

EXPLANATORY MEMORANDUM TO
THE EXCISE DUTIES AND VALUE ADDED TAX (NORTHERN IRELAND)
(MISCELLANEOUS MODIFICATIONS AND AMENDMENTS) REGULATIONS
2023

2023 No. 64

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 Under the Northern Ireland Protocol (NI Protocol) to the Withdrawal Agreement, European Union (EU) excise and Value Added Tax (VAT) law concerning goods continues to apply in Northern Ireland (NI) following the United Kingdom's (UK) departure from the EU. This includes EU legislation as it is amended or replaced.
- 2.2 This instrument makes changes to relevant domestic excise and VAT legislation to ensure amended EU excise and VAT laws are implemented in NI.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 Provisions in this instrument sub-delegate power to the Commissioners for HMRC to specify certain matters in a public notice. The authority for such sub-delegation is section 48(11)(b) of the Taxation (Cross-border Trade) Act 2018 (c. 22), which 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.

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 whole of the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is 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 Excise Goods (Holding, Movement and Duty Point) Regulations 2010 (SI 2010/593) (HMDP) sets out the general arrangements for the holding and movement of excise goods for the UK.

- 6.2 HMDP together with other UK legislation, including the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992 (SI 1992/3156) (“the 1992 Order”), the Excise Goods (Drawback) Regulations 1995 (SI 1995/1046) and the Duty Stamps Regulations 2006 (SI 2006/202), implements the provisions of Council Directive 2008/118/EC which sets out the EU rules for the holding and movement of excise goods. The 1992 Order, which sets out certain exemptions covered by Council Directive 2008/118/EC, includes parallel provision relating to VAT exemptions covered by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (“the Principal VAT Directive”).
- 6.3 To implement the NI Protocol, HMDP as it stood immediately before the end of the transition period was saved and applied in relation to NI (NI HMDP) by the Excise Duties (Northern Ireland Miscellaneous Modifications and Amendments) (EU Exit) Regulations 2020 (SI 2020/1559) (NIMMA). NI HMDP is subject to the modifications set out in Part 1 of NIMMA. Part 3 of NIMMA also saves, applies and modifies the Duty Stamps Regulations 2006 and the Excise Goods (Drawback) Regulations 1995, as those Regulations stood immediately before the end of the transition period, in relation to NI. NIMMA, and the continuing application of the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, ensure that Council Directive 2008/118/EC and the VAT exemptions covered by the Principal VAT Directive continue to be implemented in NI.
- 6.4 Council Directive 2008/118/EC has been updated and amended (recast) as Council Directive (EU) 2020/262. Council Directive (EU) 2020/262 continues to govern EU rules for the holding and movement of excise goods. It is required to be applied from 13 February 2023. The Directive is largely the same as Council Directive 2008/118/EC which it replaces, but the provisions are updated and new elements have been introduced (see section 7 for more information on the key changes). The Principal VAT Directive has been relevantly amended by Council Directive (EU) 2019/2235.
- 6.5 This Instrument implements the updated EU excise laws by amending NIMMA and modifying NI HMDP, the Excise Goods (Drawback) Regulations 1995 and the Duty Stamps Regulations 2006. This Instrument also implements updated EU excise and VAT laws by amending the 1992 Order.

7. Policy background

What is being done and why?

- 7.1 In July 2020, the EU agreed certain reforms to the administrative requirements for the movement of excise goods, based on proposals made by the European Commission in 2018. The reforms were subjected to parliamentary scrutiny and were cleared by the House of Lords European Union Committee on 26 June 2018 and by the House of Commons European Scrutiny Committee on 30 September 2020.
- 7.2 The changes have been made primarily by five new pieces of EU legislation: Council Directive (EU) 2020/262 laying down the general arrangements for excise duty; Council Regulation (EU) 2020/261 on administrative cooperation in the field of excise duties as regards the content of electronic registers; Decision (EU) 2020/263 of the European Parliament and of the Council on computerising the movement and surveillance of excise goods; Commission Delegated Regulation (EU) 2022/1636 establishing the structure and content of the documents exchanged in the context of

movement of excise goods, and establishing a threshold for the losses due to the nature of the goods; and Council Implementing Regulation (EU) 2022/1637 laying down the rules for the use of documents in the context of movement of excise goods under a duty suspension arrangement or after their release for consumption and establishing the form to be used for the exemption certificate.

- 7.3 The objective of the reforms is to improve processes and procedures to better manage risk of excise duty evasion.
- 7.4 The main changes to EU rules for the holding and movement of excise goods are (1) the introduction of two new categories of excise traders, ‘certified consignors’ and ‘certified consignees’, who are approved for the dispatch and receipt of goods on which excise duty has already been paid (‘duty paid excise goods’) and move between NI and the EU for commercial purposes, (2) the extension of the Excise Movement and Control System (EMCS) to control and monitor commercial movements of excise ‘duty paid’ goods between NI and the EU (currently these movements are accompanied by paper documentation); (3) a new ‘common partial loss threshold’ for excise goods; (4) minor changes to the format of exemption certificates for goods exempt from excise duties; (5) an exemption from excise duty for visiting forces of an EU Member State engaged in Common Security and Defence Policy (CSDP) activity. (a parallel VAT exemption has also been introduced – see section 6); (6) closer alignment of some excise and customs processes.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.5 NIMMA, and the continuing application of the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992, ensure that Council Directive 2008/118/EC and the VAT exemptions covered by the Principal VAT Directive continue to be implemented in NI.

