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

585. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 7, paragraph 27 amending section 35 of CEMA**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

586. Section 35A of CEMA gives HMRC a power to make regulations specifying cases where a vehicle operator must confirm upon arrival in the UK that a Customs declaration has previously been made, or that they reasonably believe one to have been made, in respect of all goods which they are carrying. Section 35A(3) provides that a vehicle operator who fails to give the confirmation in accordance with regulations made under section 35A shall be liable to a penalty of level 3 on the standard scale.

587. This power is intended to allow the UK to give effect to any requirement that, in certain circumstances, Customs declarations be made prior to the goods' arrival into the UK. Operators who are carrying goods into the UK but not themselves acting as the declarant are required to take reasonable steps to establish that a declaration has been made to HMRC in respect of those goods prior to their arrival.

### *Justification for power*

588. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

589. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

## **Schedule 7, Paragraph 65 inserting a new section 64(1A) into CEMA**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Common only)

### *Context and purpose*

590. Section 64 of CEMA establishes a general rule that certain categories of vehicle are required to obtain clearance from HMRC prior to departure from the UK. Schedule 7, paragraph 65 inserts a new section 64(1A) which permits HMRC to make regulations disapplying the requirement to obtain clearance in specified circumstances. The power can, in appropriate circumstances, therefore be used to reduce the regulatory burden to which operators are subject.

### *Justification for power*

591. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

### *Justification for procedure*

592. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Schedule 7, Paragraph 115 amending section 172 CEMA**

593. Section 172 of CEMA specifies the parliamentary scrutiny procedure to which regulations made pursuant to CEMA are subject. Schedule 7 creates new regulation-making powers in sections 5, 20, 22, 25, 26(1ZA) 35A, and 64 of CEMA. Paragraph 115 accordingly amends section 172 to insert a reference to those new powers to ensure that they are also subject to the appropriate parliamentary procedure for which section 172 CEMA provides; since these new regulation-making powers are concerned with the administration, collection and enforcement of duty, section 172 of CEMA provides for a House of Commons only procedure.

## Schedule 7, Part 3: Amendments of other enactments

### Schedule 7, paragraphs 124, 129-132, and 137 amending powers in the Customs and Excise Duties (General Reliefs) Act 1979 (“CED(GR)A”)

**Power conferred on:** HMRC Commissioners (in paragraphs 124, 130 and 131 amending sections 7, 13 and 13A), the Treasury (in paragraph 129 amending section 12), and the Secretary of State (in paragraph 132 amending section 13B).

**Power exercised by:** Order made by statutory instrument (in paragraphs 124, 130, 131, and 132 amending sections 7, 13, 13A and 13B) and regulation made by statutory instrument (in paragraph 129 amending section 12)

**Parliamentary Procedure:** These amendments do not alter the existing nature of the parliamentary scrutiny to which these powers are subject which is as follows. Negative procedure (House of Commons only): sections 7, 13 and 13A (unless the effect of an Order under section 13 or 13A is to restrict access to a relief in which the case the made affirmative procedure applies). Negative procedure (Both Houses): section 12. Draft affirmative (Both houses): section 13B.

#### *Context and purpose*

594. These paragraphs, respectively, amend the following sections in CED(GR)A which give powers to make regulations or orders: sections 7, 12, 13, 13A, 13B and 17. These amendments ensure that those sections, including the regulation-making power for which each section provides, do not apply in areas covered by the Taxation (Cross-border Trade) Bill (or, in the case of the amendments to sections 12 and 13B remove references concerned with the UK’s membership of the EU); specifically, clause 19 of the Taxation (Cross-border Trade) Bill which makes comprehensive provision concerning reliefs from import duty. Accordingly, sections 2, 4, and 14 which are solely concerned with establishing specific reliefs from customs duty are redundant and therefore repealed entirely. The remaining amendments clarify that the scope of the remaining CED(GR)A provisions referred to above is confined to excise duty and also make minor amendments to remove redundant references to terms derived from EU law.

