

**EXPLANATORY MEMORANDUM TO**

**THE EXCISE DUTIES (NORTHERN IRELAND MISCELLANEOUS  
MODIFICATIONS AND AMENDMENTS) (EU EXIT) REGULATIONS 2020**

**2020 No. 1559**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The United Kingdom (UK) left the European Union (EU) on 31 January 2020 and entered a transition period that will end at 11pm on 31 December 2020 (referred to as IP completion day). At the end of the transition period, under the Protocol on Ireland/Northern Ireland (the Protocol) agreed between the EU and the UK as part of the Withdrawal Agreement, EU rules in relation to excise goods will continue to apply in Northern Ireland (NI). This instrument makes changes to existing provisions in secondary legislation which govern the rules on the holding and movement of excise goods by businesses within the UK, including NI, and makes new provisions in relation to the payment of excise duty due on goods which are moved to NI from GB. This instrument also saves and modifies, in relation to NI, certain provisions as they applied immediately before IP completion day. These legislative changes are necessary to ensure that NI continues to have a functioning excise regime at the end of the transition period.

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

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

- 3.1 This instrument is required to amend existing excise provisions and makes new provision in relation to the holding and movement of excise goods into and out of NI. These changes are necessary to implement the Protocol or are related consequential provision. Further legislation to implement the Protocol in relation to excise is contained in the Taxation (Post-transition Period) Act 2020 (TPPA) (which received Royal Assent on 17 December 2020) and other statutory instruments, including the Travellers' Allowances and Miscellaneous Provisions (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1619). Regulations 81 to 91 and 96 of this instrument come into force immediately before IP completion day whilst the remainder of the instrument will come into force on IP completion day.
- 3.2 There will not be 21 days between this instrument being laid and its coming into force. The breach of the 21-day rule is due to this instrument being linked to the TPPA and it was therefore inappropriate to lay this and associated instruments until after that Act received Royal Assent. This instrument has been laid as early as possible after Royal Assent to the TPPA being given and needs to be in force for the end of the transition period.

- 3.3 Five regulations in this instrument sub-delegate power to HMRC to specify certain matters in a public notice. The power for such sub-delegation is section 48(11)(b) TCTA, which permits HMRC to make regulations relating to excise as it considers appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU, including to make any such provision as might be made by Act of Parliament.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

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

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Legislative Context**

- 6.1 This instrument will be made using the powers within sections 45(1) and (2) and 48(10)(a) and (b) and (11)(b) and (d) of the Taxation (Cross-border) Trade Act 2018 (TCTA). Regulations 81 to 92 and 96 of this instrument come into force immediately before IP completion day, whilst the remainder of the instrument will come into force on IP completion day. This instrument amends the following excise secondary legislation:

- the Excise Goods (Holding Movement and Duty Point) Regulations 2010 (S.I. 2010/593)
- the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/13)
- the Duty Stamps Regulations 2006 (SI. 2006/202)
- the Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/14)

- 6.2 This instrument also saves and modifies the excise secondary legislation referred to in paragraph 7.21 so those regulations will continue to apply in NI only in respect of excise goods.

- 6.3 Section 48(11)(b) of TCTA provides the power to make regulations under section 45 of TCTA to make provision by reference to things specified in a notice published in accordance with the regulations. That power is relied on in regulations 88, 93, 94, 96 and 99 of this instrument. Notices made pursuant to these regulations will be published on gov.uk.

