

## EXPLANATORY MEMORANDUM TO

### THE EXCISE DUTIES (NORTHERN IRELAND ETC. MISCELLANEOUS MODIFICATIONS AND AMENDMENTS) (EU EXIT) REGULATIONS 2022

2022 No. 265

#### 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 This instrument makes provisions for a new simplified model for persons removing excise goods to Northern Ireland (NI) from Great Britain (GB) or the Isle of Man (IoM) by parcel and freight. This will create a new approach as to how persons account for any excise duty that may be payable on goods removed to NI from GB or the IoM, irrespective of how they choose to move the goods.
- 2.2 This instrument also extends the scope of the excise duty offset mechanism so that it can be applied to the movement of goods from the IoM to NI. Currently this mechanism can be applied only to the movement of goods from GB to NI.
- 2.3 In addition, this instrument makes provisions to ensure the continued alignment of excise duty suspension processes (specifically entry to the Excise Movement and Control System (EMCS)) with staged customs controls for goods moving from Ireland or NI to GB.

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

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

- 3.1 This instrument contains provisions made under section 45 of the Taxation (Cross-border Trade) Act 2018 and sections 100G and 100H of the Customs and Excise Management Act 1979. Section 48(7) of the Taxation (Cross-border Trade) Act 2018 provides that for an instrument containing provision made under section 45 of that Act, as well as provision relating to excise duty under another enactment that is subject to annulment in pursuance of either House of Parliament, the only parliamentary procedure that is to apply is the procedure given by section 48 of that Act. The result is that this instrument is subject to annulment in pursuance of a resolution of the House of Commons only.
- 3.2 This instrument also makes provision by reference to things to be specified in notices published by the Commissioners for HMRC, set out in more detail in the following paragraphs. In all cases we note the need for explicit vires to sub-delegate.
- 3.3 Regulation 4 provides that the Commissioners for HMRC may specify in a notice the evidence a person may be required to provide to demonstrate that they are not, or could not reasonably be expected to be, aware of the amount of United Kingdom (UK) excise duty, or corresponding IoM duty, previously paid or able to obtain such

information. The relevant parts of regulation 4 are made under section 45 of the Taxation (Cross-border Trade) Act 2018 and section 48(11)(b) of that Act provides that the power to make regulations under section 45 includes power to make provision by reference to things specified in a notice published in accordance with the regulations.

- 3.4 Regulation 5 provides that, where a person is required to pay excise duty in respect of goods on their removal to NI from GB or the IoM, the Commissioners for HMRC may specify in a notice the form and manner of the return and must specify in a notice the date by which such duty must be paid in certain circumstances. The relevant parts of regulation 5 are made under section 45 of the Taxation (Cross-border Trade) Act 2018 and, as noted above, section 48(11)(b) of that Act provides that the power to make regulations under section 45 includes power to make provision by reference to things specified in a notice published in accordance with the regulations.
- 3.5 Regulation 6 provides that the Commissioners for HMRC may prescribe in a notice the records relating to a person’s activities that they must keep and make available for inspection, irrespective of whether a remaining amount of excise duty is payable on removal to NI from GB or the IoM and irrespective of whether that is determined using the simplified calculation method (described in more detail in paragraph 6.3 below). The relevant parts of regulation 6 are made under sections 100G and 100H of the Customs and Excise Management Act 1979. Section 100H(1)(m) of that Act provides that the Commissioners for HMRC may prescribe the records relating to their activities that registered excise dealers and shippers must keep and make available for inspection. (Section 100G(1)(b) of that Act provides that such requirements or restrictions as may be prescribed with respect to registered excise dealers and shippers (or any activities carried on by them) may also be imposed on persons other than registered excise dealers and shippers.) Section 100H(3) of that Act provides that “prescribed” in section 100H includes prescribed by the Commissioners for HMRC under any registered excise dealers and shippers regulations.
- 3.6 The notices described above will be published on the GOV.UK website when the regulations come into force. A person unable to access the notices electronically may access them in hard copy by post free of charge on application to 0300 200 3700.

#### **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 This instrument will be made using the powers within—
- sections 45(1) and (2) and 48(10) and (11) of the Taxation (Cross-border Trade) Act 2018, and
  - sections 100G and 100H of the Customs and Excise Management Act 1979.

