EXPLANATORY MEMORANDUM TO

THE CUSTOMS (NORTHERN IRELAND) (EU EXIT) (AMENDMENT) REGULATIONS 2026

2026 No. 393

1. Introduction

1.1 This Explanatory Memorandum has been prepared by His Majesty's Revenue and Customs ("HMRC") on behalf of His Majesty's Treasury 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. Declaration

2.1 Dan Tomlinson MP, Exchequer Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Hermione Mackay, Deputy Director for Northern Ireland Customs Policy at HMRC, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tauseef Ahmad in the Northern Ireland Customs Policy team at HMRC can be contacted by email at the following address with any queries regarding the instrument: tauseef.ahmad1@hmrc.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Customs (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1605) ("the 2020 Regulations") to introduce two new optional facilitations that will make it easier for businesses to benefit from remission or repayment of customs duty chargeable when they bring goods into Northern Ireland.

4.2 It changes rules in relation to remission or repayment of duty under the Northern Ireland 'duty reimbursement scheme' ("DRS") to create a link with the arrangements for duty relief granted under the Northern Ireland 'customs duty waiver scheme' ("CDWS"). Changes made by the instrument will increase the flexibility and choice available to United Kingdom ("UK") businesses, by allowing them to apply to switch an amount of relief previously granted under CDWS to an award under DRS, subject to certain eligibility criteria and evidence. The amendments made by this instrument will also permit DRS claims to be made in certain cases where it is not practical for a business to monitor the use of each individual item held within a common stock of interchangeable goods.

Where does the legislation extend to, and apply?

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

4.4 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. Policy Context

What is being done and why?

5.1 UK customs legislation makes provision for the relief, remission or repayment of customs duty incurred by businesses bringing goods into Northern Ireland. Two separate arrangements are available for goods considered to be 'at risk' of subsequently being moved from Northern Ireland to the European Union ("EU"), where the duty amount chargeable has been calculated to match the amount that would be chargeable if the same goods had been brought into the EU. The effect of these relief, remission and repayment arrangements, where they apply, is to eliminate any duty charge for UK goods entering Northern Ireland from other parts of the UK, and to ensure that the effective amount of duty for goods entering Northern Ireland from other non-EU locations does not exceed the amount chargeable under the UK customs tariff.

5.2 Relief of customs duty is available under CDWS either at the time that the goods are declared for customs purposes in Northern Ireland, or subsequently as a repayment of duty. The amount of relief that can be granted to any business within a specified period (typically three years) is subject to limits set out in the 'state aid' rules that apply in Northern Ireland. Under these state aid rules, the relevant limit varies between different business sectors. It is possible that a UK business incurring large amounts of duty within a period may not be able to use CDWS to claim relief in respect of all of the goods it brings into Northern Ireland.

5.3 Alternatively, duty chargeable on certain goods may be remitted or repaid under DRS. DRS is not subject to any limit on the amount of duty that can be remitted or repaid to a business over a period, but does require a business to be able to produce evidence that goods for which duty has been incurred were put to a qualifying use (a DRS-qualifying use), of a type specified in the document "Duty incurred in Northern Ireland – repayment and remission on production of evidence: eligibility criteria and other conditions" ("the repayment and remission reference document")[1].

5.4 This instrument amends the 2020 Regulations to provide an option for businesses that have been granted duty relief under CDWS to apply to HMRC to have that grant of relief cancelled and replaced with remission of duty under DRS, subject to certain eligibility criteria and evidence. The intention is to enable UK businesses to make the most effective use of the various relief, remission and repayment arrangements available to them. Following these amendments, it will be possible for a UK business to claim a duty relief under CDWS at the time that goods are brought into Northern Ireland, and then replace that CDWS grant with a grant of remission under DRS, once the goods in question have been put to a DRS-qualifying use. Replacing a CDWS grant with a grant under DRS will also allow a UK business to 'replenish' the total amount of relief it can claim under CDWS, for the purposes of the CDWS limits described above.

5.5 The amendments made by this instrument set out arrangements under which a business can apply for this facilitation in respect of an earlier CDWS claim, subject to

[1] The Repayment and Remission Reference Document: https://www.gov.uk/government/publications/reference-document-for-the-customs-northern-ireland-eu-exit-regulations-2020

specified exceptions and time limits. Where such an application is granted by HMRC, the earlier CDWS grant will be treated as null and void and the same amount of duty will instead be remitted under DRS. This remission under DRS will be subject to various conditions, including the provision of evidence that goods have been put to a DRS-qualifying use.

5.6 Elsewhere, the amendments made by this instrument provide the option for claims for remission or repayment of duty under DRS to be made with reference to the use of goods of the same type ("interchangeable goods"). This is intended to enable a business holding a common stock of interchangeable goods to make a DRS claim without having to keep track of the use of each individual item held within that common stock.

5.7 The amendments made by this instrument set out various characteristics that must be shared by all goods that are treated as interchangeable and provide HMRC with a power to specify further conditions and exclusions concerning the types of goods which can benefit from this provision and their uses in a public notice.

5.8 Evidence will be required that goods satisfy specified conditions to be treated as interchangeable and have been put to a DRS-qualifying use. In addition, the amendments made by this instrument contain safeguards to ensure that this facilitation is not abused, including a power for HMRC to issue a notice preventing a person or business from making DRS claims with reference to interchangeable goods where HMRC considers they are not a fit and proper person to make such a claim.

