

EXPLANATORY MEMORANDUM TO

THE TRAVELLERS' ALLOWANCES AND MISCELLANEOUS PROVISIONS (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2020

2020 No. 1619

1. Introduction

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

2. Purpose of the instrument

- 2.1 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. 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 goods will continue to apply in Northern Ireland (NI). This instrument introduces changes necessary to achieve that with regards to both travellers entering NI as well as businesses that sell excise goods on board ships and aircraft.

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 VAT and excise provisions, which are necessary to implement the Protocol, in relation to movements of goods into and out of NI. Further legislation to implement the Protocol in relation to VAT and 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 Excise Duties Miscellaneous Provisions (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1559). Along with further legislation, this instrument will come into force at 11pm on 31 December 2020.
- 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.

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)

- 3.3 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 is made using the powers in section 51(1)(a) and (c) of the Taxation (Cross-border) Trade Act 2018. It saves and modifies two existing instruments that cover travellers' allowances and sales of excise goods on board ships and aircraft. Those instruments cover the rules for the whole of the UK, and this instrument modifies them so that they continue to operate as required at the end of the transition period in relation to NI.

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 on 31 December 2020. The rules around the UK excise regime are currently set out within EU legislation and transposed into UK legislation. Legislative changes are required to provide a functioning UK excise regime at the end of the transition period. This reflects that NI will continue to be subject to EU rules whereas GB will not.
- 7.2 This instrument provides changes to existing provisions relating to both the Travellers' Allowances Order 1994 (S.I. 1994/955) and the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999 (S.I. 1999/1565).
- 7.3 The Travellers' Allowances Order 1994 is saved and modified so that it continues to apply the current VAT and excise travellers' allowances in respect of persons entering NI from the rest of the world after the end of the transition period. These amendments include removing reference to 'the United Kingdom', which is to be substituted with the words 'Northern Ireland'.
- 7.4 The Schedule to the Travellers' Allowances Order 1994 is modified to include heated tobacco products, which became a new UK excise duty category in 2018. Heated tobacco products now carry a charge of excise duty for consumption within the UK, including NI.
- 7.5 Without this change in the allowances heated tobacco products and passengers could carry up to £390 of heated tobacco sticks into NI without UK excise duty being charged.
- 7.6 The amendment introduces an allowance of 200 sticks of heated tobacco products that can be carried by a passenger for their personal use from the rest of the world. This amount is inclusive to the overall amount of tobacco products within the allowance.
- 7.7 For passenger movements into NI from GB the allowances for rest of the world will apply. Excise duty will be charged on excise goods under section 4 of the TPPA.

- 7.8 This instrument also saves and modifies the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999, which will cease to apply within GB following the end of the transition period as the registered mobile operator regime is an EU facilitation for intra-EU journeys.
- 7.9 It ensures that movements between NI and the EU retain their current treatment, whilst different rules for GB apply, this includes substituting references to “the United Kingdom” with “Northern Ireland”.
- 7.10 The proposed amendments ensure that these regulations continue to apply in relation to goods sold onboard any ship or aircraft travelling between NI and the EU and any person registered as a mobile operator or fiscal representative continues to be treated as such.
- 7.11 A registered mobile operator is someone registered by HMRC to ship, import or sell merchandise by retail to passengers on board a ship or aircraft travelling between two EU member states.
- 7.12 This means that for registered mobile operators or their fiscal representatives operating in relation to journeys between Northern Ireland and the EU the status quo is maintained.

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 VAT and excise regime operate 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 exit 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 exiting the EU and the end of the transition period.

11. Guidance

- 11.1 Guidance has been published at <https://www.gov.uk/guidance/how-vat-will-apply-to-goods-moving-between-great-britain-and-northern-ireland> .

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 will cover this instrument and will be published on the website at 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 discuss and inform 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 e-mail: 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.