

EXPLANATORY MEMORANDUM TO

THE TAXATION (CROSS-BORDER TRADE) (MISCELLANEOUS AMENDMENTS) (EU EXIT) (NO. 2) REGULATIONS 2021

2021 No. 1444

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 HMRC and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument forms part of legislation under the Taxation (Cross-border Trade) Act 2018 (TCTA) that underpins the United Kingdom's (UK) customs regime following the UK's withdrawal from the European Union (EU).
- 2.2 The measures contained in this instrument ensure current customs arrangements in place for goods moving from the island of Ireland to Great Britain (GB) are maintained. This instrument will allow (where declarations are needed) importers or their agents moving non-controlled goods¹ from the island of Ireland to GB to continue to make an entry in their commercial records at the time of, or before, import and delay providing a supplementary declaration to HMRC by up to 175 days. It also ensures that in such cases importers of goods from the island of Ireland continue to provide notice of the goods' arrival in GB, and exempts carriers of such goods from new requirements to provide advance notices to HMRC.
- 2.3 This instrument also ensures that, where appropriate, postponed Value Added Tax (VAT) accounting continues to be mandated for VAT registered businesses when using the simplified customs declaration process. Postponed VAT accounting requires import VAT to be accounted for on a VAT return for the accounting period in which the goods are imported.
- 2.4 This instrument also ensures that the time at which excise duty is required to be paid continues to align with the notification procedures used for the arrival of excise goods from the island of Ireland to GB.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 The measures in this instrument will be made using the powers in sections 32, 34, 45 and 51 of, and paragraph 9 of Schedule 1 to TCTA.
- 3.2 The Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2021 (SI 2021/1347) made provision for changes relating to the

¹ Non-controlled goods are goods that are not listed in a public notice as controlled goods, such as alcohol, tobacco or firearms.

removal or permanent replacement of the provisions for staged border controls, together with the introduction of new arrangements for applying full controls on goods exported from or imported to GB from 1 January 2022. It also provided for a penalty where obligations arising from the new arrangements are not complied with. Those measures were to give effect to a government commitment to have full customs controls on EU imports in place by that date.

- 3.3 The government now considers that goods moving from the island of Ireland into GB should not be subject to any change in processes from 1 January 2022, while discussions between the UK and EU on the operation of the Northern Ireland Protocol are continuing.
- 3.4 The measures in this instrument need to be in force on 31 December 2021 and 1 January 2022 because otherwise some goods arriving in GB from the island of Ireland would be subject to full customs controls from 1 January 2022. As with the government's broader "standstill" approach, this statutory instrument avoids any disruption while discussions with the EU are continuing. The convention of leaving 21 days between a statutory instrument being laid and coming into force will, unfortunately, be breached.
- 3.5 The short notice between laying this instrument and commencement should not affect businesses moving goods from the island of Ireland to GB as the effect of this instrument is to continue current processes that they already undertake. Where changes may be required at border locations, the government has undertaken engagement with relevant port operators to ensure that this can be done in the time available.
- 3.6 This is an amending instrument. It does not contain any provision itself to make a notice. It does amend a notice power in regulation 37B of Customs (Import Duty) (EU Exit) Regulations 2018 (SI 2018/1248). TCTA includes the express power to sub-delegate and in making this provision this instrument relies on section 32(8) of TCTA, which provides that any power to make regulations under Part 1 of TCTA includes a power conferring a discretion on any specified person to do anything by or under, or for the purposes of, the regulations, and a power to make provision by reference to things specified in a notice published in accordance with the regulations.

4. Extent and Territorial Application

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

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The main provisions governing the import of goods into the UK are set out in the Taxation (Cross-border Trade) Act 2018 (TCTA) and the Customs (Import Duty) (EU Exit) Regulations 2018 (Import Duty Regulations).
- 6.2 The legislative framework that allows traders and their agents to use delayed declarations is provided by the Import Duty Regulations. The Customs (Transitional Arrangements) (EU Exit) Regulations 2020 (SI 2020/1088) ('transitional

arrangements regulations’) amended the Import Duty Regulations to introduce the transitional Entry in the Declarant’s Records (EIDR) simplified customs declarations process. It is both those regulations which, together with the notices made under those regulations, allow traders (or their agent) to make a transitional simplified customs declaration in their internal commercial records and then submit a supplementary declaration to HMRC within 175 days from importation.