5.9 This instrument also makes some minor amendments to the 2020 Regulations to correct minor errors (see paragraphs (2) to (10), (14)(b) and (c)(i), (17), (18), (19)(b) and (20)(b) of regulation 2).

What was the previous policy, how is this different?

5.10 The previous policy was that a claim under DRS was not possible in respect of a duty amount which had been relieved under CDWS. The amendments made by this instrument will permit DRS claims in respect of duty amounts that have previously been relieved under CDWS, so that UK businesses can make the best use of the relief, remission and repayment arrangements available in respect of duty incurred in Northern Ireland.

5.11 In addition, the previous policy was that a DRS claim could only be made by providing evidence in respect of specific individual goods as to their DRS-qualifying use. This required a business wishing to make a claim under DRS to track both the duty charged on each individual item and the use to which that item has been put. The amendments made by this instrument simplify the position for businesses holding stocks of interchangeable goods. The new provisions allow, in certain circumstances, a DRS claim to be made by providing evidence as to the DRS-qualifying use of interchangeable goods - rather than needing to provide this evidence for the individual, and specifically tracked, goods in respect of which the duty has been incurred.

6. Legislative and Legal Context

How has the law changed?

6.1 The main provisions of UK law concerning customs duties are in the Taxation (Cross-border Trade) Act 2018 ("TCTA") and regulations made under that Act. These include the 2020 Regulations which contain provisions in relation to customs duties in

Northern Ireland and for the relief, remission or repayment of those duty amounts. Chapter 5 of Part 2 of the 2020 Regulations (reliefs and repayments) sets out arrangements for CDWS, and Chapter 6 of Part 2 (repayment or remission of duty on production of evidence) makes provision for DRS. Further details are set out in public notices and the repayment and remission reference document, which are published under powers contained in the 2020 Regulations.

6.2 The 2020 Regulations are being amended to permit DRS claims to be made in respect of duty that has previously been relieved under CDWS, and to provide for DRS claims made with reference to the DRS-qualifying use of interchangeable goods.

6.3 Additionally, the amendments made by this instrument to the 2020 Regulations include new powers for HMRC to specify further matters in public notices. In particular: the power to specify categories of goods which are excluded from being referenced as interchangeable goods in DRS claims; the power to specify categories of goods which are excluded from the new ability to reference interchangeable goods in DRS claims; the power to specify requirements which interchangeable goods referenced in DRS claims must satisfy; and the power to specify further matters an HMRC officer may take into account when deciding whether to issue a notice to a person that the person is not considered to be fit and proper to make a DRS claim with reference to interchangeable goods. Any public notices made by HMRC under these new powers will be published on the GOV.UK website[2] or may be inspected free of charge at HMRC, 100 Parliament Street, London, SW1B 2BQ.

Why was this approach taken to change the law?

6.4 Amendments to the existing legislation were required to make the necessary changes. The use of public notices to specify further matters, as described above, is preferred in order to preserve flexibility where particular circumstances might require it, for example when there is cause to exclude categories of goods from the interchangeable goods provisions.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has not been any formal consultation on the changes made by this instrument, which will increase the flexibility and choice available to businesses bringing goods into Northern Ireland. The changes are optional facilitations for which consultation is not considered necessary. However, HMRC is in frequent discussion with businesses and other groups about UK customs matters, and these changes reflect some of the most common feedback that has been received from businesses and customs agents involved in the movement of goods into Northern Ireland.

8. Applicable Guidance

8.1 HMRC guidance on CDWS and DRS is located on the GOV.UK website. The guidance products will be updated when the measures are implemented.

[2] Customs, VAT and excise UK transition legislation from 1 January 2021: www.gov.uk/government/collections/customs-vat-and-excise-uk-transition-legislation-from-1-january-2021

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering this instrument will be published on the GOV.UK website[3].

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is expected to be positive because the changes made by this instrument will increase the flexibility available to some of these persons who bring goods into Northern Ireland.

9.3 The legislation does impact small or micro businesses, and these businesses will be able to access the new facilitations. Small businesses in particular are among the groups who HMRC expects to benefit. Micro businesses are typically less likely to be constrained by existing legislation.

9.4 No measures are proposed to minimise the impact of the requirements on small or micro businesses (employing up to 50 people). The changes made by this instrument concern general customs rules that apply to all businesses which incur duty when they bring goods into Northern Ireland. Any impact upon small or micro businesses is expected to be positive, as explained at paragraph 9.3.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to keep the customs rules under review through ongoing engagement with businesses and their representatives, and compliance activity, to ensure that this instrument meets the policy objectives set out in section 5 of this Memorandum.

10.2 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Dan Tomlinson MP has made the following statement:

"A statutory review clause is not included in the instrument because the instrument relates to a tax or duty, and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument makes provision for certain matters to be specified in a notice published by HMRC. TCTA includes the power to sub-delegate and certain provisions of this instrument rely on sections 32(8)(b) and 40(7)(b) of TCTA in that regard.

11.2 This instrument makes minor amendments to the 2020 Regulations to correct minor errors (see paragraph 5.9) and accordingly, following agreement with the SI Registrar, is using the free issue procedure.

[3] Tax Information and Impact Note: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).