

**EXPLANATORY MEMORANDUM TO**  
**THE TAXATION CROSS-BORDER TRADE (NORTHERN IRELAND) (EU EXIT)**  
**(AMENDMENT) REGULATIONS 2021**

**2021 No. 483**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM 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 This instrument forms part of legislation for customs duty and Value Added Tax (VAT) made under the Taxation (Cross-border Trade) Act 2018 (TCTA) and Value Added Tax Act 1994.
- 2.2 The instrument removes the customs duty, and relieves the VAT charge, where certain United Kingdom domestic goods return to Great Britain after a temporary period in Northern Ireland.

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

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

- 3.1 This instrument will come into force on the day after it is laid before the House of Commons. The instrument is therefore being laid before the House of Commons fewer than 21 days before its provisions come into effect. The government considers that early commencement of these relieving provisions is appropriate to address an oversight in earlier legislation. The effect will be to remove a charge to customs duty and relieve VAT that might otherwise arise where goods return to Great Britain after a temporary period in Northern Ireland. Failing to make these changes may exacerbate existing tensions around the implementation of the Protocol on Ireland/Northern Ireland (the Protocol) and increase disruption to trade if customs and VAT charges are imposed on these intra-United Kingdom movements when travel restrictions imposed due to COVID-19 begin to lift.

*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)*

- 3.2 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.

4.3 The provisions of this instrument apply to movements between Northern Ireland and Great Britain.

## **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 provisions in this instrument relating to customs duty are made under TCTA, as amended by the Taxation (Post-transition Period) Act 2020 (TPPA).

6.2 The instrument supplements customs duty charging provisions which were inserted into TCTA by TPPA. These duty charging provisions implement the Protocol and allow customs processes to operate effectively from the end of the transition period. The Protocol sets out the arrangements for Northern Ireland that were agreed by the United Kingdom and the European Union as part of the terms for the United Kingdom to leave the European Union and is contained in the Withdrawal Agreement, which was published on 19 October 2019 and given legal effect in the United Kingdom by the European Union (Withdrawal Agreement) Act 2020.

6.3 The charges introduced by TPPA relevant to this instrument are the customs duty charge under section 30C TCTA (for certain goods removed to Great Britain from Northern Ireland), and the VAT charge at Schedule 9ZB to the Value Added Tax Act 1994.

6.4 Under the Protocol the application of VAT to the supply, import and export of goods in Northern Ireland is governed by the European Union Principal VAT Directive. The Directive is applied in domestic law by the Value Added Tax Act 1994 and numerous statutory instruments. The changes made by this instrument to the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1546) are made under the power in section 37(1) of the Value Added Tax Act 1994.

6.5 The United Kingdom's approach to the agreement between the United Kingdom and the European Union on various issues in the Protocol, including those relating to customs, was set out in the policy paper 'Northern Ireland Protocol – Command Paper' of 10 December 2020. Further legislation relating to the implementation and application of the Protocol is set out in the Customs (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1605) (as amended by the Customs (Modification and Amendment) (EU Exit) Regulations 2020 (SI 2020/1629) and the Finance Bill 2021) and the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 which this instrument amends.

## **7. Policy background**

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

7.1 This instrument removes customs requirements, customs duty and VAT that currently apply for domestic goods that return to Great Britain, after temporarily moving to Northern Ireland. This addresses an omission in earlier legislation, and ensures that there will be no customs duty chargeable (and in most cases no customs formalities applicable), and VAT will be relieved, when these goods return to Great Britain.

7.2 This provision upholds the Government’s commitment to protect Northern Ireland’s place in the United Kingdom customs territory by reducing the administrative and financial burden on traders moving goods within the United Kingdom.

## **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 United Kingdom from the European Union because it supplements provisions inserted into TCTA by TPPA in order to implement provisions of the Protocol.

## **9. Consolidation**

9.1 This instrument amends the Customs (Northern Ireland) (EU Exit) Regulations 2020 and the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020. Further updates (including those of an administrative or technical nature) are expected to these regulations to support the policy objectives set out in section 7. No consolidation is therefore considered to be appropriate at this stage.

## **10. Consultation outcome**

10.1 No formal consultation regarding this instrument has taken place although HMRC is in regular discussions with a wide range of businesses and representative groups on the rules that apply for goods moving between Northern Ireland and Great Britain – including the rules amended in this instrument.

## **11. Guidance**

11.1 There is guidance on trading and moving goods in and out of Northern Ireland at <https://www.gov.uk/guidance/trading-and-moving-goods-in-and-out-of-northern-ireland>. This guidance will be updated to take into account the changes in this instrument before the relevant provisions come into force.

## **12. Impact**

12.1 The impact on business, charities or voluntary bodies is that the measures in this instrument will remove the charge to customs duty and VAT costs for business, charities or voluntary bodies moving certain goods between Great Britain and Northern Ireland.

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 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 changes in this instrument are relieving, and are not expected to impose any additional regulatory burdens on any business.

## **14. Monitoring & review**

- 14.1 HMRC will keep the instrument under review to ensure that it meets the policy objectives set out in section 7.
- 14.2 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 Natalie Burch at the Treasury, email: [natalie.burch@hmtreasury.gov.uk](mailto:natalie.burch@hmtreasury.gov.uk) or Mark Hazell, email: [mark.hazell@hmtreasury.gov.uk](mailto:mark.hazell@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Alex Pienaar, Deputy Director for Customs EU Exit Negotiations and Northern Ireland Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.