- 6.3 The transitional EIDR simplified customs declarations process applies to imports of non-controlled goods into free circulation within GB from the EU. The change made by this instrument is to restrict the process to European Union goods² that are in the Republic of Ireland or, where applicable, in Northern Ireland before their import into the UK or their removal from Northern Ireland to GB from 1 January 2022.
- 6.4 The provision that requires the giving of a notification of the arrival of goods in GB, in regulation 4(3C) and 4(3D) of the Import Duty Regulations was omitted by the Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2021, and that provision is restored in cases where the goods are imported into GB from the Republic of Ireland or, where applicable, Northern Ireland. The Customs and Excise Border Procedures (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2021 also introduced the notification requirement on carriers and this instrument amends the requirement to exclude goods that are imported from the Republic of Ireland or Northern Ireland into GB.
- 6.5 The legislative framework for postponed VAT accounting is the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (SI 2019/60). The Value Added Tax (Miscellaneous and Transitional Provisions, Amendment and Revocation) (EU Exit) Regulations 2020 (SI 2020/1495) mandates the use of postponed VAT accounting where the transitional EIDR simplified customs declarations process is used.
- 6.6 The legislative framework for operators and consignees who import goods through fixed transport installations is at regulation 37B of the Import Duty Regulations. This provision was made by the Customs (Amendment) (EU Exit) Regulations 2020 (SI 2020/1552).
- 6.7 The legislative framework providing for the continued alignment of the time at which excise duty is required to be paid with the notification procedures used for the arrival of excise goods from the island of Ireland to GB is at Chapter 2 of Part 4 of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019 (SI 2019/474).

7. Policy background

What is being done and why?

- 7.1 This instrument maintains the status-quo for goods moving between the island of Ireland and GB whilst UK-EU negotiations on the implementation of the Northern Ireland Protocol continue. This means whilst full import controls will be introduced

² Broadly, European Union goods consist of products that are manufactured in the EU and are in free circulation within the EU.

on 1 January 2022 for EU to GB movements, this will not apply to movements from the island of Ireland to GB³.

- 7.2 This policy aligns with the current approach to the Northern Ireland Protocol, particularly in light of the ‘standstill’ arrangements which seek to ensure there will be no changes for businesses whilst negotiations with the EU continue. The measures in this instrument extend staged customs controls for European Union goods that are in Republic of Ireland or where relevant, Northern Ireland, immediately before their importation into GB. This includes extending the transitional Entry in the Declarant's Records (EIDR) declaration process, which allows traders to make a note of the movement in their own records and then submit a supplementary declaration within 175 days. The deferral of the supplementary declaration for these goods also defers any import duty payable until the supplementary declaration is made to HMRC. This will only apply to non-controlled goods.
- 7.3 Certain traders will not be allowed to delay declarations. This instrument allows HMRC to exclude any importers with a poor compliance history from being able to defer declarations and allows HMRC to write to these traders informing them that they will not be able to defer declarations and will need to submit full or simplified declarations at the time of import.
- 7.4 The extension to the transitional EIDR declaration process will also continue to be available for fixed transport installations, which relate to oil, gas and electricity imports through a pipeline, cable or interconnector.
- 7.5 Where declarations are made into HMRC systems (e.g. for controlled goods) this instrument also removes the requirement for carriers to provide advance notification of the embarkation of such goods before arrival in GB and requires the person declaring the goods to notify HMRC that goods have arrived in GB by 23:59 the day after the day on which the goods were imported.
- 7.6 This instrument also makes consequential changes to ensure that VAT registered businesses using staged customs controls continue to be required to account for import VAT, where appropriate, in the VAT return for the period in which the import takes place. This avoids a cash flow impact to the exchequer as otherwise import VAT would not be due until the supplementary return is submitted.
- 7.7 The instrument also ensures the continued alignment of the excise duty time of payment rules with the staged customs controls process, for notifying the arrival of excise goods from the island of Ireland in GB.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the UK from the EU because it concerns the operation of the UK's customs regime following the UK's withdrawal from the EU.

9. Consolidation

- 9.1 No consolidation is planned, but that will be kept under review

³ Businesses moving Northern Ireland qualifying goods will continue to have unfettered access on the Northern Ireland to Great Britain direct route.

10. Consultation outcome

- 10.1 HMRC has engaged with trusted stakeholders essential to the operational delivery of this policy, including port operators and carriers operating across the Irish sea. Engagement with third parties critical to delivering the change in approach has been positive, with carriers indicating that their systems are capable of delivering this policy from 1 January 2022.

11. Guidance

- 11.1 All GOV.UK guidance relevant to this policy will be updated before this instrument comes into force.

12. Impact

- 12.1 There is no, or no significant, impact on businesses, charities or voluntary bodies involved in the movement of goods from the island of Ireland to GB as this policy is a continuation of current arrangements.
- 12.2 There is no, or no significant, impact on the public sector as this policy is a continuation of current arrangements for goods moving from the island of Ireland to GB.
- 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 (employing up to 50 people).
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the majority of businesses new to customs procedures, particularly small businesses that would otherwise have had to make a full declaration, will be able to continue to make, or instruct their agents on their behalf to make, an entry in their commercial records at the time of import.

14. Monitoring & review

- 14.1 HMRC will keep the instrument under review to ensure that it meets the government's policy objectives.
- 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 provisions are in connection with a tax or duty.

15. Contact

- 15.1 Kam Munir at HMRC Telephone: 0300 052 5614 or email: kam.munir@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Catherine Stewart, Deputy Director for Northern Ireland Customs Policy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

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