

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS (NORTHERN IRELAND: REPAYMENT AND REMISSION) (EU EXIT) (AMENDMENT) REGULATIONS 2023**

**2023 No. 618**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 The instrument establishes new arrangements under which customs duty charged in respect of certain goods entering Northern Ireland can be remitted or repaid to traders by HMRC where those goods are ultimately sold or used outside the European Union (EU).

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

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

- 3.1 This instrument makes provision by reference to matters that are to be specified in notices published by HMRC under the Customs (Northern Ireland) (EU Exit) Regulations 2020 (SI 2020/1605) (Northern Ireland Regulations).
- 3.2 The Taxation (Cross-border Trade) Act 2018 (TCTA) includes the express power to sub-delegate and certain provisions of this instrument rely on sections 32(8) and 40(7) of TCTA (as applied to regulations under sections 40A and 40B of TCTA by section 40B(5)). These sections of TCTA have the effect that any power to make regulations under Part 1 or Part 2 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. Notices made under this instrument will be published at <https://www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021> no later than the date on which the relevant provisions of the instrument come into force.
- 3.3 The instrument also provides for certain matters to be set out in a document entitled 'Duty incurred in Northern Ireland – repayment and remission on production of evidence: Eligibility criteria and other conditions'. This document sets out the eligibility criteria for a claim, as well as classes of goods in relation to which a claim can be made.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom. The instrument applies in relation to customs duty chargeable on the entry of goods to Northern Ireland.

## **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 instrument concerns customs duty charges imposed under sections 30A TCTA (for certain goods imported to the United Kingdom as a result of their entry to Northern Ireland) and section 40A TCTA (for certain goods removed to Northern Ireland from Great Britain).

6.2 These duty charging provisions implement the Windsor Framework, under which customs duty may be chargeable with reference to the EU tariff and EU customs legislation where goods enter Northern Ireland and are regarded under terms set out in a decision of the UK-EU Joint Committee as ‘at risk’ of subsequently being moved to the EU.

6.3 In its Command Paper of February 2023 ‘The Windsor framework: A new way forward’ [CP 806] the government set out its intention to establish a comprehensive tariff reimbursement scheme for cases in which traders can show that goods entering Northern Ireland were ultimately not destined for the EU.

6.4 This instrument is consistent with Article 2 of the Windsor Framework and does not diminish the rights, safeguards and equality of opportunity provisions set out in that part of the Good Friday Agreement.

6.5 This instrument comes within the scope of section 46(2) of the United Kingdom Internal Market Act 2020. Special regard has been given to the matters listed in subsection (1) of that section.

## **7. Policy background**

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

7.1 The instrument provides repayment and remission arrangements in respect of customs duty chargeable in Northern Ireland under section 30A or 40A of TCTA. These new arrangements reflect the government’s commitment to minimise tariff burdens on traders moving goods into Northern Ireland, where the goods in question are not ultimately destined for the EU.

7.2 Under TCTA customs legislation, goods entering Northern Ireland may be subject to a customs duty liability calculated with reference to EU duty rules where those goods are ‘at risk’ of entering the EU. The Northern Ireland Regulations provide for this duty liability to be relieved for United Kingdom traders in certain circumstances. However, this relief is subject to conditions and limits, including the state aid de minimis limit in certain circumstances.

7.3 The new arrangements set out in the instrument will operate alongside those existing arrangements for relief of customs duty. They will update the Northern Ireland Regulations to allow a trader to claim (i) a full or partial repayment of duty paid, or (ii) remission of some or all of the duty amounts that have been deferred under duty

deferment arrangements. It is intended that any such repayment or remission will only be granted where the claimant provides appropriate evidence concerning the sale or use of the goods outside the EU.

- 7.4 For goods sold or used outside the EU, the intention is to put traders in the same duty position that would have applied had the goods been regarded as ‘not at risk’ of entering the EU (and were therefore goods for the United Kingdom internal market) at the point they entered Northern Ireland. This means that repayment or remission of the full amount of duty chargeable will be available where United Kingdom goods are moved to Northern Ireland from Great Britain. In other cases, the repayment and remission amount will be calculated with reference to the duty amount chargeable under the United Kingdom tariff when goods entered the UK internal market.
- 7.5 The instrument makes provision for how a claim is to be made, as well as rules concerning claims made by agents and the time limit for claims. The instrument also provides rules for: the consideration and granting of claims by HMRC; the recovery of amounts paid in error or where there has been a breach of conditions; notification and record keeping requirements for claimants and requirement on agents to make available certain records to their principal.
- 7.6 As well as updating the Northern Ireland Regulations, the instrument also amends the Customs (Contravention of a Relevant Rule) Regulations 2003 (SI 2003/3113) to allow penalties to be imposed for breaches of the rules in relation to the repayment and remission arrangements.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the EU because it supplements customs duty provisions that implement the Windsor Framework.

## **9. Consolidation**

- 9.1 The instrument mainly amends the Northern Ireland Regulations and further changes are expected to this legislation as a result of the Windsor Framework and to support the policy objectives set out in section 7. Therefore, no consolidation is 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 entering Northern Ireland.

## **11. Guidance**

- 11.1 There is already guidance on customs matters at: <https://www.gov.uk/starting-to-import> and <https://www.gov.uk/starting-to-export>. 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 those that satisfy the relevant eligibility conditions will be able to claim a repayment or remission of certain customs duty amounts incurred in Northern Ireland.
- 12.2 Use of the repayment and remission arrangements is voluntary. There will however, be an administrative burden for those who choose to make a claim for repayment or remission. This would include the costs associated with compiling and submitting a claim to HMRC. Continuing costs after the initial claim include the costs of retaining records in respect of a claim.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 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 additional action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).
- 13.3 No mitigating action is proposed because the instrument seeks to implement repayment or remission arrangements for small businesses in the same way as large businesses.

## **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 Zachary Azim, at email: [zachary.azim@hmrc.gov.uk](mailto:zachary.azim@hmrc.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 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.