595. None of these amendments alter the nature of the parliamentary scrutiny procedure, (specified in section 17 CED(GR)A), to which these provisions are currently subject.

#### *Justification for power*

596. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in orders or regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

#### *Justification for procedure*

597. For the reasons set out in paragraphs 32 and 33 above, it is proposed that the affirmative procedure will be used for some of the regulations and orders. For the reasons set out in paragraph 36 above, it is proposed that all other regulations and orders made pursuant to this power will be subject to the negative procedure.

## **Schedule 7, Paragraph 149 amending section 26 of the Finance Act 2003**

***Powers conferred on: the Treasury***

***Powers exercised by: Regulation made by statutory instrument***

***Parliamentary Procedure: Negative procedure (House of Commons only).***

### *Context and purpose*

598. Paragraph 149 creates a new regulation-making power in section 26 of the Finance Act 2003. That section confers a power on the Treasury to impose administrative civil penalties for breaches of “relevant rules”, which the section defines as requirements imposed by or under certain specified pieces of legislation. Paragraph 149 removes references to various EU requirements from the categories of “relevant rules” for which a penalty may be imposed, and inserts a new reference, specifying that requirements imposed by or under the Taxation (Cross-border) Trade Bill are to be considered as relevant rules for the purposes of that section and, accordingly, may be subject to administrative penalties. This amendment is to reflect the fact that customs rules will, following EU withdrawal, no longer be imposed pursuant to EU customs legislation and will instead be imposed pursuant to the Taxation (Cross-border Trade) Bill.

599. Paragraphs 149 and 150 insert new sections 26(5A) and 32(2) into Finance Act 2003. This allows the Treasury to make regulations that prescribe circumstances where a failure to remedy an existing breach of a condition imposed on a person under sections 20(1A), 22(1A), or 25(1A) of CEMA is to be treated as a further breach of the requirement in question.

600. None of these amendments alter the nature of the parliamentary scrutiny procedure, (specified in sections 24, 26, and 41 of the Finance Act), to which these provisions are currently subject.

### *Justification for power*

601. This power is necessary to establish a standalone UK customs regime and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 14 above.

602. The amendments made by paragraphs 149 and 150 will allow for the imposition of proportionate penalties in circumstances where a breach of a requirement is ongoing and a person is refusing to remedy it.

### *Justification for procedure*

603. For the reasons set out in paragraph 36 above, it is proposed that regulations made pursuant to this power will be subject to the negative procedure.

**Clause 43 and Schedule 8, paragraphs 5, 6(3), 16(4), 19(4), 25(5), 26(2), 26(3), 27, 30(7), 32(2), 37(2), 41, 45(2), 54, 98(2)(a), 98(4) and 98(5) (amending sections 5(3), 6(14), 17(5)(a), 18B(2A), 24(6), 25(1)(b) and (7), 26(1), 30(9), 33(1), 34(1), 38, 41(3), 52, and Schedule 11, paras 2, 3 and 6 of VATA)**

***Powers conferred on:*** *the Treasury or HMRC Commissioners*

***Powers exercised by:*** *Regulations or Order made by statutory instrument depending on the power*

***Parliamentary Procedure:*** *Negative or affirmative procedure depending on the power*

*Context and purpose*

604. The powers in clause 43 and Schedule 8, paragraphs 5, 6(3), 16(4), 19(4), 25(5), 26(2), 26(3), 27, 30(7), 32(2), 37(2), 41, 45(2), 54, 98(2)(a), 98(4) and 98(5) are all amendments to existing powers where the amendments are consequential on the abolition of acquisition tax/other special rules on the application of VAT to the movement of goods between Member States, and the extension of import VAT to goods entering the UK from the EU.