## 7. Policy background

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

- 7.1 The UK left the EU on 31 January 2020 and entered a transition period, which ends at 11pm on 31 December 2020. The current rules and regulations about the holding and movement of excise goods within the EU are set out in Council Directive 2008/118/EC and related directly applicable EU legislation. The Directive is implemented within UK law by the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (HMDP). As NI will continue to be subject to EU excise rules after the end of the transition period, whilst Great Britain (GB) will not, then the HMDP regulations require changes to reflect this position.
- 7.2 Currently excise goods, on which UK excise duty has been paid, can move unrestricted within the UK. At the end of the transition period, some movements between GB and NI will trigger an excise duty point, which could require a second payment of UK excise duty.
- 7.3 Additional proposed amendments also modify the existing HMDP regulations governing the holding and movement of excise goods in several ways.
- 7.4 They ensure that the provisions which implement EU legislation continue to apply but only in relation to excise goods entering or leaving NI or being held or moved wholly within NI by changing references to “the United Kingdom” to read “Northern Ireland”.
- 7.5 Other references are also being amended, added, replaced or removed to achieve the same policy approach of ensuring that the excise rules apply as required in relation to NI after the end of the transition period. For example, the reference to “another Member State” is replaced with “an EU Member State”, references to the Channel Islands and the Isle of Man are removed from the definition of a Member State.
- 7.6 References to customs legislation which link to the Community Customs Code are replaced to ensure correct referencing to EU legislation and the Union Customs Code.
- 7.7 The definition of excise goods is also updated to ensure it covers all goods subject to excise rules in NI including heated tobacco products.
- 7.8 Part 4 of the HMDP regulations, which concerns registered consignors, is also amended to make it clear that it only applies in relation to movements which involve an EU Member State.
- 7.9 Parts 8 and 9 of the HMDP regulations are removed as they govern movements of duty suspended goods wholly within the UK (and any references to these parts throughout HMDP are also removed for the purposes of these NI modifications). Movements wholly within NI will continue to be subject to same rules as they are now. Equally, movements between NI and the rest of the UK will, as far as possible, be subject to the same rules as they are now.
- 7.10 The amendments to the Excise Goods (Holding, Movement and Duty Point) (Amendment etc.) Regulations 2019 provide for the circumstances in which the UK Excise Movement and Control System (EMCS) will be used and the circumstances in which the EU EMCS will be applicable in relation to different duty suspended movements leaving, entering or within NI. There will be two separate types of movement, one to and from the EU and the other to and from GB. In effect there are two different versions of the existing EMCS, one of which shares data with the EU

(for movements involving the EU) and one which purely applies for internal UK movements.

- 7.11 To avoid potential double taxation and prevent the need for a reclaim of any previous payment of excise duty, the proposed amendments introduce an off-set mechanism. This provides that where HMRC are satisfied that UK excise duty has already been paid on goods moved to NI from GB, the amount paid can be off-set against the amount due at the second duty point arising in NI. In most cases this will result in no additional payment being necessary. It also provides that the Commissioners for HMRC may require compliance with such conditions and evidence of previous payment of UK excise duty in respect as the goods as they may specify in a public notice on gov.uk.
- 7.12 There is also a provision that allows HMRC to remit excise duty where on application by a person liable to pay any excess duty due after the off-set. There may be excess duty to pay where a duty rate change has occurred. The power to remit is subject to a person complying with conditions and providing such evidence as the Commissioners for HMRC may specify in a public notice on gov.uk.
- 7.13 In addition, amendments are required to the Duty Stamps Regulations 2006. They lay down the circumstances when retail containers of relevant alcoholic products in the UK, must and must not be stamped.
- 7.14 UK duty paid excise goods bearing duty stamps must have their stamps destroyed before they are exported from the UK but can currently move between different parts of the UK without any effect on the stamps. This instrument amends the list of circumstances in which duty stamps must not be stamped to make it clear that the term export in these regulations does not include movements between NI and the rest of the UK which simply pass through the Republic of Ireland on their journey. This allows for any UK duty stamps already applied to UK excise duty paid alcohol to be retained as currently and avoids the need to destroy them and reapply new ones upon arrival.
- 7.15 It also adds to the exceptions to the general principle that goods bearing duty stamps are not eligible for a reclaim of UK excise duty under the excise duty drawback scheme. This is to allow for a drawback claim where goods travel from GB to NI by way of the Republic of Ireland without the need to remove any duty stamps. This only applies in cases where those goods are not placed into a duty suspension arrangement upon leaving GB. This is to try to maintain, as far as possible, the current ability to move stamped duty paid goods within the UK and avoid collecting the UK excise duty twice.
- 7.16 The Excise Duties (Miscellaneous Amendments) (EU Exit) Regulations 2019 are amended to ensure the amendments which those regulations make to the Excise Goods (Drawback) Regulations 1995 (S.I. 1995/1046) (the 1995 Regulations) operate as required in NI in relation to certain movements of goods. The 1995 Regulations set out in what circumstances UK excise duty may be reclaimed and what evidence is needed to support such claims. The amendments ensure the current rules continue to work for excise goods moving between NI and GB.
- 7.17 UK excise duty paid goods are generally not eligible to reclaim the UK excise duty on goods that will be consumed in the UK. However, after the end of the transition period goods that travel from GB to NI by way of an EU member state will be exported from GB before arriving in NI. This instrument amends the application of