Why is it being changed?

- 7.6 NIMMA and the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992 are being updated to ensure excise and VAT rules concerning goods in NI continue to be aligned with EU rules. The changes are largely technical in nature and are explained more fully in sections 7.7 to 7.16.

What will it now do?

- 7.7 The changes to NIMMA and the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992 are, and what the law will do from 13 February 2023 is, set out below under the main excise and VAT policy reforms introduced by the Council Directive (EU) 2020/262 and the updated Principal VAT Directive.
- 7.8 (1) *New categories of excise traders:* The changes made to NIMMA, and the modification of NI HMDP, provide for two new categories of excise traders approved to move duty paid excise goods between member states for commercial purposes. These are defined as ‘certified consignees’ and ‘certified consignors’. Currently a business importing duty-paid excise goods into NI from an EU member state must notify HMRC of the movement and account for the UK excise duty on the goods. For businesses moving UK excise duty paid goods from NI to an EU business, there are presently very limited requirements in place. From 13 February 2023 businesses, or individuals acting in a commercial capacity, wishing to move duty-paid excise goods

between NI and EU member states must be registered with, and approved by, HMRC as a certified consignee or a certified consignor. The changes made to NIMMA, and the modifications of the Excise Goods (Drawback) Regulations 1995 and the Duty Stamps Regulations 2006, implement this change and the new categories of excise traders.

- 7.9 (2) *The extension of the Excise Movement and Control System (EMCS) to control and monitor commercial movements of excise ‘duty paid’ goods between NI and the EU:* The changes made to NIMMA, and the modification of NI HMDP, require movements of duty paid goods between NI and an EU member state to be monitored electronically on EMCS from 13 February 2023. But this is subject to the savings and transitional provisions explained in below.
- 7.10 EMCS is an EU-wide system established in 2010, that is currently used by excise businesses for the movement of excise goods between NI and the EU before duty becomes payable (known as movement in ‘duty suspension’). Current legislation requires the movement of duty paid excise goods between NI and the EU to take place under a paper Simplified Accompanying Administrative Document (SAAD).
- 7.11 The changes made to NIMMA, and the modification of NI HMDP, include saving the existing paper SAAD process for excise goods (as set out in NI HMDP) that began movements before 13 February 2023.
- 7.12 The UK EMCS will not be updated in time for 13 February 2023 and HMRC have agreed with the EU transitional arrangements that are to apply until the IT changes are implemented. The changes made to NIMMA, and the modification of NI HMDP, include transitional arrangements, which provide that until 31 December 2023, or such other date set by the Commissioners, movements can be made under the fallback procedure (under cover of paper documentation) that usually applies when the EMCS is temporarily unavailable. For the transitional arrangements, EMCS is to be treated as continuously unavailable.
- 7.13 (3) *Common partial loss thresholds:* The changes made to NIMMA, and the modification of NI HMDP, amend the rules for dealing with ‘partial losses’ during the movement of excise goods. Current legislation states that goods can be destroyed and not released for consumption (and therefore not attract excise duty) where a “relevant event” occurs; relevant event is defined in NI HMDP and includes the total destruction or irretrievable loss of the excise goods. Modifications to NI HMDP make it clear that this approach also applies to occurrences of partial (as opposed to complete) losses that occur during a duty suspended movement. The modifications establish a new ‘common partial loss threshold’ for excise products. This is the amount of loss that can occur during a movement of goods where generally duty does not need to be paid. The threshold is set by reference to EU legislation. Commission Delegated Regulation (EU) 2022/1636 establishes a common partial loss threshold for tobacco products. The HMRC Commissioners must specify common partial loss threshold for other excise goods as and when the EU establishes such thresholds.
- 7.14 (4) *Exemption certificates:* these are currently required for excise goods exempt from duty moving from one member state to another under a duty suspension arrangement. The changes made to NIMMA, and the modification of NI HMDP, update the definition of ‘EU requirements’ and require the form set out in Commission Implementing Regulation (EU) 2022/1637 to be used.