- 6.2 This instrument makes provision for a simplified excise duty model where excise goods are removed to NI from GB or the IoM and provides for a simplified method of calculating any previously paid UK excise duty where a person is not, or could not reasonably be expected to be, aware of the amount previously paid or able to obtain such information. It also makes provision as to how any excise duty (where payable in respect of goods removed to NI from GB or the IoM) must be accounted for and the timeframe in which it must be paid, and for the Commissioners for HMRC to specify in notices any supporting evidence that may be required to determine whether excise duty is payable, the form and manner of the return used to declare any excise duty that is payable, and further particulars relating to the timeframe for making returns and payment in certain circumstances. This instrument also makes provision for record keeping irrespective of whether excise duty is payable on removal of excise goods to NI from GB or the IoM (whether or not calculated using the simplified calculation method), in respect of which non-compliance attracts sanctions under section 100J of the Customs and Excise Management Act 1979.
- 6.3 The Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) Regulations 2020 made changes to provisions in secondary legislation which govern the rules on the holding and movement of excise goods by businesses within the UK, including NI, and includes provisions in relation to the payment of excise duty due on goods which are moved to NI from GB. Regulation 93 of those regulations provides for the offset of a payment of UK excise duty against any excise duty that becomes payable as a result of the removal of the goods to NI from GB and regulation 94 provides for remittance of excise duty that remains payable after such an offset. This instrument amends those regulations to extend the scope of the excise duty offset mechanism and remittance so that they can be applied in relation to the movement of excise goods from the IoM to NI.
- 6.4 Chapter 2 of Part 4 of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019 made modifications to the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 to reflect changes made to customs procedures. Regulations 12 and 14 to 16 of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019, which related to goods under duty suspension arrangements, were revoked by the Taxation (Cross-border Trade) Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2021 to reflect the ending of the changes to customs procedures in relation to most goods entering GB from the European Union (EU). This instrument re-enacts the provisions made by regulations 12, 14 and 15 of the Excise Duties (Miscellaneous Amendments) (EU Exit) (No. 3) Regulations 2019 in relation to excise goods entering GB from Ireland or NI. This provides for a continued alignment of excise duty suspension processes with staged customs controls.

## **7. Policy Background**

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

- 7.1 This instrument makes changes to three areas of the excise regime.

### *Simplified excise duty model*

- 7.2 This instrument introduces a new simplified model for persons removing excise goods to NI from GB or the IoM. The model builds upon the existing excise duty offset mechanism, which credits UK excise duty already paid on excise goods against the

excise duty charge that arises on entry to NI, preventing the risk of double taxation on these goods or the need for a burdensome repayment mechanism. The new model includes a simplified method for persons to calculate any previously paid UK excise duty where they are not, or could not reasonably be expected to be, aware of the amount previously paid or able to obtain such information. It also includes a periodic accounting system, separate from the customs process, for paying any excise duty that remains payable after the Commissioners for HMRC have offset duty that has previously been paid, as well as a provision for record keeping. These changes are being introduced to respond to challenges faced by persons in calculating and accounting for additional duty and will ensure the processes in place are consistent, irrespective of how the goods are sent to NI, whether they come from GB or the IoM.

#### *Extending the excise offset mechanism*

- 7.3 This instrument extends the scope of the excise duty offset mechanism (as described above) so that it can be applied to the movement of excise goods from the IoM to NI. Currently the offset mechanism applies only to movements of excise goods from GB to NI and extending it will allow excise goods entering NI from the IoM to benefit from the application of the mechanism. This will prevent the risk of double taxation on these goods and will also provide for a consistent treatment for excise goods entering NI from the IoM and GB.

#### *Staged controls*

- 7.4 Following the end of the UK/ EU transition period on 31 December 2020, the UK introduced staged customs controls for goods arriving in GB from the EU to give businesses time to adjust to the new customs requirements. These controls provided for a delay to the notification of arrival of goods and allowed businesses to move goods straight to their premises upon import without having to stop at the port to complete customs formalities.
- 7.5 The staged customs controls ended on 31 December 2021, however they were temporarily extended only for the movements of goods from Ireland and NI to GB. This instrument makes provisions to ensure that the excise duty suspended processes continue to be aligned with customs staged controls for these movements. Where notification of the arrival of controlled goods can be delayed (up to the end of the next working day after the day on which the goods entered GB) this instrument enables the entry of duty suspended goods into EMCS to be similarly delayed.

## **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 implements changes to the excise duty regime necessitated by the withdrawal.
- 8.2 More broadly, it should be noted that the government is seeking to find a new balance in operating the NI Protocol in order to place it on a more sustainable footing. The government's July 2021 Command Paper (Northern Ireland Protocol: the way forward), set out these re-balancing proposals, which include arrangements covering trade in goods and the institutional framework.

## **9. Consolidation**

9.1 As the changes to existing legislation are minor, there are no plans to consolidate the legislation being amended.

## **10. Consultation outcome**

10.1 No formal consultation on the legislation has been carried out due to the minor nature of the changes, however HMRC engaged with excise businesses and the IoM authorities on ways to simplify the requirements placed on businesses.

## **11. Guidance**

11.1 Amendments to the guidance on the offset mechanism, to cover the procedural changes implemented in this legislation, will be made when the regulations come into force.

11.2 Guidance on moving excise goods between GB and NI is available on the [GOV.UK](https://www.gov.uk) website

## **12. Impact**

12.1 The impact on business, charities or voluntary bodies is positive and achieved through the simplification of the process for the removal of excise goods to NI from GB and IoM.

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 although this instrument does implement certain requirements on them, it will overall simplify the process for sending excise goods from GB to NI.

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is to be kept under review through communications with key stakeholder groups.

14.2 The instrument does not include a statutory review clause 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 Cesar Yanchev at HMRC (email: [lachezar.yanchev@hmrc.gov.uk](mailto:lachezar.yanchev@hmrc.gov.uk)) can be contacted with any queries regarding the instrument.

15.2 Nis Bandara, Deputy Director for Excise and Environmental Taxes at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Helen Whately MP, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.