the drawback regulations to allow for a claim for goods that take this particular journey. It also gives HMRC the powers to provide for specific details as prescribed within a public notice in relation to the evidence of excise duty payment that would be acceptable in support of such a claim.

- 7.18 This instrument also saves and modifies a number of excise regulations so that they continue to work in relation to NI as intended immediately before IP completion day. The Duty Stamps Regulations 2006 as they apply immediately before IP completion day are saved in relation to NI, subject to modifications. This includes modification in order to allow for retail containers of alcoholic liquor to remain stamped if transported from NI to GB or vice versa via the Republic of Ireland.
- 7.19 The Tobacco Products Regulations 2001 (S.I. 2001/1712) are saved with minor modifications to allow them to continue to operate in NI as required. This includes removing reference to “the United Kingdom” which is substituted with “Northern Ireland”.
- 7.20 The Excise Goods (Drawback) Regulations 1995 as they applied immediately before IP completion day are also saved in relation to NI, with modifications. These include modification to allow for claims to be made in respect of goods that have been transported from GB to NI via an EU member state upon presentation of evidence of previous payment of excise duty. The instrument also gives the Commissioners the power to specify the evidential requirements to support a claim, including the documentation required, within a public notice which will be published on gov.uk.
- 7.21 This instrument also saves, in relation to NI, the following regulations as they applied immediately before IP completion day;
- The Denatured Alcohol Regulations 2005 (S.I. 2005/1524);
  - The Excise Warehousing (Etc.) Regulations 1988 (S.I. 1988/809);
  - The Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (1999/1278);
  - The Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998 (S.I. 1998/202);
  - The Excise Warehousing (Energy Products) Regulations 2004 (S.I. 2004/2064).

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the UK from the EU as it is required to ensure that the excise regime operates as required in relation to NI after the transition period ends.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the legislation given that the changes are consequential following the UK’s withdrawal from the EU and the end of the transition period.

## **10. Consultation outcome**

- 10.1 No formal consultation on the legislation has been carried out. These are consequential changes which have arisen as a result of the UK withdrawing from the EU and the end of the transition period.

## **11. Guidance**

- 11.1 This instrument does not introduce any procedural changes requiring guidance.
- 11.2 Guidance on moving excise goods under the Protocol is available on gov.uk: <https://www.gov.uk/government/publications/moving-excise-goods-as-freight-under-the-northern-ireland-protocol-from-1-january-2021/moving-excise-goods-as-freight-under-the-northern-ireland-protocol-from-1-january-2021> .

## **12. Impact**

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins> .

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument does not impose new obligations on them.

## **14. Monitoring & review**

- 14.1 The instrument will be kept under review through communications with key stakeholder groups, including the Joint Alcohol and Tobacco Steering Group (JATCG). The JATCG is a platform for HMRC to inform and engage specifically targeted stakeholders on excise policy.
- 14.2 A statutory review provision is not included within this instrument by virtue of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015. This section sets out that there is an exemption where a provision is in connection with imposing a tax or duty.

## **15. Contact**

- 15.1 Nicholas Hampson at HM Revenue and Customs Telephone: 03000 576 416 or email: [nicholas.hampson@hmrc.gov.uk](mailto:nicholas.hampson@hmrc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Judith Kelly, Deputy Director for Excise and Environmental Taxes, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kemi Badenoch MP, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.