605. There are specific rules in the application of VAT to cross-border movements of goods within the EU. Goods leaving a Member State in certain circumstances are referred to as dispatches or removals and goods entering a Member State in certain circumstances are referred to as acquisitions. In the absence of an agreement with the EU, the Bill will amend VATA to treat goods moving between the EU and the UK in the same way as goods moving between the rest of the world and the UK, and will apply import VAT to such goods entering the UK. The abolition of acquisition tax and the concepts of removals and dispatches, and the extension of import VAT, require consequential amendments to various powers.

606. The amendments are to s5(3) (meaning of supply: alteration by Treasury order), s6(14) (time of supply), s17(5)(a) (free zone regulations), s18B(2A) (fiscally warehoused goods: relief), s24(6) (input tax and output tax), s25(1)(b) and (7) (payment by reference to accounting periods and credit for input tax against output tax), s26(1) (input tax allowable under section 25), s30(9) (zero-rating), s33(1) (refunds of VAT in certain cases), s34(1) (capital goods), s38 (importation of goods by taxable persons), s41(3) (application to the Crown), and s52 (trading stamp schemes) of VATA.

607. Schedule 11 to VATA is amended to remove: information requirements on transactions with Member States (para 2(3) and (3ZA)), invoicing provisions for acquisitions/dispatches (para 3(2)) and record keeping requirements for acquisitions (para 6(1)).

*Justification for power*

608. These are amendments to existing powers consequential on other changes made in the Bill.

*Justification for procedure*

609. These are amendments to existing powers so it is appropriate that the existing procedure should apply.

**Clause 43 and Schedule 8 paragraphs 30(4) and (5), 40(2), (4) & (5), 42 and 98(3) (amending sections 30(6) (a) and (8), 37(1), (3) & (4), 39(1), Schedule 11 para 2A VATA)**

***Powers conferred on: the Treasury or HMRC Commissioners***

***Powers exercised by: made by Order or made by Regulation***

***Parliamentary Procedure: Negative procedure (House of Commons only)***

*Context and purpose*

610. Schedule 8 paragraphs 30(4) and (5), 40(2), (4) & (5), 42 and 98(3) are all amendments to existing powers where the amendments are consequential on the general approach of the Bill in not distinguishing between the EU and the rest of the world in the application of VAT.
611. Currently there are specific rules in place for VAT as applied to cross border movement of goods within the EU. These include rules for dispatches (in relation to goods leaving the UK) and acquisitions (in relation to goods coming into the UK). In the absence of an agreement with the EU, goods leaving or coming into the UK from the EU will be treated by the Bill in the same way as those leaving or coming into the UK from the rest of the world.
612. Similarly, there are currently different VAT refund procedures to be adopted by a person who incurs VAT in the UK depending on whether that person carries on business in the EU or outside the EU.
613. Equally powers to make provision regarding content of VAT invoices include power to require an indication of whether VAT is chargeable under the law of an EU Member State.
614. Given that these existing powers contained in sections 30(6) (a) and (8), 37(1), (3) and (4), 39(1) and Schedule 11 para 2A VATA use language reflecting these underlying rules which distinguish between the EU and the rest of the world, consequential changes need to be made to these powers to reflect the fact that the Bill treats EU Member States in the same way as the rest of the world in the application of VAT.
615. Changes are also made, in the case of section 30(8) and section 39, to permit flexibility, by providing that section 30(8) may be used to zero-rate a supply where goods are exported to such places specified in the regulations, and by providing that regulations under section 39 may make different provision for persons carrying on business in different places.
616. The existing power to make provision for relief of import VAT in s37 (1) can only be applied of and so far as the relief appears to the Treasury to be necessary or expedient having regard to any international agreements or arrangements. The Bill removes this requirement.

*Justification for power*

617. These changes are largely consequential on other changes made in the Bill with further substantive changes being introduced for flexibility.

*Justification for procedure*

618. These are amendments to existing powers so it is appropriate that the existing procedure should apply.

**Clause 43 and Schedule 8, Paragraph 7(6) (new subsection 7(12))**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

619. Section 7(11) VATA contains an existing power to vary the rules for determining where a supply of goods is made. The proposed extension to the power in section 7(11) by the addition of a new subsection (12) means that an order made under section 7(11) making rules for determining where a supply of goods is made may be subject to notification of matters to HMRC or such other conditions as may be specified in the regulations.