- 7.15 (5) *An exemption from excise duty and VAT for visiting forces of an EU Member State engaged in Common Security and Defence Policy (CSDP) activity*: the changes to the Customs and Excise (Personal Reliefs for Special Visitors) Order 1992 introduce an exemption for use by the armed forces (and accompanying civilian staff) of a member state stationed in NI and taking part in an EU defence effort under the EU's CSDP.
- 7.16 (6) *Excise and customs alignment*: the changes introduced are designed to improve the handling of excise goods at import and export. The amendments to excise legislation include recognising a customs office of exit, which is at the same time the customs office of departure for the external transit procedure, as a possible excise destination. In such cases the unique administrative reference code assigned to the goods under the customs procedures must be provided to the Commissioners. The legislation also provides the excise goods must not be moved from a place of importation under a duty suspension arrangement, until information is provided to the Commissioners on the consignor, the consignee and, where requested by the Commissioners, evidence that imported goods are intended to be dispatched from Northern Ireland to an EU Member State.
- 7.17 Finally, this instrument includes provisions which make changes to NIMMA to correct minor errors. HMRC is of the view that it would be disproportionate to apply the free issue procedure to these Regulations given the nature of the correcting provisions and the proportion that they represent of the whole instrument. HMRC has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but it relates to the withdrawal of the UK from the EU because it ensures the implementation of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement between the United Kingdom and the European Union. This instrument makes provision for the implementation, in respect of Northern Ireland, of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty. This instrument also makes provision for the implementation of Council Directive (EU) 2019/2235 in respect of Northern Ireland for an exemption from VAT and excise duty for visiting forces of an EU Member State engaged in CSDP activity.

9. Consolidation

- 9.1 This instrument amends Parts 1 and 3 of NIMMA and in respect of the VAT and excise duty exemption for CSDP activity, this instrument amends the 1992 Order. There are currently no plans to consolidate amendments made to NIMMA or the 1992 Order.

10. Consultation outcome

- 10.1 As the changes made by this instrument are largely technical in nature, and are required to be implemented, it was not felt proportionate to hold a consultation.

11. Guidance

- 11.1 This instrument makes procedural changes requiring an amendment to current guidance, which will be prepared in advance of the February 2023 implementation date.
- 11.2 Guidance on storing and moving excise goods is available on GOV.UK - <https://www.gov.uk/government/collections/holdings-and-movement-notice>. All public notices made under powers included in this instrument will also be published electronically at this address. Anyone unable to access the notices electronically, may request them in a hard copy free of charge by contacting the Excise Helpline on 0300 200 3700.
- 11.3 Guidance on moving excise goods under the NI Protocol is available on GOV.UK - <https://www.gov.uk/government/publications/moving-excise-goods-as-freight-under-the-northern-ireland-protocol-from-1-january-2021/moving-excise-goods-as-freight-under-the-northern-ireland-protocol-from-1-january-2021>.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that an estimated 200 businesses will be affected by the new processes linked to EMCS. This will place some additional burdens on those businesses operating in NI, dealing in duty paid movements of excise goods. These are either businesses based in and operating in NI, or businesses based in Great Britain who receive or dispatch excise goods between NI and the EU. Businesses currently using EMCS will incur a negligible one-off administrative cost to familiarise themselves with the new process. Businesses not currently using EMCS may incur some small additional costs, however these will be offset by the reduced administrative burden in replacing the current paper-based process. This impact will not be immediate as the EMCS changes for duty-paid goods are planned to be introduced at the end of December 2023.
- 12.2 The changes will largely provide benefits to businesses and from the beginning of 2024, the ability to see real time information of when and which goods are being sent to them. Businesses will also be able to verify that the business they are dealing with is approved by the relevant fiscal authorities to send or receive the goods.
- 12.3 The introduction of ‘certified consignors’ and ‘certified consignees’ as two new types of excise trader means businesses wishing to supply or receive duty-paid excise goods between NI and the EU will need to obtain approval from HMRC. The change will require both the supplier and the recipient to hold an approval from the authorities in the relevant country before any such movement can take place. HMRC already operates a partial approval scheme for movements arriving from the EU, so for existing registered businesses there will be minimal impact as the changes will largely involve only a change of scheme name. For other businesses, there will be a small increased administrative burden in obtaining approval. The new trader types will provide UK businesses with greater certainty as to who they are dealing with as EU businesses involved in such movements will need to be approved by the authorities in the relevant EU member state.
- 12.4 Changes to the certificate that accompanies excise products qualifying for an exemption have been set out in Commission Implementing Regulation (EU) 2022/1637. This is likely to have little impact on businesses as exemption certificates

are already required. However, there may be a small administrative impact for businesses adjusting to the new format after possible system changes.

- 12.5 The introduction of a common threshold for partial losses is likely to have a low impact on businesses, though this is dependent on the level at which the threshold is set. As the level is set at 0% and only for tobacco products, this does not change the current position and duty will still be payable on all losses.
- 12.6 The updated terminology and definitions will have no impact on businesses. It will however add further legal clarity.
- 12.7 There is no, or no significant, impact on the public sector.
- 12.8 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 is that we expect the small additional costs to be offset by the reduced administrative burden in replacing the current paper-based process.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the changes made will be kept under review through communication with key stakeholder groups including the Joint Alcohol and Tobacco Consultation Group - a platform for HMRC to inform and engage specifically targeted stakeholders on excise policy to review and comment on the legislation changes proposed).
- 14.2 As this instrument is not made by a Minister of the Crown, no review clause is required.

15. Contact

- 15.1 Cesar Yanchev at HMRC, email: 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 James Cartlidge MP, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.