620. The change is consequent on other changes made to section 7 and is made so that the administrative framework for the rules determining where a supply of goods is made continues to operate when the UK leaves the EU.

*Justification for power*

621. This power is required so that the administrative framework for determining where a supply takes place can operate effectively when the UK leaves the EU.

*Justification for procedure*

622. The parliamentary procedure that will be adopted is consistent with the existing legislative regime.

**Clause 43 and Schedule 8, paragraph 13 (substituting a new section 16 in VATA)**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

623. VATA provides that VAT on imports (import VAT) should be accounted for as if it were customs duty. Section 16 VATA currently applies all customs legislation (UK and EU) to import VAT but provides the power to make regulations to exclude or modify the application of that legislation. Section 16 as amended will apply, to import VAT, all the legislation which is relevant to import duty. The power to make regulations to exclude or modify the application of that legislation remains. Insofar as the power is amended that amendment is consequent on other changes made in the Bill and the withdrawal of the UK from the EU.

*Justification for power*

624. This is an amendment to an existing power consequential on other changes made in the Bill.

*Justification for procedure*

625. This is an amendment to an existing power so it is appropriate that the existing procedure should apply.

## **Clause 43 and Schedule 8, paragraph 14 (new section 16A in VATA)**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

626. If the UK enters into a customs union with other territories under which arrangements have effect for the purposes of import duty under this Bill, it may be necessary to make provision for the application of VAT to goods which enter the UK. This is because, if the arrangements do not require an import declaration for such goods, a charge to import VAT would not arise and could not be collected. This paragraph inserts into VATA the power to make regulations charging VAT on customs union acquisitions (goods travelling into the UK from territories within a customs union) and to make provisions for persons to register account for VAT such as record-keeping and other administrative/collection requirements. This paragraph also contains a power to modify the application of the VAT Act in relation to cases dealt with under these regulations.

### *Justification for power*

627. This power is necessary to charge VAT on goods entering the UK from countries in a customs union with the UK.

### *Justification for procedure*

628. The parliamentary procedure that will be adopted is consistent with the existing legislative regime.

## **Clause 43 and Schedule 8, paragraph 15 (new section 16B in VATA)**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation made by statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

### *Context and purpose*

629. In the absence of an agreement with the EU, the UK needs the ability to amend the rules in relation to how import VAT (and excise duty) is collected on goods imported as small parcels. In particular, extending the existing rules for non-EU parcels to those from the EU would increase the number of UK consumers having to pay duties and tax when their goods are delivered, and the associated burdens on fast parcel operators and Royal Mail, would increase. In order to minimise disruption to the parcels service for customers, the Bill confers a power to transfer liability to account for and pay VAT due on parcels to the overseas seller rather than the UK purchaser.

630. It also permits HMRC to prescribe the necessary administrative framework, reflecting the development of the relevant systems and processes and necessary compliance measures such as joint and several liability and disclosure of information to HMRC.

### *Justification for power*

631. This power is necessary to enable the VAT regime to function as required after the UK's withdrawal from the EU and the government considers that it would not be appropriate to set out the detail to be contained in regulations made pursuant to this power in primary legislation for the reasons outlined in paragraph 17 above.

### *Justification for procedure*

632. The parliamentary procedure that will be adopted is consistent with the existing legislative regime.

**Clause 43 and Schedule 8, paragraphs 58 and 77 (new section 58ZA and associated amendment to section 92 VATA)**

***Power conferred on:*** HMRC Commissioners

***Power exercised by:*** Regulation by made statutory instrument

***Parliamentary Procedure:*** Negative procedure (House of Commons only)

*Context and purpose*

633. Section 92(6) of VATA allows HMRC to exercise certain information powers (including powers to make regulations regarding the administration of VAT covering such matters as keeping of accounts and similar), for the purpose of facilitating compliance with any EU obligations, with respect to matters that are relevant to a charge to EU VAT as well as to UK VAT. On withdrawal of the UK from the EU, that power will no longer be appropriate and is removed by paragraph 77.

634. The proposed new power in Section 58ZA(1) would allow HMRC to impose obligations on taxable persons in relation to the provision of information that would enable the UK to give effect to any international VAT arrangements between the UK and other countries, thereby facilitating the administration, collection or enforcement of VAT in the UK.

635. “International VAT arrangements” are defined by subsection (9) of the new section 58ZA to mean arrangements which have effect by virtue of an Order in Council under section 173 of the Finance Act 2006 and which relate to VAT (or a tax corresponding to VAT) imposed under the law of any territory in relation to which the arrangements have been made.

*Justification for power*

636. The power is a recast and extension of an existing power which will facilitate the collection of UK VAT by putting the UK in a position to exchange information with other tax authorities where relevant agreements are made and so assist UK revenue collection and the fight against fraud.

*Justification for procedure*

637. This is an amendment/extension to an existing power so it is appropriate that the existing procedure should apply.

**Clause 43 and Schedule 8, paragraphs 98(2) (c) and 98(2)(f) (amending para 2 of Schedule 11 to VATA)**

**Power conferred on:** HMRC Commissioners (for making regulations as to the payment of VAT on importation of a “means of transport”) and Treasury (for varying the meaning of “means of transport”)

**Power exercised by:** Regulation (for HMRC power) and Order (for Treasury power)

**Parliamentary Procedure:** Negative procedure (House of Commons only)

*Context and purpose*

638. There are specific EU rules in place for the VAT treatment of intra-EU movements of new means of transport. In the absence of a negotiated agreement with the EU, such movements of new means of transport will be treated in the same way as imports/exports of vehicles from/to outside the EU. As a result several consequential changes are required to VATA involving amendments to Sections 40 and 95 and powers in paragraph 2 of Schedule 11.

639. The amendments made here will allow HMRC to make regulations requiring import VAT on the importation of a means of transport to be paid at such time and in such manner as may be specified in the regulations. They will also allow the Treasury to vary the definition of “means of transport”. Those powers already exist but are recast, because special rules regarding new means of transport arriving from the EU are no longer appropriate.

*Justification for power*

640. This is an amendment to an existing power consequential on other changes made in the Bill.

*Justification for procedure*

641. This is an amendment/extension to an existing power so it is appropriate that the existing procedure should apply.

**Clause 43 and Schedule 8 paragraph 106 (amending section 13(4) of the Customs and Excise Duties (General Reliefs) Act 1979)**

***Powers conferred on:*** HMRC Commissioners

***Powers exercised by:*** Order made by statutory instrument

***Parliamentary Procedure:*** Existing power (Negative Procedure)

*Context and purpose*

642. S13 CED(GR)A gives powers to provide for relief from, inter alia, VAT for persons entering the UK. S13(4) defines VAT in terms consistent with the UK's membership of the EU. Paragraph 106 amends the definition to remove references which distinguish between the EU and the rest of the world. This is a consequential amendment and does not expand or create any new powers.

*Justification for power*

643. This is an amendment to an existing power consequential on other changes made in the Bill.

*Justification for procedure*

644. This is an amendment to an existing power so it is appropriate that the existing procedure should apply.

**Schedule 8, paragraphs 109 and 111 amending section 26 of the Finance Act 2003**

***Powers conferred on: the Treasury***

***Powers exercised by: Order made by statutory instrument***

***Parliamentary Procedure: Existing power (Negative Procedure)***

*Context and purpose*

645. Section 26 of the Finance Act 2003 contains provisions about penalties which can be imposed on persons of a prescribed description who contravene a prescribed relevant rule or relevant rule of a prescribed description. Under section 26(6) the Treasury has the power to amend the maximum amount of penalty that can be imposed.

646. Section 26(8) defines 'relevant rules', for the purpose of this section. Paragraph 111 removes "(d) in the case of import VAT, community customs rules as they apply in relation to import VAT". This is a consequential amendment to remove reference to community customs rules and does not expand or create any new powers.

*Justification for power*

647. This is an amendment to an existing power consequential on other changes made in the Bill.

*Justification for procedure*

648. This is an amendment/extension to an existing power so it is appropriate that the existing procedure should apply.

**Clause 43 and Schedule 8 paragraphs 125, 127 and 130 (amending sections 49(3), 51(1)(d) and 55(1) of the Finance (No. 2) Act 2017)**

***Powers conferred on:*** HMRC Commissioners

***Powers exercised by:*** Order made by statutory instrument

***Parliamentary Procedure:*** Existing power (Negative Procedure)

*Context and purpose*

649. The Finance (No. 2) Act 2017 provides for a regime to govern the VAT treatment of fulfilment businesses and provides powers for HMRC to approve such businesses and to make regulations for a registration and penalties system. Paragraphs 125, 127 and 130 amend the definition of “fulfilment business” to remove references which distinguish between the EU and the rest of the world. This is a consequential amendment and does not expand or create any new powers.

*Justification for power*

650. This is an amendment to an existing power consequential on other changes made in the Bill.

*Justification for procedure*

651. This is an amendment to an existing power so it is appropriate that the existing procedure should apply.

**Schedule 9, paragraph 5 amending section 13AC of the Hydrocarbon Oil Duties Act 1979**

**Power conferred on:** *HMRC Commissioners*

**Power exercised by:** *Regulation made by statutory instrument*

**Parliamentary Procedure:** *Negative procedure (either House of Parliament)*

*Context and purpose*

652. This power allows HMRC to specify in regulations what is treated as being, or not being, private pleasure-flying for the purposes of section 13AC of the Hydrocarbon Oil Duties Act 1979 (HODA).

653. Schedule 9, paragraph 5 amends section 13AC of the Hydrocarbon Oil Duties Act 1979 (HODA) which provides for rebated kerosene for private pleasure flying. Paragraph 3 removes the reference to Directive 2003/96/EC in the definition of private pleasure-flying and recasts the definition without reference to that EU legislation.

*Justification for power*

654. There is no intention to change the meaning of the definition. However, if uncertainty arises as to what is covered, the power inserted into section 13AC of HODA in new subsection (6C) allows HMRC to resolve the issue rapidly by specifying in regulations what is treated or not treated as being private pleasure-flying for the purposes of that section.

*Justification for procedure*

655. The power takes the procedure provided for the other regulation-making powers in section 13AC of HODA into which it is inserted.

## **Schedule 9, paragraph 6 amending section 14E**

**Power conferred on:** *HMRC Commissioners*

**Power exercised by:** *Regulation made by statutory instrument*

**Parliamentary Procedure:** *Negative procedure (either House of Parliament)*

### *Context and purpose*

656. This power allows HMRC to specify in regulations what is treated as being, or not being, a private pleasure craft for the purposes of section 14E of the Hydrocarbon Oil Duties Act 1979 (HODA).

657. Schedule 9, paragraph 6 amends section 14E of the Hydrocarbon Oil Duties Act 1979 (HODA), which provides for the use of rebated heavy oil and bioblend in private pleasure craft. This includes removing the reference to Directive 2003/96/EC in the definition of private pleasure craft and recasting the definition without reference to that EU legislation.

### *Justification for power*

658. There is no intention to change the meaning of the definition. However, if uncertainty arises as to what is covered, the power in new section 14E(7D) of HODA allows HMRC to resolve the issue rapidly by specifying in regulations what is treated or not treated as being a private pleasure-flying craft and a private pleasure craft for the purposes of those sections.

### *Justification for procedure*

659. The power takes the procedure provided for the other regulation-making powers in section 14E of HODA into which it is inserted.